



**Resource Management Agency
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

KUYLER CROCKER
District One

PETE VANDER POEL
District Two

AMY SHUKLIAN
District Three

EDDIE VALERO
District Four

DENNIS TOWNSEND
District Five

AGENDA DATE: May 21, 2019 – **REVISED**

Public Hearing Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Published Notice Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Advertised Published Notice	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Meet & Confer Required	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Personnel Resolution attached	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
CONTACT PERSON: Celeste Perez PHONE: 559-624-7010		

SUBJECT: Amending General Nuisance Abatement Ordinances and Building Regulations Ordinances to Address Substandard Housing Nuisances

REQUEST(S):

That the Board of Supervisors:
On May 21, 2019

1. Introduce and waive the first reading of an ordinance amending Chapter 1 of Part IV of the Ordinance Code of Tulare County, pertaining to abatement of nuisances, and amending Chapter 15 of Part VII of the Ordinance Code of Tulare County, pertaining to building regulations and abatement of related nuisances, including substandard housing nuisances.
2. Set the second reading for June 4, 2019.
3. Direct the Clerk to publish a summary of the ordinance before the second reading, as required by law.
4. Approve the Categorical Exemption as the appropriate environmental determination, consistent with the California Environmental Quality Act (CEQA) and the State CEQA Guidelines, pursuant to Title 14, Cal. Code Regulations Section 15061 (b) (3).
5. Direct the Environmental Assessment Officer, or designee, to sign and file the Notice of Exemption with the County Clerk.

On June 4, 2019

1. Waive the second reading and adopt an ordinance amending Chapter 1 of Part IV of the Ordinance Code of Tulare County, pertaining to abatement of nuisances, and amending Chapter 15 of Part VII of the Ordinance Code of Tulare County, pertaining to building regulations and abatement of related

SUBJECT: Amending General Nuisance Abatement Ordinances and Building Regulations Ordinances to Address Substandard Housing Nuisances

DATE: May 21, 2019

- nuisances, including substandard housing nuisances.
2. Direct the Clerk to publish a summary of the ordinance and to post a full copy of the ordinance after adoption, as required by law.

SUMMARY:

The Building & Housing Division, which includes Code Compliance, under the direction of the Resource Management Agency (RMA), was developed to address concerns about unsafe, unhealthy or unsightly conditions throughout the County. Over the past several years, RMA has struggled to recover costs of code compliance activities from code violators. In determining a method to increase the likelihood of cost recovery, County Counsel and Risk Management advised RMA that modifying our existing ordinances related to nuisance abatement procedures would be necessary. There are various types of nuisances that RMA encounters in fulfilling its duties as the agency that houses the Planning Department, Building Official, and general code enforcement, however, after recently reviewing the County's nuisance abatement procedures, staff determined that it would like to improve and clarify the County's abatement processes.

Accordingly, this agenda item proposes an update to both the general nuisance abatement ordinance (located in Chapter 1 of Part IV, of the Ordinance Code, and which affects other departments apart from RMA) and the Building Regulation Ordinances (located in Chapter 15 of Part VII of the Ordinance Code, and which primarily impacts RMA). Staff believes that these changes will improve code enforcement's ability to enforce regulations that protect the public's health, safety and welfare, both for general nuisances and for nuisances related to substandard housing, specifically.

The most significant changes proposed for general nuisance abatement include changes to the abatement appeals process. The current appeals process includes an appeal to the Department, which requires prospective appellants to pay an administrative hearing fee. After the Department (generally through a designee) renders a determination on the existence of a nuisance, the Department's decision would be appealable to the Board of Supervisors. In the new appeals process, prospective appellants would appeal to the Department without having to pay a fee, but the Department's decision would then be appealable to a new position that the Board has recently created: the County Hearing Officer. Those individuals who wish to appeal to the County Hearing Officer would have to pay an appeals fee, to be set by the Board of Supervisors. The appeals fee can be waived for individuals who provide sufficient evidence of their inability to pay.

Other changes to the general nuisance abatement ordinance include the following:

- (1) adds new or expands definitions of significant terms;
- (2) clarifies information that should be contained in a notice and order to abate;
- (3) codifies the authority of an enforcement officer to enter into voluntary abatement agreements, pursuant to certain limitations;
- (4) allows the County or the appellant as the "prevailing party" in a Hearing Officer

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appeal case to recover attorney's fees in an action, administrative proceeding, or special proceeding to abate a nuisance if the County so elects at the initiation of the action or proceeding;

(5) establishes more robust requirements for a statement of expense regarding abatement activities;

(6) provides that the County Hearing Officer will confirm any appealed statements of expenses at a hearing, and that the Board of Supervisors may order those costs to be specially assessed or liened against the property through later Board action;

(7) clarifies language that must be included in a notice of abatement lien;

(8) clarifies service and posting requirements for all notices/orders; and

(9) adds provisions clarifying that ordinance sections, provisions, etc., are severable and that the ordinance does not create a duty to enforce.

As mentioned above, the proposed ordinance also amends various sections in the County's Building Regulations Ordinances (Part VII, Chapter 15 of the Ordinance Code of Tulare Code). The most significant change to these ordinances includes the addition of a new abatement ordinance specific to substandard housing, which would be located at Article 35 of Chapter 15 of Part VII. The "Substandard Housing Nuisance Abatement Ordinance" establishes a local administrative abatement process that contains similar procedures and requirements to many provisions in the general nuisance abatement ordinance, but with some variations to provide substantial equivalency with the processes and protections provided by State Housing Law and its implementing regulations (See Health & Safety Code sections 17910 *et seq.* and Title 25 of the California Code of Regulations, sections 1 *et seq.*). The appeal process in the Substandard Housing Nuisance Abatement Ordinance will similarly include an informal, department level appeal, to be followed by a formal appeal to the County Hearing Officer established pursuant to the new ordinance enacting Article 31 of Chapter 3 of Part I of the Ordinance Code.

Additional highlights of the Building Regulations Ordinance amendments include:

(1) clarifies that constructing, altering or maintaining a building in violation of the requirements of that Chapter, or installing, using or maintaining heating and ventilation equipment in violation of the requirements of that Chapter are a public nuisance subject to abatement;

(2) clarifies and revises certain provisions of the Uniform Housing Code, 1997 Edition, as adopted by the County in section 7-15-2940 of the Ordinance Code, and clarifies that appeals of technical determinations by the Building Official pursuant to the Uniform Housing Code are appealable to a new Local Appeals Board, (which will also be established by a separate amendment to section 7-15-1050 of the Ordinance Code, to be considered at this same meeting);

(3) moves the "Unsafe and Substandard Buildings" regulations in the Ordinance Code from Article 15 in Chapter 15 of Part VII to Article 33 of the same Chapter; and

(4) codifies various options for the County to exercise its nuisance abatement authority with respect to substandard or unsafe buildings.

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FISCAL IMPACT/FINANCING:

No Net County Cost. We anticipate that as a result of the ordinance changes proposed in this resolution, cost recovery for the Code Enforcement Division of RMA, a unit of the General Fund, will improve significantly.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

Safety and Security and Economic Well Being – Code enforcement activities enhance the safety and security of the Tulare County residents by identifying and abating unsafe, unhealthy or unsightly conditions in the community. It will also serve to improve the economic well-being of residents by eliminating blight and improving the opportunity for business investment.

ADMINISTRATIVE SIGN-OFF:



Sherman Dix
Assistant Director Fiscal Services



Michael Washam
Associate Director



FOR - _____
Reed Schenke
Director

cc: County Administrative Office

- Attachment(s)
- A - Proposed Ordinance (Clean copy)
 - B - Proposed Ordinance (Red-lined mark-up)
 - C - Pre-Adoption Summary of Proposed Ordinance
 - D - Post-Adoption Summary of Proposed Ordinance
 - E - Notice of Exemption

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF AMENDING GENERAL)
NUISANCE ABATEMENT ORDINANCES) Resolution No. _____
AND BUILDING REGULATIONS) Ordinance No. _____
ORDINANCES TO ADDRESS)
SUBSTANDARD HOUSING NUISANCES)
)

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD MAY 21, 2019, BY
THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JASON T. BRITT
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

* * * * *

On May 21, 2019

1. Introduced and waived the first reading of an ordinance amending Chapter 1 of Part IV of the Ordinance Code of Tulare County, pertaining to abatement of nuisances, and amending Chapter 15 of Part VII of the Ordinance Code of Tulare County, pertaining to building regulations and abatement of related nuisances, including substandard housing nuisances.
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5. Directed the Environmental Assessment Officer, or designee, to sign and file the Notice of Exemption with the County Clerk.

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF AMENDING GENERAL)
NUISANCE ABATEMENT ORDINANCES) Resolution No. _____
AND BUILDING REGULATIONS) Ordinance No. _____
ORDINANCES TO ADDRESS)
SUBSTANDARD HOUSING NUISANCES)
)

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD JUNE 4, 2019, BY
THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JASON T. BRITT
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

* * * * *

1. Waived the second reading and adopted an ordinance amending Chapter 1 of Part IV of the Ordinance Code of Tulare County, pertaining to abatement of nuisances, and amending Chapter 15 of Part VII of the Ordinance Code of Tulare County, pertaining to building regulations and abatement of related nuisances, including substandard housing nuisances.
2. Directed the Clerk to publish a summary of the ordinance and to post a full copy of the ordinance after adoption, as required by law.

Attachment “A”

Proposed Ordinance (Clean copy)

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 1 OF PART IV OF THE ORDINANCE CODE OF TULARE COUNTY, PERTAINING TO ABATEMENT OF NUISANCES, AND AMENDING CHAPTER 15 OF PART VII OF THE ORDINANCE CODE OF TULARE COUNTY, PERTAINING TO BUILDING REGULATIONS AND ABATEMENT OF RELATED NUISANCES, INCLUDING SUBSTANDARD HOUSING NUISANCES.

THE BOARD OF SUPERVISORS OF THE COUNTY OF TULARE ORDAINS AS FOLLOWS:

Section 1. Chapter 1 (“Public Nuisances”) of Part IV (“Health, Safety and Sanitation”) of the Tulare County Ordinance Code is amended to read in its entirety as follows:

CHAPTER 1. PUBLIC NUISANCES

ARTICLE 1. GENERAL PROVISIONS

4-01-1000 LEGISLATIVE AUTHORIZATION: TITLE:

Pursuant to the authority granted to it by sections 25845 and 25845.5 of the Government Code , the Board of Supervisors does enact this Chapter, which shall be known, and may be cited, as the Public Nuisance Ordinance.

4-01-1005 PURPOSE AND INTENT:

(a) It is the purpose of this Chapter to protect the health, safety, [comma added] and welfare of the residents of the County of Tulare through the prevention of public nuisances in the County. It shall be construed liberally to that end.

(b) It is the intention of the Board of Supervisors to minimize the burden placed upon property owners and taxpayers in carrying out the purpose set forth in subsection (a) above. Accordingly, those methods of abatement are to be favored which are least costly and that are most directly related to protecting the public health, safety, [comma added] and welfare.

4-01-1010 NOT EXCLUSIVE REGULATION:

This Chapter is not the exclusive regulation of public nuisances. It shall supplement and be in addition to the other regulating statutes and ordinances heretofore or hereafter enacted by the State, the County, or any other legal entity or agency having jurisdiction.

4-01-1015 APPLICATION:

This Chapter applies to all real property owned by an individual, firm, partnership, joint venture, association, corporation, estate, [comma added] or trust. In addition, it applies to any real property owned by the United States and any agency of the United States, the State of California and any agency of the State, any city, and a public district or political subdivision of the State of California, [comma added] insofar as it is legally possible to enforce this Chapter, or any portion thereof, against such entities.

4-01-1020 DEFINITIONS:

Except where the context otherwise requires, the following definitions shall govern the construction of this Chapter:

- (a) "Agent" means a person or entity acting on behalf of and subject to the control of the owner of real property or of a person legally in possession of the real property.
- (b) "Board" means the Board of Supervisors of the County .
- (c) "Cost of abatement" means the direct cost to the County of physically abating a public nuisance.
- (d) "Cost of administration" means the cost to the County of performing the various administrative acts required under this Chapter with regard to the abatement of a public nuisance, including, without limitation, the costs of investigating such nuisance [comma deleted] and the cost of prosecuting the public nuisance, but not including the actual cost of physically abating the nuisance.
- (e) "County" means the County of Tulare, acting by and through the Board , the County Administrative Officer, or any appropriate County agency, department, or division.
- (f) "Department" means the County department that employs the enforcement officer.

(g) "Director" means the head of the Department that issued the notice of violation and order to abate a nuisance, or his or her designee.

(h) For the purposes of this Chapter, "enforcement officer" means and includes the following County officials and their deputies, assistants, or other duly authorized representatives:

- (1) Director of Resource Management Agency;
- (2) County Health Officer;
- (3) Agricultural Commissioner;
- (4) Fire Chief;
- (5) Sheriff; and/or
- (6) Such other persons as may be designated by the Board.

(i) "Owner" means the person in whom is vested the ownership, dominion, or title of real property.

(j) "Real property" includes all of the surface or subsurface areas described in the most recently recorded deed or deeds relating to such property, [comma added] and all improvements on the real property.

4-01-1025 SEVERABILITY

The provisions of this Chapter are hereby declared to be severable. If any section, subsection, subdivision, sentence, clause, phrase, portion, or application of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portions of this Chapter. The Board hereby declares that it would have enacted this Chapter, each section, subsection, subdivision, sentence, clause, phrase, and portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions be declared invalid.

4-01-1030 NO DUTY TO ENFORCE:

Nothing in this Chapter shall be construed as imposing any duty on the enforcement officer, or any other agency, department, or division of the County to take any specific enforcement action

with respect to alleged violations of this Chapter, including issuing citations or notices of violations pursuant to this Chapter. Neither the enforcement officer nor any other agency, department, or division of the County, or the County, shall be held liable for failure to take any specific enforcement action to correct an alleged violation of this Chapter.

ARTICLE 3. NUISANCE

4-01-1070 DECLARATION OF NUISANCE:

Without limiting any other provision of this Code, or of any other ordinance adopted by the Board, each of the following is hereby declared to be a public nuisance [comma deleted] and a violation of this Code, which may be abated in accordance with the provisions of this Chapter:

- (a) Anything , or any use or condition of real property, that poses a danger to human health, is unsafe or detrimental to the public health, safety, or welfare, or is indecent or offensive to the senses and interferes 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, stream, canal, or basin, or any public park, street, or highway, and affects at the same time an entire community or neighborhood or any considerable number of persons, although the extent of annoyance or damage inflicted upon individuals may be unequal ; [comma deleted, semicolon added; ¶ added](b) Any condition that is specifically declared to be a public nuisance by any statute, [comma added] any provision of this Code, or any other ordinance adopted by the Board;
- (c) Any public nuisance known or recognized in common law or equity;
- (d) Any condition that constitutes a nuisance as defined in section 3479 of the Civil Code;
- (e) Any use of land, buildings, or premises established, operated, or maintained contrary to the provisions of any statute, any provision of this Code, or any other ordinance adopted by the Board;
- (f) Any condition that constitutes a visual blight to a reasonable person of average sensibilities. For purposes of this Chapter, “visual blight” is any unreasonable or unlawful condition or use of real property, premises, or building exteriors that by reason of its appearance as viewed at ground level from the public right-of-way, or from neighboring premises, is detrimental to the property of others or to the value of property of others, offensive to the senses, or significantly degrades the aesthetic appearance of the neighborhood. “Visual blight” may include, but is not limited to, the keeping, storing, depositing, scattering over, or accumulation on the premises of any of the following:

(1) Junk, trash, debris, scrap metal, wood, rubbish, or packing materials, or

(2) Abandoned, discarded, or unused objects or equipment, such as furniture, stoves, appliances, refrigerators, freezers, cans or containers, motor vehicles, or automotive parts and equipment.

(g) Any condition that constitutes an attractive nuisance, which are those dangerous objects or conditions that, by their nature, may attract children or other curious individuals. Attractive nuisances include, but are not limited to, unprotected hazardous or unfilled swimming pools, ponds, iceboxes, refrigerators, freezers, abandoned wells, shafts, septic tanks, or other excavations.

4-01-1075 INSPECTION WARRANT:

Where there is a report of the existence of a public nuisance or other reason to believe that a public nuisance exists on certain real property, but the owner or person legally in possession of the real property refuses consent for the enforcement officer to inspect it, or where circumstances justify the failure to seek consent to inspect, the County may proceed to obtain an inspection warrant pursuant to Code of Civil Procedure section 1822.50 et seq. to enter and inspect such real property.

4-01-1080 EXCEPTION:

No inspection warrant shall be required where there is an immediate threat or danger to the public health or safety, [comma added] and immediate abatement of a public nuisance is justified as provided in section 4-01-1315 of this Chapter.

4-01-1085 OWNER'S DUTY:

It is the duty of every owner of real property within the unincorporated area of the County to prevent a public nuisance described in section 4-01-1070 of this Chapter from arising on, or existing upon, the owner's real property.

ARTICLE 5. NOTICE OF NUISANCE

4-01-1140 DETERMINATION OF NUISANCE: NOTICE OF VIOLATION: ORDER TO ABATE AND VACATE: SERVICE:

Whenever an enforcement officer determines that a public nuisance described in section 4-01-1070 of this Chapter exists upon any real property within the County, the enforcement officer may prepare a notice of violation and order to abate (“notice/order”), and shall serve a copy thereof upon the owner of the real property upon which the nuisance exists, as shown on the last equalized assessment roll, or to the current owner if otherwise known to the enforcement officer. The enforcement officer shall also serve copies of the notice/order upon anyone known to the enforcement officer to be in possession of the real property, and upon any mortgagee, beneficiary under a deed of trust, or other lienholders of record.

4-01-1145 NOTICE OF VIOLATION AND ORDER TO ABATE: CONTENTS:

(a) The notice/order described in section 4-01-1140 of this Chapter shall include the following:

(1) The name, address, and telephone number of the enforcement officer who issued the notice/order.

(2) The name of the owner of the real property upon which the nuisance exists, as the name appears on the records of the County Assessor/Clerk-Recorder.

(3) The street address, assessor's parcel number, or any other description sufficient to identify the real property affected.

(4) A statement that the County has determined that a public nuisance exists on the real property.

(5) A description of the condition(s) constituting the nuisance, including any facts upon which the determination is based.

(6) Identification of the specific provisions of law the enforcement officer has determined are being violated.

(7) An order to completely abate the nuisance within a reasonable period of time after the notice is served. Except for nuisances where the time to respond or abate is otherwise determined by statute, another provision of this Code, or any other ordinance adopted by the

Board, a reasonable amount of time to abate a nuisance shall not be less than ten (10) calendar days after service of the notice.

(8) If the enforcement officer determines that the condition causing the nuisance can be corrected or abated by repair or corrective action, an order specifying the repairs or corrective actions that are required.

(9) A statement of the right to request administrative review of the Notice of Violation by filing a written request for administrative review with the Director within ten (10) calendar days of service of the notice/order. The notice/order shall include a telephone number and an Internet website (if applicable) where a property owner may obtain a copy of the request form. A copy of the request form shall also be included with the notice/order.

(10) A statement explaining the consequences of failing to abate or request administrative review within the applicable time periods, including (i) that the notice/order will become a final order; (ii) that the County may abate the public nuisance at the owner's expense; and (iii) that if the notice/order is not fully complied with within the applicable time period, the County may seek recovery of its civil, administrative and abatement costs, and may impose fines or penalties pursuant to this Chapter and any other applicable laws, including by means of liens and/or special assessments against the subject real property that will be collected at the same time and in the same manner as ordinary real property taxes.

(11) If the enforcement officer determines that sufficient information about the nuisance and subject property is available, then the notice/order shall be accompanied by an estimate of the potential total abatement costs that may be charged to the owner if the County abates the nuisance, as well as any related civil and administrative costs, and estimated fines and penalties, along with a statement that any such estimate is provided as a courtesy, is simply an estimate, and in no way limits the type or amount of costs and penalties the County may impose under this Chapter.

(12) A statement that, with respect to substandard housing, in accordance with sections 17274 and 24436.5 of the Revenue and Taxation Code, a tax deduction may not be allowed for interest, taxes, depreciation, or amortization paid or incurred in the taxable year.

(b) Any estimate furnished by the County to the property owner of potential abatement costs, civil and administrative costs, or fines and penalties that the County may impose under this Chapter if the County abates a nuisance is simply an estimate, and in no way limits the type or amount of costs, fines, and penalties the County may ultimately impose under this Chapter.

4-01-1150 METHODS OF SERVICE: RECORDING: TIMING OF SERVICE:

(a) Unless otherwise required by law, the notices/orders required by this Chapter shall be served by one or more of the following methods:

(1) Personal service, by delivery to the party or attorney on whom the service is required to be made.

(2) Service by certified mail. Such service shall be deemed effective two (2) days after the date of mailing. The owner of a property may be served by certified mail at his or her address as it appears on the last equalized assessment roll, except that, if the records of the County Assessor/Clerk-Recorder show that the ownership has changed since the last equalized assessment roll was compiled, the notice shall be mailed to the new owner. (3) Service by posting. If service cannot with diligent effort be accomplished by personal delivery or by mail, then notice may be given by posting copies of the notice/order along the subject real property not more than one thousand (1,000) feet apart, but in no event shall fewer than two (2) signs be posted.

(b) A copy of any notice/order served pursuant to this section shall be recorded against the subject real property in the office of the County Assessor/Clerk-Recorder.

(c) If the enforcement officer serves a notice/order pursuant to this Chapter in the manner and within the time limits required by this section, then the failure of any person to receive actual notice of any proceedings shall not affect the validity of any proceedings taken pursuant to this Chapter.

ARTICLE 7. ADMINISTRATIVE REVIEW BY DEPARTMENT

4-01-1200 REQUEST TO [colon deleted] DEPARTMENT:

(a) Any person affected by the determination of the County that a public nuisance exists may request administrative review of that determination by filing a written request with the Director of the County department that issued the determination on or before the tenth (10th) calendar day following the date of mailing, personal delivery, [comma added] or posting of the notice, as required by Article 5 of this Chapter.

(b) Unless the nuisance is abated as specified in the notice/order, or the real property owner or other party with a legally protected interest in the real property requests administrative review of the determination that a public nuisance exists within ten (10) calendar days after the date the notice/order was served, then the enforcement officer's notice/order shall constitute a final ad-

ministrative order or decision. It cannot be appealed and cannot be judicially reviewed, because the aggrieved person failed to exhaust available administrative remedies.

4-01-1210 NOTICE:

The Director, or his or her designee, as administrative review officer, shall give notice to the person requesting the administrative review of the date, time and place when the administrative review will be held, which date shall not be less than five (5) calendar days after the date of mailing the notice. The notice shall be mailed to the address given by the person in his or her request for administrative review.

4-01-1220 ADMINISTRATIVE REVIEW:

(a) At the administrative review, the administrative review officer shall review the determination, any and all relevant documents, and such other relevant information as shall be presented. The administrative review shall be informal.

(b) After reviewing all of the available information, the administrative review officer shall determine whether to uphold the determination of the existence of a nuisance and the order to abate, modify the notice/order, or direct that the notice/order be withdrawn. This decision may be made orally at the administrative review, but the decision shall be reduced to writing and mailed to the person requesting the appeal at the address given by the person in his or her request for administrative review, unless otherwise requested in writing by the party to be served. The notice of decision shall also include a description of the right to appeal the decision to the County Hearing Officer, as provided in Article 9 of this Chapter.

ARTICLE 9. APPEAL TO COUNTY HEARING OFFICER

4-01-1250 APPEAL TO COUNTY HEARING OFFICER: NOTICE:

(a) The person who requested the administrative review by the Department may appeal the decision of the administrative review officer to the County Hearing Officer, as provided by Article 31 of Chapter 3 of Part I of this Code. An appeal to the County Hearing Officer shall be in writing and shall be filed with the Clerk of the Board within ten (10) calendar days after mailing of the notice of decision by the administrative review officer. An appeal to the County Hearing Officer shall specifically set forth the grounds of the appeal. [¶ added]

(b) At the time of filing the appeal, the appellant shall pay a fee in an amount adequate to cover the cost of processing and hearing the appeal, [comma added] as established from time to time

by resolution of the Board of Supervisors. [¶ added] The appellant may request a waiver of the fee pursuant to section 1-31-1060 of this Code.

(c) The Clerk of the Board shall mail notice to the appellant of the date and time that the County Hearing Officer will hear the appeal, which date shall be not less than ten(10) calendar days after the date of mailing of the notice.

4-01-1255 HEARING ON APPEAL: DETERMINATION:

(a) At the time fixed by the Clerk of the Board, the County Hearing Officer shall hear the appeal from the administrative review officer's decision.

(b) The written determination that a public nuisance exists shall be admitted into evidence. The owner shall bear the burden of proving that the determination is not accurate.

(c) The hearing shall be conducted, and the County Hearing Officer's decision shall be issued, in the manner prescribed in Article 31 of Chapter 3 of Part I of this Code.

ARTICLE 11. ABATEMENT

4-01-1300 ABATEMENT FOLLOWING JUDICIAL DECREE:

If a public nuisance is declared by judicial decree, after the defendant(s) receive(s) notice of entry of judgment as prescribed by law, and after the time within which an appeal may be filed has expired, then all procedures of this Chapter shall be applicable and may be followed in the same manner as if a decision by the County Hearing Officer had been made determining a public nuisance to exist.

4-01-1305 ABATEMENT BY OWNER:

(a) Any owner may voluntarily abate a nuisance described in section 4-01-1070 of this Chapter at any time prior to commencement of abatement by the County. The County shall have discretion to request such voluntary correction or abatement prior to proceeding with the formal abatement procedures provided by this Chapter.

(b) The enforcement officer is also authorized to enter into voluntary abatement settlement agreements with the owner of a property, to allow the County to enter onto an owner's real property and to abate nuisances on behalf of the owner. Any such agreement must be approved as to form by County Counsel, and will require the owner to: admit the existence of the nui-

sance; consent to the County's entry on the subject real property; consent to the County's conducting abatement activities on the real property through the County's representatives and/or independent contractors; accept all liabilities and costs related to the abatement; and allow the County to collect such abatement costs by lienning the subject real property, or by pursuing a personal lien against the owner. Nothing in this paragraph is intended to require a property owner to enter into a voluntary abatement settlement agreement with the County.

4-01-1310 ABATEMENT: ENTERING PRIVATE PROPERTY:

If a public nuisance is not voluntarily corrected or abated by the owner or other responsible person, and if no request for administrative review has been made as provided in Article 7 of this Chapter, or if no appeal to the County Hearing Officer has been made as provided in Article 9 of this Chapter, or if the decision after an appeal to the County Hearing Officer so provides, the County may cause the public nuisance to be abated. The County or its representatives or independent contractors who are to perform the work may enter upon the real property on which the public nuisance exists for the purpose of abating the nuisance . If necessary, the enforcement officer shall apply to a court of competent jurisdiction for a warrant authorizing entry upon the subject real property for purposes of undertaking the work of abatement.

4-01-1315 SAME: EMERGENCIES:

Regardless of the provisions of section 4-01-1310 of this Chapter, if it appears to the County that a public nuisance represents an immediate threat or danger to the public health or safety, the County may abate such public nuisance to the extent necessary to eliminate such threat or danger to the public health or safety without following the notice and hearing requirements set forth in Articles 5, 7, [comma added] and 9 of this Chapter.

ARTICLE 13. PAYMENT OF COSTS

4-01-1370 RECOVERY OF ATTORNEY'S FEES:

In any action, administrative proceeding, or special proceeding to abate a nuisance under this Chapter, attorney's fees may be recovered by the prevailing party. Recovery of attorneys' fees by the prevailing party is limited to those actions or proceedings in which the County elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the County in the action or proceeding.

4-01-1375 STATEMENT OF EXPENSES:

(a) Any County department [comma deleted] which abates a public nuisance pursuant to this Chapter [comma deleted] shall keep an accounting of the cost of each abatement, and shall prepare a statement of expenses in writing showing the cost of abatement and the applicable cost of administration. If real property under more than one ownership has been included in an overall abatement project, the statement of expenses shall show such costs for the property owned by each owner separately. The statement of expenses or its supporting attachments shall include the following information:

- (1) Name(s) of the contractor(s) who performed the abatement;
- (2) Dates when abatement activities were conducted on the real property, and information about what activities were conducted on which dates;
- (3) Number of individuals who worked on each type of abatement activity on the property;
- (4) Total number of hours the contractor's employees/agents spent on each type of abatement activity;
- (5) Rate for each type of abatement activity performed;
- (6) Itemized list of other fees or charges incurred in conducting the abatement, including, but not limited to, dump fees or travel fees; and
- (7) Costs of administration, including any applicable postage and attorneys' fees.

(b) The County shall mail a copy of the statement of expenses, and a notice explaining the right to appeal the statement of expenses to the County Hearing Officer as provided in section 4-01-1380 of this Chapter, to the owner of the affected real property at the address provided in section 4-01-1150 of this Chapter, unless the owner has otherwise requested in writing, and to any mortgagee, lienholders of record, or beneficiary under a deed of trust.

4-01-1380 APPEAL ON STATEMENT OF EXPENSES: NOTICE:

(a) The owner of the affected real property, or other individual with a legally protected interest in the affected real property, may appeal for a modification of the statement of expenses to the County Hearing Officer. Any appeal to the County Hearing Officer shall be in writing and shall be filed with the Clerk of the Board within ten (10) calendar days after the date of mailing of the

notice and statement of expenses. An appeal shall specifically set forth the grounds of the appeal. At the time of filing the appeal, the appellant shall pay a fee adequate to cover the cost of processing and hearing the appeal as established from time to time by resolution of the Board of Supervisors. The appellant may request a waiver of the fee pursuant to section 1-31-1060 of this Code. [¶ added]

(b) The Clerk of the Board shall mail notice to the appellant of the date and time that the County Hearing Officer will hear the appeal, which date shall be not less than ten (10) calendar days after the date of mailing the notice.

(c) Unless otherwise expressly stated by the owner, payment of the cost of abatement and the cost of administration prior to said hearing shall be deemed a waiver of the right thereto and an admission that said statement of expenses is accurate and reasonable.

4-01-1385 HEARING ON APPEAL: STATEMENT OF EXPENSES:

(a) At the time fixed by the Clerk of the Board, the County Hearing Officer shall hear the appeal on the statement of expenses. The owner may appear and be heard on the questions of whether the statement of expenses and the costs included are accurate and reasonable.

(b) The report of the statement of expenses shall be admitted into evidence. The owner shall bear the burden of proving that the statement of expenses is not accurate or reasonable.

(c) The hearing shall be conducted in the manner prescribed in Article 31 of Chapter 3 of Part I of this Code .

4-01-1390 MODIFICATIONS:

The County Hearing Officer may make such modifications in the statement of expenses as he or she deems necessary based on the evidence at the hearing, [comma added] and thereafter shall confirm the statement of expenses in a written decision.

4-01-1395 LIABILITY FOR COST OF ABATEMENT: SPECIAL ASSESSMENT AND LIEN:

(a) The owner of the real property shall be liable for the cost of the abatement, including the cost of administration, and any applicable attorney's fees, as so determined. [¶ added]

(b) The Board may order that the cost of abating public nuisances pursuant to this Chapter, and the applicable costs of administration, and any applicable attorney's fees, be placed on the County tax roll by the County Auditor as special assessments against any applicable real prop-

erty, or placed on the unsecured roll, and collected at the same time and in the same manner as ordinary county taxes are collected, if such costs and fees are not paid within five (5) days following service of the County Hearing Officer's decision under section 4-01-1385 or 4-01-1390. The Board may also order that a notice of abatement lien be recorded against any applicable real property until such costs and fees have been paid in full.

(c) Recovery of costs and fees pursuant to this section shall be in addition to and shall not limit any prevailing party's right to recover costs pursuant to Sections 1032 and 1033.5 of the Code of Civil Procedure or any other provision of law.

4-01-1400 PAYMENT OF COST OF ABATEMENT: CONDITIONS:

The Board may order that the payment of the cost of abating nuisances pursuant to this Chapter, and the applicable costs of administration, and any applicable attorney's fees, become a condition precedent to the issuance of any and all pending or future permits or entitlements for use requested from the County by any person found responsible for the payment of such costs.

4-01-1405 SECOND OR SUBSEQUENT ABATEMENT: TREBLE DAMAGES:

As authorized by Government Code section 25845.5, upon a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property is responsible for a condition that may be abated in accordance with this Chapter, except for conditions abated pursuant to section 17980 of the Health and Safety Code, a court may order the owner to pay treble the costs of the abatement.

Section 2. Section 7-15-1005 ("Severability") of Chapter 15 ("Building Regulations" of Part VII ("Land Use Regulation and Planning") of the Tulare County Ordinance Code is amended to read as follows:

7-15-1005 SEVERABILITY:

The provisions of this Chapter are hereby declared to be severable. If any section, subsection, subdivision, sentence, clause, phrase, portion, or application of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portions of this Chapter. The Board hereby declares that it would have enacted this Chapter, each section, subsection, subdivision, sentence, clause, phrase, and portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions is declared invalid.

Section 3. Section 7-15-1065 (“Violations and Penalties”) of Chapter 15 (“Building Regulations”) of Part VII (“Land Use Regulation and Planning”) of the Tulare County Ordinance Code is amended to read as follows:

7-15-1065 VIOLATIONS AND PENALTIES: PUBLIC NUISANCE

(a) It shall be unlawful and a public nuisance for any person to erect, construct, enlarge, alter, repair, move, remove, demolish, convert, equip, use, occupy, [comma added] or maintain any building or structure, or any portion thereof, in the unincorporated territory of Tulare County, contrary to or in violation of Chapter 15 (Building Regulations) or of this Article, or to cause, permit, or suffer the same to be done. [¶ added]

(b) It shall also be unlawful and a public nuisance for any person to erect, install, alter, repair, relocate, add to, replace, use, [comma added] or maintain heating, ventilating, comfort cooling, or refrigeration equipment in the unincorporated territory of Tulare County contrary to or in violation of any of the provisions of Chapter 15 (Building Regulations), or of this Article, or to cause, permit, or suffer the same to be done. [¶ added]

(c) Any person violating any of the provisions of this Chapter, or any of the California Codes incorporated pursuant to any of the provisions of this Chapter 15 (Building Regulations), shall be guilty of a misdemeanor, which shall be punishable as provided in Section 125 (Violations) of this Code. Any person in violation of Chapter 15 (Building Regulations) or this Article shall be deemed guilty of a separate offense for each and every day, or portion thereof, during which any violation of any such provision of said Codes or this Article is committed, continued, or permitted.

Section 4. Article 15 (“Unsafe and Substandard Buildings”) of Chapter 15 (“Building Regulations”) of Part VII (“Land Use Regulation and Planning”) of the Tulare County Ordinance Code is repealed.

Section 5. Article 15 of Chapter 15 (“Building Regulations”) of Part VII (“Land Use Regulation and Planning”) of the Tulare County Ordinance Code is added to read as follows:

ARTICLE 15. (RESERVED)

[no sections enacted under heading]

Section 6. Section 7-15-2940 (“Adoption”) of Article 30 (“1997 Uniform Housing Code”) of Chapter 15 (“Building Regulations”) of Part VII (“Land Use Regulation and Planning”) of the Tulare County Ordinance Code is renumbered and amended to read as follows:

7-15-3000 ADOPTION OF UNIFORM HOUSING CODE:

Subject to subsections (a) through (e) below, the Uniform Housing Code, 1997 Edition, as published by the International Conference of Building Officials, [comma added] is hereby referred to, adopted, [comma added] and made a part of this Article with the same effect as if fully set forth herein. The procedures and proceedings provided in said Uniform Housing Code may, in the discretion of the Building Official, be used in place of procedures and proceedings that may be provided elsewhere in this Code. The provisions of said Uniform Housing Code, [comma added] as adopted and incorporated by this section, [comma added] shall apply to all of the unincorporated territory of the County of Tulare.

(a) Section 203 (Housing Advisory and Appeals Board) and Chapter 12 (Appeal) of the Uniform Housing Code are not adopted. The administrative enforcement of this Article is subject to the right of appeal as provided by section 7-15-1050 of this Code.

(b) Section 201 of the Uniform Housing Code is amended by adding thereto a new Section 201.4, to read as follows:

Section 201.4 Authorized Representatives. In accordance with prescribed procedures and with the approval of the appointing authority, the Building Official may appoint such number of technical officers and inspectors and other employees as shall be authorized from time to time. The Building Official may appoint such inspectors or employees as may be necessary to carry out the provision of the Uniform Housing Code.

(c) Additional Requirement – Caretaker – Notice. In addition to the requirements of the Uniform Housing Code, the following shall be required:

1. Caretaker. A janitor, housekeeper, or other responsible person shall reside upon the premises and shall have charge of every apartment house in which there are sixteen or more apartments and of every hotel in which there are twelve or more guest rooms, in the event that the owner of any such apartment house or hotel does not reside upon the premises.

2. Notice. If the owner does not reside upon the premises of any apartment house in which there are four or more but less than sixteen apartments, a notice stating

the owner's name and address or telephone number, or the name and address or telephone number of the owner's agent in charge of the apartment house, shall be posted in a conspicuous place on the premises.

(d) Section 202 of the Uniform Housing Code is amended to read as follows:

Buildings or portions thereof that are determined to be substandard as defined in the State Housing Law or as otherwise determined to be substandard pursuant to the Tulare County Ordinance Code are hereby declared to be public nuisances and may be abated by repair, rehabilitation, demolition or removal in accordance with the procedure specified in Chapter 11 of the Uniform Housing Code, or such other procedure specified in the Tulare County Ordinance Code.

(e) All references to the Building Code in the Uniform Housing Code shall be interpreted to refer to the California Building Code, as adopted by the California Building Standards Commission.

Section 7. Section 7-15-3010 of Article 30 ("1997 Uniform Housing Code") of Chapter 15 ("Building Regulations") of Part VII ("Land Use Regulation and Planning") of the Tulare County Ordinance Code is added to read as follows:

7-15-3010 MISDEMEANOR:

Maintaining a substandard building in violation of the Uniform Housing Code, as adopted herein, is a misdemeanor, and is punishable as provided in Section 125 (Violations) of this Code.

Section 8. Section 7-15-2945 ("Adoption of California Existing Building Code, Title 24, Part 10") of Article 31 ("California Existing Building Code, Title 24, Part 10") of Chapter 15 ("Building Regulations") of Part VII ("Land Use Regulation and Planning") of the Tulare County Ordinance Code is renumbered without amendment to read as follows:

**7-15-3100 ADOPTION OF CALIFORNIA EXISTING BUILDING CODE, TITLE 24,
PART 10:**

[No amendments to text]

Section 9. Section 7-15-2950 (“Enforcement”) of Article 31 (“California Existing Building Code, Title 24, Part 10”) of Chapter 15 (“Building Regulations”) of Part VII (“Land Use Regulation and Planning”) of the Tulare County Ordinance Code is renumbered without amendment to read as follows:

7-15-3110 ENFORCEMENT:

[No amendments to text]

Section 10. Section 7-15-2955 (“Fees”) of Article 31 (“California Existing Building Code, Title 24, Part 10”) of Chapter 15 (“Building Regulations”) of Part VII (“Land Use Regulation and Planning”) of the Tulare County Ordinance Code is renumbered without amendment to read as follows:

7-15-3120 FEES:

[No amendments to text]

Section 11. Section 7-15-2960 (“Appeals”) of Article 31 (“California Existing Building Code, Title 24, Part 10”) of Chapter 15 (“Building Regulations”) of Part VII (“Land Use Regulation and Planning”) of the Tulare County Ordinance Code is renumbered without amendment to read as follows:

7-15-3130 APPEALS:

[No amendments to text – note that text, but not number, was amended in recent ordinance adding Local Appeals Board]

Section 12. Section 7-15-2965 (“Violations and Penalties”) of Article 31 (“California Existing Building Code, Title 24, Part 10”) of Chapter 15 (“Building Regulations”) of Part VII (“Land Use Regulation and Planning”) of the Tulare County Ordinance Code is renumbered without amendment to read as follows:

7-15-3140 VIOLATIONS AND PENALTIES:

[No amendments to text]

Section 13. Article 33 of Chapter 15 (“Building Regulations”) of Part VII (“Land Use Regulation and Planning”) is added to the Tulare County Ordinance Code, to read as follows:

ARTICLE 33. UNSAFE AND SUBSTANDARD BUILDINGS

7-15-3300 ADOPTION OF PORTION OF CALIFORNIA CODE OF REGULATIONS:

The State Housing Law Regulations as referenced in California Code of Regulations, Title 25, Division 1, Chapter 1, Subchapter 1, are hereby referred to, adopted and made a part of this Article with the same effect as though fully set forth herein and shall apply to all of the unincorporated territory of the County of Tulare where not in conflict with the provisions of this Chapter.

7-15-3310 DEFINITIONS FOR STATE HOUSING LAW REGULATIONS:

Whenever any of the following terms are used in the provisions of the California Code of Regulations adopted pursuant to this Article, such terms shall have the following meanings:

- (a) The term “enforcement agency” shall mean the Resource Management Agency of the County of Tulare, unless otherwise required or specified by State Housing Law.
- (b) The term “governing board” shall mean the Board of Supervisors of the County.

7-15-3320 DECLARATION OF PUBLIC NUISANCE:

The following conditions are hereby declared to be public nuisances:

- (a) Any residential building that, as the result of development, has become unsafe, injurious to health, indecent, offensive to the senses, or that unlawfully obstructs the free passage or use, in the customary manner, of any county park, square, street or highway, or that constitutes a fire hazard;
- (b) Any dangerous building or structure;
- (c) Any substandard housing or dwelling;
- (d) Any unused service station.

7-15-3330 NUISANCE ABATEMENT AUTHORITY:

Without limiting any other rights, remedies, or enforcement mechanisms available at law, upon discovering a public nuisance related to unsafe buildings or substandard building, the enforcement agency may take one or more of the following actions:

- (a) Abate the nuisance in accordance with the administrative abatement procedures provided in this Chapter, or any other applicable provisions of this Code;
- (b) Determine and collect an administrative civil penalty in accordance with the procedures provided in Chapter 23 of Part I of this Code.
- (c) Seek relief from any court of competent jurisdiction to abate the nuisance and/or collect civil penalties, without first going through the administrative procedures set forth in this Chapter; or
- (d) Refer violations to the District Attorney for prosecution under applicable criminal laws.

7-15-3340 POSTING SIGNS:

Immediately upon determining any building or portion thereof to be substandard and a public nuisance, the enforcement agency may post upon each entrance of the building a notice in substantially the following form:

D A N G E R

DO NOT ENTER

UNSAFE TO OCCUPY

This building has been determined to be substandard and a nuisance and may be dangerous to enter or occupy. It is an infraction to remove or deface this notice without permission of the Tulare County Resource Management Agency or other authorized County entities.

The right to post said notice is in addition any other notices or posting requirements in this Chapter, or as otherwise authorized by law. Any person who removes or defaces any notice posted pursuant to this section without the permission of the Tulare County Resource Management Agency or other County entity shall be guilty of an infraction and shall be punishable as provided in Section 125 (Violations) of this Code.

Section 14. Article 35 of Chapter 15 (“Building Regulations”) of Part VII (“Land Use Regulation and Planning”) is added to the Tulare County Ordinance Code, to read as follows:

ARTICLE 35. SUBSTANDARD HOUSING NUISANCE ABATEMENT

7-15-3500 LEGISLATIVE AUTHORIZATION: TITLE:

(a) Pursuant to the authority granted to it by section 25845 of the Government Code, and by Article XI, section 7 of the California Constitution, the Board of Supervisors hereby enacts this Article 35 of Chapter 15 of Part VII of the Tulare County Ordinance Code, which shall be known, and may be cited, as the “Substandard Housing Nuisance Abatement Ordinance.”

(b) The Board of Supervisors hereby determines that the procedures for substandard housing abatement incorporated in this Article are equivalent to the procedures provided in Article 6 (Actions and Proceedings, commencing with section 48) of Subchapter 1 (State Housing Law Regulations) of Chapter 1 (State Housing Law Regulations and Earthquake Protection Law Regulations) of Division 1 (Housing and Community Development) of Title 25 (Housing and Community Development) of the California Code of Regulations.

7-15-3510 PURPOSE AND INTENT:

(a) The purpose of this Article is to protect the health, safety, and welfare of the residents of the County of Tulare through the prevention and abatement of substandard housing nuisances in the County. It shall be construed liberally to that end.

(b) It is the intention of the Board of Supervisors to minimize the burden placed upon property owners and taxpayers in carrying out the purpose set forth in subsection (a) above. Accordingly, those methods of abatement are to be favored that are least costly and that are most directly related to protecting the public health, safety and welfare.

7-15-3520 NOT EXCLUSIVE REGULATION:

This Article is not the exclusive regulation of substandard housing nuisances. It shall supplement and be in addition to the other regulating statutes and ordinances heretofore or hereafter enacted by the State, the County, or any other legal entity or agency having jurisdiction.

7-15-3530 APPLICATION:

This Chapter applies to all real property owned by an individual, firm, partnership, joint venture, association, corporation, estate, or trust. In addition, it applies to any real property owned

by the United States and any agency of the United States, the State of California and any agency of the State, any city, and a public district or political subdivision of the State of California, insofar as it is legally possible to enforce this Chapter, or any portion thereof, against such entities.

7-15-3540 DEFINITIONS:

Except where the context otherwise requires, the following definitions shall govern the construction of this Article:

(a) "Agent" means a person or entity acting on behalf of and subject to the control of the owner of real property or of a person legally in possession of the real property.

(b) "Board" means the Board of Supervisors of the County.

(c) "Cost of abatement" means the direct cost to the County of physically abating a public nuisance.

(d) "Cost of administration" means the cost to the County of performing the various administrative acts required under this Chapter with regard to the abatement of a public nuisance, including, without limitation, the costs of investigating such nuisance and the cost of prosecuting the public nuisance, but not including the actual cost of physically abating the nuisance.

(e) "County" means the County of Tulare, acting by and through the Board, the County Administrative Officer, or any appropriate County agency, department, or division.

(f) "Department" means the County department that employs the enforcement officer.

(g) "Director" means the head of the Department that issued the notice of violation and order to abate a nuisance, or his or her designee.

(h) For the purposes of this Article, "enforcement officer" means and includes the following County officials and their deputies, assistants, or other duly authorized representatives:

(1) Director of Resource Management Agency;

(2) Such other persons as may be designated by the Board.

(i) "Owner" means the person in whom is vested the ownership, dominion, or title of real property.

(j) "Real property" includes all of the surface or subsurface areas described in the most recently recorded deed or deeds relating to such property, and all improvements on the real property.

7-15-3550 INSPECTION WARRANT:

Where there is a report of the existence of a substandard housing nuisance, or other reason to believe that such a nuisance exists on certain real property, but the owner or person legally in possession of the real property refuses consent for the enforcement officer to inspect it, or where circumstances justify the failure to seek consent to inspect, the County may proceed to obtain an inspection warrant pursuant to Code of Civil Procedure section 1822.50 et seq. to enter and inspect such real property.

7-15-3560 EXCEPTION TO INSPECTION WARRANT:

No inspection warrant shall be required where there is an immediate threat or danger to the public health or safety, and immediate abatement of a public nuisance is justified as provided in section 7-15-3710 of this Article.

7-15-3570 ABATEMENT OF SUBSTANDARD BUILDINGS

All structures, or portions thereof, that are determined by the enforcement officer to constitute a substandard building and also a public nuisance may be abated by repair, rehabilitation, or removal in accordance with this Article and/or Health and Safety Code section 17980 et seq. In cases of extreme hardship to owner-occupants of the dwellings, the enforcement officer or the County Hearing Officer may provide for deferral of the effective date of orders of abatement.

7-15-3580 DETERMINATION OF NUISANCE: NOTICE OF VIOLATION: ORDERS TO ABATE AND TO VACATE: SERVICE:

(a) Whenever an enforcement officer determines that a building is substandard and also a public nuisance, the enforcement officer shall prepare a notice of violation and order to abate, and shall serve a copy thereof upon the owner of the property upon which the nuisance exists, as shown on the last equalized assessment roll, or to the current owner if otherwise known to the enforcement officer. The enforcement officer shall also serve copies of the notice/order upon anyone known to the enforcement officer to be in possession of the property (including tenants); and upon any mortgagee, beneficiary under a deed of trust, or other lienholders of record.

(b) Where the enforcement officer has determined that the condition causing the nuisance is imminently dangerous to human life or limb, or to public health or safety, the enforcement officer may include in the notice/order an order that the property, building or structure affected

shall be vacated pending abatement of the conditions causing a nuisance, if the enforcement officer proceeds pursuant to the procedures described in subdivision (c) of section 17980 of the Health and Safety Code.

7-15-3590 NOTICE OF VIOLATION AND ORDER TO ABATE CONTENTS:

(a) The notice/order described in section 7-15-3580 of this Article shall include the following:

(1) The name, address, and telephone number of the enforcement officer who issued the notice/order.

(2) The name of the owner of the real property upon which the nuisance exists, as the name appears on the records of the County Assessor/Clerk-Recorder.

(3) The street address, assessor's parcel number, or any other description sufficient to identify the real property affected.

(4) A statement that the County has determined that a public nuisance exists on the real property and that the building or structure on said property has been determined to be substandard.

(5) A description of the condition(s) constituting the nuisance and creating the substandard housing, including any facts upon which the determination is based.

(6) Identification of the specific provision(s) of law the enforcement officer has determined are being violated.

(7) An order to completely abate the nuisance within forty-five (45) days after the notice/order is served, or sooner if deemed necessary to remedy an immediate threat to the health/safety of public or occupants. The time to abate shall be extended up to sixty (60) days after a person takes title to a property if that person has purchased and is in the process of diligently abating that property, unless a shorter time is deemed necessary to remedy immediate threat to the health/safety of public or occupants.

(8) If the enforcement officer determines that the condition(s) causing the nuisance and substandard building can be corrected or abated by repair or corrective action, then the notice shall state the repairs or corrective actions that shall be required.

(9) If appropriate to protect the public health and safety of possible occupants or entrants, an order that the building, or any portion thereof, be vacated until the nuisance is abated;

(10) A statement of the right to request administrative review of the Notice of Violation by filing a written request for administrative review with the Director within fifteen (15) calendar days of service of the notice/order. The notice/order shall include a local contact number and an Internet website (if applicable) where a property owner may obtain a copy of an appeal form. A copy of the appeal form shall also be included with the notice/order.

(11) A statement explaining the consequences of failing to abate or appeal within the applicable time periods, including (i) that the notice/order becomes a final order; (ii) that the County may abate the public nuisance at the owner's expense; and (iii) that the County may seek recovery of its civil, administrative, and abatement costs, and may impose fines or penalties pursuant to this Article and any other applicable laws, including through the use of liens and/or special assessments against the subject real property that will be collected at the same time and in the same manner as ordinary real property taxes.

(12) If the enforcement officer determines that sufficient information about the nuisance and subject property is available, then the notice/order shall also be accompanied by an estimate of the potential total abatement costs that may be charged to the owner if the County abates the nuisance, as well as any related civil and administrative costs and estimated fines and penalties, along with a statement that any such estimate is provided as a courtesy, is simply an estimate, and in no way limits the type or amount of costs and penalties the County may impose under this Article.

(13) A statement that, with respect to said substandard housing, and in accordance with sections 17274 and 24436.5 of the Revenue and Taxation Code, a tax deduction may not be allowed for interest, taxes, depreciation, or amortization paid or incurred in the taxable year.

(b) Any estimate furnished by the County to the property owner of potential abatement costs, civil and administrative costs, and penalties that the County may impose under this Article if the County abates a nuisance is simply an estimate, and in no way limits the type or amount of costs and penalties the County may ultimately impose under this Article.

7-15-3600 METHODS OF SERVICE: RECORDING: TIMING OF SERVICE:

(a) The notices required by this Article shall be given by conspicuously posting at least one copy of any order or notice to repair or abate on the building alleged to be substandard, and by also serving the notice through one of the following methods:

(1) Sending a copy of the notice by certified mail, postage prepaid, return receipt requested, to the person owning the land on which the building is located, either as that person's name and address appear on the last equalized assessment roll, or if the records of the County

Assessor/Clerk-Recorder show that the ownership has changed since the last equalized assessment roll was compiled, notice shall be mailed to the new owner, or as otherwise known to the enforcement officer. A copy shall also be sent to any mortgagee, beneficiary of a deed of trust, or lienholder of record for the real property. Such service by mail shall be deemed effective two (2) days after the date of mailing. If any address is unknown to the enforcement officer, this fact shall be stated in the copy so mailed and the notice shall be addressed to the affected party at the Clerk of the Board's office; or

(2) Personally serving the party or attorney on whom the service is required to be made. Personal service is deemed effective once made.

(b) A proof of service or affidavit of mailing shall be prepared for every notice mailed or served pursuant to this section.

(c) When instituting an action or proceeding pursuant to this article, a notice of pendency of the action and/or copy of any notice/order served pursuant to this section shall be recorded in the office of the County Recorder.

(d) If the County Department charged with serving a notice pursuant to this Article serves the notice in the manner and within the time limits required by this section, then the failure of any person to receive actual notice of any proceedings shall not affect the validity of any proceedings taken pursuant to this Article.

7-15-3610 NOTICE TO TENANTS

(a) Tenants in a residential building shall be provided copies of any of the following:

(1) The notice of a violation described in Health and Safety Code section 17980, subdivision (a), that affects the health and safety of the occupants and that causes the building to be substandard pursuant to Section 17920.3 or in violation of Section 17920.10.

(2) An order of the enforcement officer issued after inspection of the premises declaring the dwelling to be in violation of a provision described in Health and Safety Code section 17980, subdivision (a).

(3) The enforcement officer's decision to repair or demolish.

(4) The issuance of a building or demolition permit following the abatement order of an enforcement agency.

(b) At least one copy of any order or notice to repair or abate pursuant to Health and Safety Code sections 17980 or 17980.6 shall also be conspicuously posted on the building alleged to be substandard, and provided to tenants of a residential property by either: (i) first-class mail to each affected residential unit; (ii) or by posting a copy of the order or notice in a prominent place on each affected residential unit.

(c) Such orders or notices must contain the following information:

(1) The name, address, and telephone number of the Department and enforcement officer that issued the notice or order.

(2) The date, time, and location of any public hearing or proceeding concerning the order or notice.

(3) Information that the lessor cannot retaliate against a lessee pursuant to section 1942.5 of the Civil Code.

7-15-3620 ADMINISTRATIVE REVIEW: REQUEST:

(a) Any person affected by the determination of an enforcement officer that a public nuisance exists may request administrative review of that determination by filing a written request with the Director of the County department that issued the determination on or before the fifteenth (15th) calendar day following the date of posting and mailing or personal delivery of the notice.

(b) Unless the nuisance is abated as specified in the notice/order, or the real property owner or other party with a legally protected interest in the real property requests administrative review of the determination that a public nuisance exists within fifteen (15) calendar days after the date the notice/order was served, then the enforcement officer's notice/order shall constitute a final administrative order or decision. It cannot be appealed and cannot be judicially reviewed, because the aggrieved person failed to exhaust available administrative remedies.

7-15-3630 ADMINISTRATIVE REVIEW: NOTICE:

The Director, or his or her designee, as administrative review officer, shall give notice to the person requesting the administrative review of the date, time and place when the administrative review will be held, which date shall not be less than five (5) calendar days after the date of mailing the notice. The notice shall be mailed to the address given by the person in his or her request for administrative review.

7-15-3640 ADMINISTRATIVE REVIEW: DECISION

(a) At the administrative review, the administrative review officer shall review the determination, any and all relevant documents, and such other relevant information as shall be presented. The administrative review shall be informal.

(b) After reviewing all of the available information, the administrative review officer shall determine whether to uphold the determination of the existence of a nuisance and the order to abate, modify the notice/order, or direct that the notice/order be withdrawn. This decision may be made orally at the administrative review, but the decision shall be reduced to writing and mailed to the person requesting the appeal at the address given by the person in his or her request for administrative review, unless otherwise requested in writing by the party to be served. The notice of decision shall also include a description of the right to appeal the decision to the County Hearing Officer, as provided in this Article.

7-15-3650 APPEAL TO COUNTY HEARING OFFICER: NOTICE:

(a) Within fifteen (15) calendar days after service of the administrative review officer's decision issued pursuant to section 7-15-3640 determining that a nuisance exists on real property, a property owner, a person in possession of real property, mortgagee, lienholder of record, or beneficiary under a deed of trust may appeal the decision to the County Hearing Officer, as provided by Article 31 of Chapter 3 of Part I of this Code. An appeal pursuant to this section shall specifically set forth the grounds of the appeal, in writing, and shall be filed with the Clerk of the Board.

(b) At the time of filing the appeal, the appellant shall pay a fee in an amount adequate to cover the cost of processing and hearing the appeal, as established from time to time by resolution of the Board of Supervisors. The appellant may request a waiver of the fee pursuant to section 1-31-1060 of this Code.

(c) The Clerk of the Board shall mail notice to the appellant of the date and time that the County Hearing Officer will hear the appeal, which date shall be not less than ten (10) calendar days after the date of mailing of the notice.

7-15-3660 HEARING ON APPEAL: DETERMINATION:

(a) At the time fixed by the Clerk of the Board, the County Hearing Officer shall hear the appeal from the administrative review officer's decision.

(b) The written determination that a nuisance exists on the subject real property shall be admitted into evidence. The owner shall bear the burden of proving that the determination is not accurate.

(c) The hearing shall be conducted, and the County Hearing Officer's decision shall be issued, in the manner prescribed in Article 31 of Chapter 3 of Part I of this Code.

7-15-3670 SERVICE OF COUNTY HEARING OFFICER'S DECISION: EXTENSIONS OF TIME TO ABATE:

(a) Within 60 days of the issuance of a final decision by the County Hearing Officer determining the existence of a nuisance, the enforcement officer shall cause a copy of the Hearing Officer's decision to be posted on the affected building or property. The Clerk of the Board shall also cause a copy of the decision to be mailed by certified mail, postage prepaid, return receipt requested, to the person owning the land on which the building is located as such person's name and address appear on the last equalized assessment roll or as known to the Clerk of the Board. A copy of said notice shall also be mailed to each mortgagee, lienholder, or beneficiary under any deed of trust, of record, at their last known addresses. If the address of any person designated to receive notice pursuant to this section is unknown, then that fact shall be stated in the mailed copy and the notice shall be addressed to that party, at the Clerk of the Board's office.

(b) After the County Hearing Officer determines that a nuisance exists, and orders the nuisance to be abated, the enforcement officer retains the authority to grant any extension of time to abate said nuisance that the Department or enforcement officer deems justifiable, upon good cause therefore being shown.

7-15-3680 ABATEMENT FOLLOWING JUDICIAL DECREE:

If a substandard housing public nuisance is declared by judicial decree, then after the defendant(s) receive(s) notice of entry of judgment as prescribed by law, and the time within which an appeal may be filed has expired, all procedures of this Article shall be applicable and may be followed in the same manner as if the County had issued a final administrative determination declaring a public nuisance to exist.

7-15-3690 ABATEMENT BY OWNER:

(a) Any owner may voluntarily abate a nuisance described in this Article at any time prior to commencement of abatement by the County. The County shall have discretion to request such voluntary correction or abatement prior to proceeding with the formal abatement procedures provided by this Article.

(b) The enforcement officer is also authorized to enter into voluntary abatement settlement agreements with the owner(s) of a property, to allow the County to enter onto an owner's real property and to abate nuisances on behalf of a property owner. Any such agreement must be approved as to form by County Counsel, and will require the owner to: admit the existence of the nuisance(s); consent to the County's entry on the subject real property and to County's conducting related abatement activities on the real property through County's representatives and/or independent contractors; accept all liabilities and costs related to the abatement; and allow the County to collect such abatement costs by liening the subject real property, or by pursuing a personal lien against the property owner(s). Nothing in this paragraph is intended to require a property owner to enter into a voluntary abatement settlement agreement with the County.

7-15-3700 ABATEMENT: ENTERING PRIVATE PROPERTY:

If a public nuisance is not voluntarily corrected or abated by the owner or other responsible person, and if no request for administrative review has been made; or if no appeal to the County Hearing Officer has been made; or if the public nuisance is not abated pursuant to the decision of the County Hearing Officer within 30 days of service and posting of the County Hearing Officer's decision, or within the time prescribed pursuant to section 7-15-3670, subsection (b) above, whichever is longer; then the County may cause the public nuisance to be abated. The County or its representatives and/or independent contractors who are to perform the abatement work may enter upon the real property on which the public nuisance exists for the purpose of abating the nuisance. If necessary, the enforcement officer shall apply to a court of competent jurisdiction for a warrant authorizing entry upon the subject real property for purposes of undertaking the work of abatement.

7-15-3710 SAME: EMERGENCIES:

Regardless of the notice and hearing requirements provided by this Article, if it appears to the County that a public nuisance represents an immediate threat or danger to the public health or safety, then the County may abate such public nuisance to the extent necessary to eliminate such threat or danger to the public health or safety without following the notice and hearing requirements set forth in this Article.

7-15-3715 RECOVERY OF ATTORNEY'S FEES:

In any action, administrative proceeding, or special proceeding to abate a nuisance pursuant to this Article, attorney's fees may be recovered by the prevailing party. Recovery of attorneys' fees by the prevailing party is limited to those actions or proceedings in which the County elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees.

In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the County in the action or proceeding.

7-15-3720 SALE OF MATERIALS:

The building materials contained in any building razed or removed pursuant to this Article may be sold by the Board or the Purchasing Agent at public sale to the highest responsible bidder after not less than five (5) days' notice of intended sale, published at least once in a newspaper of general circulation published in the city or county wherein such building is located, either before or after said building has been razed or removed. Any amount received from the sale of such building materials shall be deducted from the expense of razing or removing said building. Nothing herein shall be construed to require the County to sell any such building materials. Unsold building materials may be disposed of by the enforcement officer by any lawful means, and the costs of such disposal included in the expenses of abatement.

7-15-3730 STATEMENT OF EXPENSES:

(a) Any enforcement officer who abates a public nuisance pursuant to this Article shall keep an accounting of the cost of each abatement, and shall prepare a statement of expenses in writing showing the gross and net cost of abatement actions taken by the Department, including the expense of inspections; repairs, if any; and the cost of the razing or removing of the building, if applicable; and any other cost of abatement, including the applicable cost of administration. If multiple properties are included in the same report, then the account shall separately itemize the costs for the abatement for each impacted parcel/real property. The statement of expenses or its supporting attachments shall include the following information:

- (1) Name(s) of the contractor(s) who performed the abatement;
- (2) Dates when abatement activities were conducted on the real property, and information about what activities were conducted on which dates;
- (3) Number of individuals who worked on each type of abatement activity on the property;
- (4) Total number of hours the contractor's agents spent on each type of abatement activity;
- (5) Rate for each type of abatement activity performed;

- (6) Itemized list of other fees or charges incurred in conducting the abatement, including, but not limited to, dump fees or travel fees; and
- (7) Costs of administration, including any applicable postage and attorneys' fees.

(b) The enforcement officer shall mail a copy of the accounting, and a notice explaining the owner's right to appeal the accounting to the County Hearing Officer as provided in section 7-15-3740 of this Article, to the owner of the affected real property at the address described in section 7-15-3600 of this Article, unless the owner has otherwise requested in writing, and to any mortgagee, lienholders of record, or beneficiary under a deed of trust.

7-15-3740 APPEAL ON STATEMENT OF EXPENSE: NOTICE:

(a) The owner or other interested person may appeal for a modification of the statement of expense to the County Hearing Officer. Any appeal to the County Hearing Officer shall be in writing and shall be filed with the Clerk of the Board within ten (10) calendar days after the date of mailing of the notice and statement of expense. An appeal shall specifically set forth the grounds of the appeal. At the time of filing the appeal, the appellant shall pay a fee adequate to cover the cost of processing and hearing the appeal as established from time to time by resolution of the Board of Supervisors. The appellant may request a waiver of the fee pursuant to section 1-31-1060 of this Code.

(b) The Clerk of the Board shall mail notice to the appellant of the date and time that the County Hearing Officer will hear the appeal, which date shall be not less than ten (10) calendar days after the date of mailing the notice.

(c) Unless otherwise expressly stated by the owner, payment of the cost of abatement and the cost of administration prior to said hearing shall be deemed a waiver of the right thereto and an admission that said statement of expenses is accurate and reasonable.

7-15-3750 HEARING ON APPEAL: STATEMENT OF EXPENSE

(a) At the time fixed by the Clerk of the Board, the County Hearing Officer shall hear the appeal on the statement of expense. The owner or other interested party may appear and be heard on the questions of whether the accounting and the costs included are accurate and reasonable.

(b) The statement of expense shall be admitted into evidence. The owner shall bear the burden of proving that the statement of expense is not accurate or reasonable.

(c) The hearing shall be conducted in the matter prescribed in Article 31 of Chapter 3 of part I of this Code.

7-15-3760 MODIFICATIONS

The County Hearing Officer may make such modifications in the statement of expense as he or she deems necessary based on the evidence at the hearing, and thereafter shall confirm the accounting in a written decision.

7-15-3770 LIABILITY FOR COST OF ABATEMENT: SPECIAL ASSESSMENT AND LIEN:

(a) The owner of the real property shall be liable for the costs of the abatement, including the cost of administration, and any applicable attorney's fees, as so determined.

(b) If the costs related to abating public nuisances pursuant to this Article, including the applicable cost of administration, and any applicable attorney's fees, exceed the proceeds from the sale of any materials obtained from razing the property, if any, then the Board may order that any such costs and fees that remain unpaid on or after the fifth (5th) calendar day following service of the County Hearing Officer decision confirming the costs and fees and demanding payment shall be placed upon the County tax roll by the County Auditor as special assessments against the property on which the building(s) or structure(s) were located, and collected at the same time and in the same manner as ordinary county taxes are collected, or placed on the unsecured roll. Service of the resolution confirming the abatement costs and fees, and demand for payment shall be completed in the manner outlined in section 7-15-3600, though the statement of expenses need not be recorded. All laws applicable to the levy, collection, and enforcement of County taxes shall be applicable to such special assessments. If any person pays the expenses of abatement prior to the placement of the special assessment on the tax roll, then the County Auditor shall not place the special assessment on the tax roll.

(c) If the Board orders the costs and fees to be specially assessed against the real property, the Board may also order that a notice of abatement lien be recorded against the affected real property until such costs and fees have been paid in full. The notice shall, at a minimum, identify the record owner or possessor of property, set forth the last known address of the record owner or possessor, set forth the date upon which abatement of the nuisance was ordered, and the date the abatement was complete, and include a description of the real property subject to the lien and the amount of the abatement cost and fees.

(d) In lieu of specially assessing and lienning the abatement costs pursuant to subsections (b) and (c), above, the Board of Supervisors may determine that the net expense to the County of abat-

ing the nuisance shall be a personal obligation of the property owner(s) and direct the County Counsel to bring legal action to collect said net expense.

(e) Recovery of costs and fees pursuant to this section shall be in addition to and shall not limit any prevailing party's right to recover costs pursuant to Sections 1032 and 1033.5 of the Code of Civil Procedure or any other provision of law.

**7-15-3780 PAYMENT OF COST OF ABATEMENT AS CONDITION PRECEDENT
TO FUTURE ENTITLEMENTS:**

The Board may order that the payment of the cost of abating nuisances pursuant to this Chapter, and the applicable cost of administration, become a condition precedent to the issuance of any and all pending or future permits or entitlements for use requested from the County by any person found responsible for the payment of such costs.

7-15-3790 SECOND OR SUBSEQUENT ABATEMENT: TREBLE DAMAGES:

As authorized by Government Code section 25845.5, upon a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property is responsible for a condition that may be abated in accordance with this Chapter, except for conditions abated pursuant to section 17980 of the Health and Safety Code, a court may order the owner shall be liable for to pay treble the costs of the abatement.

7-15-3800 NOTICE OF FINAL DISPOSITION:

The enforcement officer shall record notice of final disposition of any action or proceeding instituted pursuant to this Article immediately following final resolution of the action or proceeding.

7-15-3810 APPEAL FROM BOARD DECISION:

Judicial review of a decision of the County Hearing Officer made after a hearing pursuant to this Article shall be made pursuant to section 1094.6 of the California Code of Civil Procedure where and to the extent said section may be applicable.

Section 15. The foregoing ordinance shall take effect thirty (30) days from the date of the passage hereof, and prior to the expiration of fifteen (15) days from the passage hereof a summary shall be published once in a newspaper printed and published in the County of Tulare, State of California, together with the names of the Board of Supervisors voting for and against the same.

THE FOREGOING ORDINANCE was passed and adopted by the Board of Supervisors of the County of Tulare, State of California, on the ____ day of _____, 2019, at a regular meeting of said Board duly and regularly convened on said day by the following vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

COUNTY OF TULARE

By: _____
Chairman, Board of Supervisors

ATTEST:

JASON T. BRITT
County Administrative Officer/
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Approved as to Legal Form:
COUNTY COUNSEL

By: _____
Deputy
Matter No. 2018749

Attachment “B”

Proposed Ordinance (Red-lined mark-up)

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 1 OF PART IV OF THE ORDINANCE CODE OF TULARE COUNTY, PERTAINING TO ABATEMENT OF NUISANCES, AND AMENDING CHAPTER 15 OF PART VII OF THE ORDINANCE CODE OF TULARE COUNTY, PERTAINING TO BUILDING REGULATIONS AND ABATEMENT OF RELATED NUISANCES, INCLUDING SUBSTANDARD HOUSING NUISANCES.

THE BOARD OF SUPERVISORS OF THE COUNTY OF TULARE ORDAINS AS FOLLOWS:
(added provisions are underlined and deleted provisions are in ~~striketrough~~ typeface)

Section 1. Chapter 1 (“Public Nuisances”) of Part IV (“Health, Safety and Sanitation”) of the Tulare County Ordinance Code is amended to read in its entirety as follows:

CHAPTER 1. PUBLIC NUISANCES

ARTICLE 1. GENERAL PROVISIONS

4-01-1000 LEGISLATIVE AUTHORIZATION: TITLE:

Pursuant to the authority granted to it by ~~section~~ sections 25845 and ~~section~~ 25845.5 of the Government Code ~~of the State of California~~, the Board of Supervisors does enact this Chapter, which shall be known, and may be cited, as the Public Nuisance Ordinance.

4-01-1005 ~~PURPOSES~~ PURPOSE AND INTENT:

(a) It is the purpose of this Chapter to protect the health, safety, ~~and~~ [comma added] and welfare of the residents of the County of Tulare through the prevention of public nuisances in the County. It shall be construed liberally to that end.

(b) It is the intention of the Board of Supervisors to minimize the burden placed upon property owners and taxpayers in carrying out the ~~purposes~~ purpose set forth in subsection (a) above. Accordingly, those methods of abatement are to be favored which are least costly and ~~which~~ that are most directly related to protecting the public health, safety, ~~and~~ [comma added] and welfare.

4-01-1010 NOT EXCLUSIVE REGULATION:

This Chapter is not the exclusive regulation of public nuisances. It shall supplement and be in addition to the other regulating statutes and ordinances heretofore or hereafter enacted by the State, the County, or any other legal entity or agency having jurisdiction.

4-01-1015 APPLICATION:

This Chapter applies to all real property owned by an individual, firm, partnership, joint venture, association, corporation, estate, [comma added] or trust. In addition, it applies to any real property owned by the United States and any agency of the United States, the State of California and any agency of the State, any city, and a public district or political subdivision of the State of California, [comma added] insofar as it is legally possible to enforce this Chapter, or any portion thereof, against such entities.

4-01-1020 DEFINITIONS:

Except where the context otherwise requires, the following definitions shall govern the construction of ~~the~~ this Chapter:

- (a) "Agent" means a person or entity acting on behalf of and subject to the control of the owner of real property or of a person legally in possession of the real property.
- (b) "Board" means the Board of Supervisors of the County of ~~Tulare~~.
- (c) "Cost of abatement" means the direct cost to the County of physically abating a public nuisance.
- (d) "Cost of administration" means the cost to the County of performing the various administrative acts required under this Chapter with regard to the abatement of a public nuisance, including, without limitation, the costs of investigating such nuisance, [comma deleted] and the cost of prosecuting the public nuisance, but not including the actual cost of ~~abatement~~ physically abating the nuisance.
- (e) "County" means the County of Tulare, acting by and through the Board of ~~Supervisors~~, the County Administrative Officer, or any appropriate County agency, department, or division.
- (f) "Department" means the County department that employs the enforcement officer.

(g) "Director" means the head of the Department that issued the notice of violation and order to abate a nuisance, or his or her designee.

(h) For the purposes of this Chapter, "enforcement officer" means and includes the following County officials and their deputies, assistants, or other duly authorized representatives:

(1) Director of Resource Management Agency;

(2) County Health Officer;

(3) Agricultural Commissioner;

(4) Fire Chief;

(5) Sheriff; and/or

(6) Such other persons as may be designated by the Board.

~~(f)~~ (i) "Owner" means the person in ~~who~~ whom is vested the ownership, dominion, or title of real property.

~~(g)~~ (j) "Real property" includes all of the surface or subsurface areas described in the most recently recorded deed or deeds relating to such property, [comma added] and all improvements on the real property.

4-01-1025 SEVERABILITY

The provisions of this Chapter are hereby declared to be severable. If any section, subsection, subdivision, sentence, clause, phrase, portion, or application of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portions of this Chapter. The Board hereby declares that it would have enacted this Chapter, each section, subsection, subdivision, sentence, clause, phrase, and portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions be declared invalid.

4-01-1030 NO DUTY TO ENFORCE:

Nothing in this Chapter shall be construed as imposing any duty on the enforcement officer, or any other agency, department, or division of the County to take any specific enforcement action

with respect to alleged violations of this Chapter, including issuing citations or notices of violations pursuant to this Chapter. Neither the enforcement officer nor any other agency, department, or division of the County, or the County, shall be held liable for failure to take any specific enforcement action to correct an alleged violation of this Chapter.

ARTICLE 3. NUISANCE

4-01-1070 DECLARATION OF NUISANCE:

The Without limiting any other provision of this Code, or of any other ordinance adopted by the Board, each of the following is hereby declared to be a public nuisance, [comma deleted] and a violation of this Code, which may be abated in accordance with the provisions of this Chapter:

(a) Anything ~~which is injurious~~ , or any use or condition of real property, that poses a danger to human health, is unsafe or detrimental to the public health, safety, or welfare, or is indecent or offensive to the senses and interferes 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, stream, canal, or basin, or any public park, street, or highway, and affects at the same time an entire community or neighborhood or any considerable number of persons, although the extent of annoyance or damage inflicted upon individuals may be unequal; ; [comma deleted, semicolon added; ¶ added]

(b) ~~or any~~ Any condition that is specifically declared to be a public nuisance by any statute, [comma added] any provision of this Code, or any other ordinance adopted by the Board;

(c) Any public nuisance known or recognized in common law or equity;

(d) Any condition that constitutes a nuisance as defined in section 3479 of the Civil Code;

(e) Any use of land, buildings, or premises established, operated, or maintained contrary to the provisions of any statute, any provision of this Code, or any other ordinance adopted by the Board;

(f) Any condition that constitutes a visual blight to a reasonable person of average sensibilities. For purposes of this Chapter, "visual blight" is any unreasonable or unlawful condition or use of real property, premises, or building exteriors that by reason of its appearance as viewed at ground level from the public right-of-way, or from neighboring premises, is detrimental to the property of others or to the value of property of others, offensive to the senses, or significantly degrades the aesthetic appearance of the neighborhood. "Visual blight" may include, but is not

limited to, the keeping, storing, depositing, scattering over, or accumulation on the premises of any of the following:

(1) Junk, trash, debris, scrap metal, wood, rubbish, or packing materials, or

(2) Abandoned, discarded, or unused objects or equipment, such as furniture, stoves, appliances, refrigerators, freezers, cans or containers, motor vehicles, or automotive parts and equipment.

(g) Any condition that constitutes an attractive nuisance, which are those dangerous objects or conditions that, by their nature, may attract children or other curious individuals. Attractive nuisances include, but are not limited to, unprotected hazardous or unfilled swimming pools, ponds, iceboxes, refrigerators, freezers, abandoned wells, shafts, septic tanks, or other excavations.

4-01-1075 INSPECTION WARRANT:

Where there is a report of the existence of a public nuisance or other reason to believe that a public nuisance exists on certain real property, but the owner or person legally in possession of the real property refuses consent for the enforcement officer to inspect it, or where circumstances justify the failure to seek consent to inspect, the County may proceed to obtain an inspection warrant pursuant to ~~California~~ Code of Civil Procedure ~~sections~~ section 1822.50 et seq. to enter and inspect such real property.

4-01-1080 EXCEPTION:

No inspection warrant shall be required where there is an immediate threat or danger to the public health or safety, ^[comma added] and immediate abatement of a public nuisance is justified as provided in section 4-01-1315 of this Chapter.

4-01-1085 OWNER'S DUTY:

It is the duty of every owner of real property within the unincorporated area of ~~Tulare~~ the County to prevent a public nuisance described in section 4-01-1070 of this Chapter from arising on, or existing upon, ~~his or her~~ the owner's real property.

ARTICLE 5. NOTICE OF NUISANCE

**4-01-1140 DETERMINATION OF NUISANCE: NOTICE OF VIOLATION: ORDER
TO ABATE AND VACATE: SERVICE:**

Whenever ~~the County~~ an enforcement officer determines that a public nuisance described in section 4-01-1070 of this Chapter exists upon any real property within the County, the ~~County~~ shall first notify enforcement officer may prepare a notice of violation and order to abate (“notice/order”), and shall serve a copy thereof upon the owner of the real property of such determination upon which the nuisance exists, as shown on the last equalized assessment roll, or to the current owner if otherwise known to the enforcement officer. ~~Notice shall also be provided to any tenant or other person legally in possession of the property known, or reasonably believed, by the County to be in legal possession.~~ The enforcement officer shall also serve copies of the notice/order upon anyone known to the enforcement officer to be in possession of the real property, and upon any mortgagee, beneficiary under a deed of trust, or other lienholders of record.

4-01-1145 NOTICE: OF VIOLATION AND ORDER TO ABATE: CONTENTS:

(a) ~~The notice/order provided~~ described in section 4-01-1140 of this Chapter shall include the following:

~~(a) Identify the owner of the real property upon which the nuisance exists, as the name appears on the records of the County Clerk/Recorder/Assessor.~~

~~(b) Provide a description of the real property sufficient to give its location.~~

~~(c) State that the County has determined that a public nuisance exists on the real property, and identifies the public nuisance.~~

~~(d) State the facts upon which that determination was based.~~

~~(e) State that the owner or any person affected by the determination may within ten (10) calendar days after mailing, posting or personal delivery of the notice make a request in writing to the County department which issued the notice for appeal of the determination that a public nuisance exists, or to show that for some other reason the condition should not be abated in accordance with the provisions of this Chapter.~~

~~(f) State that unless the owner or any person in lawful possession of the real property voluntarily abates the public nuisance by legal means, or requests an appeal of the determination that a~~

~~public nuisance exists within ten (10) calendar days after the date the notice was mailed, posted or delivered, the County may abate the public nuisance. It shall also state that the cost of abating the public nuisance, including the applicable cost of administration, may be specially assessed against the real property and collected at the same time and in the same manner as ordinary County taxes are collected pursuant to Government Code section 25845.~~

(1) The name, address, and telephone number of the enforcement officer who issued the notice/order.

(2) The name of the owner of the real property upon which the nuisance exists, as the name appears on the records of the County Assessor/Clerk-Recorder.

(3) The street address, assessor's parcel number, or any other description sufficient to identify the real property affected.

(4) A statement that the County has determined that a public nuisance exists on the real property.

(5) A description of the condition(s) constituting the nuisance, including any facts upon which the determination is based.

(6) Identification of the specific provisions of law the enforcement officer has determined are being violated.

(7) An order to completely abate the nuisance within a reasonable period of time after the notice is served. Except for nuisances where the time to respond or abate is otherwise determined by statute, another provision of this Code, or any other ordinance adopted by the Board, a reasonable amount of time to abate a nuisance shall not be less than ten (10) calendar days after service of the notice.

(8) If the enforcement officer determines that the condition causing the nuisance can be corrected or abated by repair or corrective action, an order specifying the repairs or corrective actions that are required.

(9) A statement of the right to request administrative review of the Notice of Violation by filing a written request for administrative review with the Director within ten (10) calendar days of service of the notice/order. The notice/order shall include a telephone number and an Internet website (if applicable) where a property owner may obtain a copy of the request form. A copy of the request form shall also be included with the notice/order.

(10) A statement explaining the consequences of failing to abate or request administrative review within the applicable time periods, including (i) that the notice/order will become a final order; (ii) that the County may abate the public nuisance at the owner's expense; and (iii) that if the notice/order is not fully complied with within the applicable time period, the County may seek recovery of its civil, administrative and abatement costs, and may impose fines or penalties pursuant to this Chapter and any other applicable laws, including by means of liens and/or special assessments against the subject real property that will be collected at the same time and in the same manner as ordinary real property taxes.

(11) If the enforcement officer determines that sufficient information about the nuisance and subject property is available, then the notice/order shall be accompanied by an estimate of the potential total abatement costs that may be charged to the owner if the County abates the nuisance, as well as any related civil and administrative costs, and estimated fines and penalties, along with a statement that any such estimate is provided as a courtesy, is simply an estimate, and in no way limits the type or amount of costs and penalties the County may impose under this Chapter.

(12) A statement that, with respect to substandard housing, in accordance with sections 17274 and 24436.5 of the Revenue and Taxation Code, a tax deduction may not be allowed for interest, taxes, depreciation, or amortization paid or incurred in the taxable year.

(b) Any estimate furnished by the County to the property owner of potential abatement costs, civil and administrative costs, or fines and penalties that the County may impose under this Chapter if the County abates a nuisance is simply an estimate, and in no way limits the type or amount of costs, fines, and penalties the County may ultimately impose under this Chapter.

**4-01-1150 NOTICE: MAILING: PERSONAL DELIVERY: POSTING: RECORDING:
METHODS OF SERVICE: RECORDING: TIMING OF SERVICE:**

The notice required by section 4-01-1140 of this Chapter shall be served by personal delivery or registered mail to the person to be served.

(a) Unless otherwise required by law, the notices/orders required by this Chapter shall be served by one or more of the following methods:

(1) Personal service, by delivery to the party or attorney on whom the service is required to be made.

(2) Service by certified mail. Such service shall be deemed effective two (2) days after the date of mailing. The owner of a property may be served by certified mail at his or her address as

it appears on the last equalized assessment roll, except that, if the records of the County ~~Clerk/Recorder/Assessor~~ Assessor/Clerk-Recorder show that the ownership has changed since the last equalized assessment roll was compiled, the notice shall be mailed to the new owner.

(3) Service by posting. If service cannot with diligent effort be accomplished by personal delivery or by mail, then notice may be given by posting copies of the notice/order along the subject real property not more than one thousand (1,000) feet apart, but in no event shall fewer than two (2) signs be posted.

(b) A copy of ~~the~~ any notice/order served pursuant to this section shall be recorded against the subject real property in the office of the County Assessor/Clerk-Recorder.

(c) If the enforcement officer serves a notice/order pursuant to this Chapter in the manner and within the time limits required by this section, then the failure of any person to receive actual notice of any proceedings shall not affect the validity of any proceedings taken pursuant to this Chapter.

ARTICLE 7. ~~APPEAL TO THE~~ ADMINISTRATIVE REVIEW BY DEPARTMENT

4-01-1200 ~~APPEAL REQUEST TO:~~ [colon deleted] ~~DEPARTMENT: NOTICE:~~

(a) Any person affected by the determination of the County that a public nuisance exists may ~~first appeal~~ request administrative review of that determination by filing a written request with the Director of the County department that issued the determination on or before the tenth (10th) calendar day following the date of mailing, personal delivery, [comma added] or posting of the notice, as required by ~~section 4-01-1150~~ Article 5 of this Chapter. ~~At the time of filing the request for appeal, the person making the request shall pay a fee in an amount adequate to cover the cost of processing and hearing the appeal as established from time to time by resolution of the Board of Supervisors. The determination that a public nuisance exists shall be final unless an appeal is requested in a timely manner.~~

(b) ~~The head of the County department, or his or her designee, shall give notice to the person requesting the appeal of the date, time and place when the appeal will be heard, which date shall not be less than five (5) calendar days after the date of mailing the notice.~~

(c) ~~At the hearing on the appeal, the head of the County department, which issued the determination that a public nuisance exists, or his or her designee, shall review the determination, any and all relevant documents and testimony, and such other relevant evidence as shall be presented. The parties may be represented by legal counsel. Testimony shall be taken on oath or~~

~~affirmation. Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues presented even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called the witness; and, to rebut evidence. The hearing need not be conducted according to technical rules relating to evidence. Any evidence may be presented if it is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule, which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but may be rejected if deemed to be unreliable. The rules of privileges shall be effective to the extent that they are otherwise required by statute to be recognized at a hearing. Irrelevant and unduly repetitious evidence shall be excluded. At the conclusion of the hearing, the person hearing the appeal may affirm, reverse or modify the determination that a public nuisance exists. The decision shall be made in writing and shall be mailed to the person requesting the appeal at the address provided in section 4-01-1150 of this Chapter, unless otherwise requested in writing by the party to be served. The notice of decision shall also include a description of the right to appeal the decision as provided in section 4-01-1250 of this Chapter.~~

(b) Unless the nuisance is abated as specified in the notice/order, or the real property owner or other party with a legally protected interest in the real property requests administrative review of the determination that a public nuisance exists within ten (10) calendar days after the date the notice/order was served, then the enforcement officer's notice/order shall constitute a final administrative order or decision. It cannot be appealed and cannot be judicially reviewed, because the aggrieved person failed to exhaust available administrative remedies.

4-01-1210 NOTICE:

The Director, or his or her designee, as administrative review officer, shall give notice to the person requesting the administrative review of the date, time and place when the administrative review will be held, which date shall not be less than five (5) calendar days after the date of mailing the notice. The notice shall be mailed to the address given by the person in his or her request for administrative review.

4-01-1220 ADMINISTRATIVE REVIEW:

(a) At the administrative review, the administrative review officer shall review the determination, any and all relevant documents, and such other relevant information as shall be presented. The administrative review shall be informal.

(b) After reviewing all of the available information, the administrative review officer shall determine whether to uphold the determination of the existence of a nuisance and the order to abate, modify the notice/order, or direct that the notice/order be withdrawn. This decision may be made orally at the administrative review, but the decision shall be reduced to writing and mailed to the person requesting the appeal at the address given by the person in his or her request for administrative review, unless otherwise requested in writing by the party to be served. The notice of decision shall also include a description of the right to appeal the decision to the County Hearing Officer, as provided in Article 9 of this Chapter.

ARTICLE 9. APPEAL TO ~~THE BOARD~~ COUNTY HEARING OFFICER

4-01-1250 APPEAL: ~~BOARD OF SUPERVISORS~~ TO COUNTY HEARING OFFICER:

NOTICE:

(a) The person who requested the appeal to administrative review by the ~~department~~ Department ~~ment~~ may appeal the decision of the ~~department~~ administrative review officer to the ~~Board~~, subject to the provisions of section 165 of the Ordinance Code County Hearing Officer, as provided by Article 31 of Chapter 3 of Part I of this Code. An appeal to the ~~Board~~ County Hearing Officer shall be in writing and shall be filed with the Clerk of the Board within ten (10) calendar days after mailing of the notice of decision on the departmental appeal by the administrative review officer. An appeal to the ~~Board~~ County Hearing Officer shall specifically set forth the grounds of the appeal. [¶ added]

(b) At the time of filing the appeal, the appellant shall pay a fee in an amount adequate to cover the cost of processing and hearing the appeal, [comma added] as established from time to time by resolution of the Board of Supervisors. [¶ added] The appellant may request a waiver of the fee pursuant to section 1-31-1060 of this Code.

(c) The Clerk of the Board shall mail notice to the appellant of the date and time that the ~~Board~~ County Hearing Officer will ~~meet to~~ hear the appeal, which date shall be not less than ~~five (5)~~ ten(10) calendar days after the date of mailing of the notice.

4-01-1255 HEARING ON APPEAL: DETERMINATION:

(a) At a the time fixed by the Clerk of the Board, the ~~Board~~ County Hearing Officer shall ~~meet to review~~ hear the appeal from the ~~determination that a public nuisance exists~~ administrative review officer's decision. ~~The owner may appear and be heard on the matter.~~

(b) The written determination that a public nuisance exists shall be admitted into evidence. The owner shall bear the burden of proving that the determination is not accurate.

(c) The hearing shall be conducted, and the County Hearing Officer's decision shall be issued, in the manner prescribed in ~~section 165 of the Ordinance Code~~ Article 31 of Chapter 3 of Part I of this Code.

ARTICLE 11. ABATEMENT

4-01-1300 ABATEMENT FOLLOWING JUDICIAL DECREE:

If a public nuisance is declared by judicial decree, after the defendant(s) receive(s) notice of entry of judgment as prescribed by law, and after the time within which an appeal may be filed has expired, then all procedures of this Chapter shall be applicable and may be followed in the same manner as if a decision by the County Hearing Officer had been made determining a public nuisance to exist.

4-01-1305 ABATEMENT BY OWNER:

(a) Any owner may voluntarily abate a nuisance described in section 4-01-1070 of this Chapter at any time prior to commencement of abatement by the County. The County shall have discretion to request such voluntary correction or abatement prior to proceeding with the formal abatement procedures provided by this Chapter.

(b) The enforcement officer is also authorized to enter into voluntary abatement settlement agreements with the owner of a property, to allow the County to enter onto an owner's real property and to abate nuisances on behalf of the owner. Any such agreement must be approved as to form by County Counsel, and will require the owner to: admit the existence of the nuisance; consent to the County's entry on the subject real property; consent to the County's conducting abatement activities on the real property through the County's representatives and/or independent contractors; accept all liabilities and costs related to the abatement; and allow the County to collect such abatement costs by liening the subject real property, or by pursuing a personal lien against the owner. Nothing in this paragraph is intended to require a property owner to enter into a voluntary abatement settlement agreement with the County.

4-01-1310 ABATEMENT: ENTERING PRIVATE PROPERTY:

If a public nuisance is not voluntarily corrected or abated by the owner or other responsible person, and if no request for ~~appeal~~ administrative review has been made as provided in ~~section~~

~~4-01-1200 and section 4-01-1250, respectively, Article 7 of this Chapter, or if no appeal to the County Hearing Officer has been made as provided in Article 9 of this Chapter, or if the decision after an appeal to the Board County Hearing Officer so provides, the County may cause the public nuisance to be abated. The County or its agents representatives or independent contractors who are to perform the work may enter upon the real property on which the public nuisance exists for the purpose of abating the nuisance at all reasonable times. If necessary, the enforcement officer shall apply to a court of competent jurisdiction for a warrant authorizing entry upon the subject real property for purposes of undertaking the work of abatement.~~

4-01-1315 SAME: EMERGENCIES:

Regardless of the provisions of section 4-01-1310 of this Chapter, if it appears to the County that a public nuisance represents an immediate threat or danger to the public health or safety, the County may abate such public nuisance to the extent necessary to eliminate such threat or danger to the public health or safety without following the notice and hearing requirements set forth in Articles 5, 7, [comma added] and 9 of this Chapter.

ARTICLE 13. PAYMENT OF COSTS

4-01-1370 RECOVERY OF ATTORNEY'S FEES:

In any action, administrative proceeding, or special proceeding to abate a nuisance under this Chapter, attorney's fees may be recovered by the prevailing party. Recovery of attorneys' fees by the prevailing par-ty is limited to those actions or proceedings in which the County elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing par-ty exceed the amount of reasonable attorneys' fees incurred by the County in the action or proceeding.

4-01-1375 ACCOUNTING STATEMENT OF EXPENSES:

(a) Any County department, [comma deleted] which abates a public nuisance pursuant to this Chapter, [comma deleted] shall keep an accounting of the cost of each abatement, and shall prepare a ~~report~~ statement of expenses in writing showing the cost of abatement and the applicable cost of administration. If real property under more than one ownership has been included in an overall abatement project, the ~~account~~ statement of expenses shall show such costs for the property owned by each owner separately. The statement of expenses or its supporting attachments shall include the following information:

- (1) Name(s) of the contractor(s) who performed the abatement;

(2) Dates when abatement activities were conducted on the real property, and information about what activities were conducted on which dates;

(3) Number of individuals who worked on each type of abatement activity on the property;

(4) Total number of hours the contractor's employees/agents spent on each type of abatement activity;

(5) Rate for each type of abatement activity performed;

(6) Itemized list of other fees or charges incurred in conducting the abatement, including, but not limited to, dump fees or travel fees; and

(7) Costs of administration, including any applicable postage and attorneys' fees.

(b) The County shall mail a copy of the ~~accounting statement of expenses~~, and a notice explaining the ~~owner's~~ right to appeal the ~~accounting statement of expenses~~ to the County Hearing Officer as provided in section 4-01-1380 of this Chapter, to the owner of the affected real property at the address provided in section 4-01-1150 of this Chapter, unless the owner has otherwise requested in writing, and to any mortgagee, lienholders of record, or beneficiary under a deed of trust.

4-01-1380 APPEAL ON ~~ACCOUNTING STATEMENT OF EXPENSES~~; NOTICE:

(a) The owner of the affected real property, or other individual with a legally protected interest in the affected real property, may appeal for a modification of the ~~accounting statement of expenses~~ to the ~~Board of Supervisors~~ County Hearing Officer. Any appeal to the ~~Board~~ County Hearing Officer shall be in writing and shall be filed with the Clerk of the Board within ten (10) calendar days after the date of mailing of the notice and ~~accounting statement of expenses~~. An appeal shall specifically set forth the grounds of the appeal. At the time of filing the appeal, the appellant shall pay a fee adequate to cover the cost of processing and hearing the appeal as established from time to time by resolution of the Board of Supervisors. The appellant may request a waiver of the fee pursuant to section 1-31-1060 of this Code. [¶ added]

(b) The Clerk of the Board shall mail notice to the appellant of the date and time that the ~~Board~~ County Hearing Officer will ~~meet to~~ hear the appeal, which date shall be not less than ~~five (5)~~ ten (10) calendar days after the date of mailing the notice.

(c) Unless otherwise expressly stated by the owner, payment of the cost of abatement and the cost of administration prior to said hearing shall be deemed a waiver of the right thereto and an admission that said statement of expenses is accurate and reasonable.

4-01-1385 HEARING ON APPEAL: ~~ACCOUNTING STATEMENT OF EXPENSES:~~

(a) At a ~~the~~ time fixed by the Clerk of the Board, the ~~Board~~ County Hearing Officer shall ~~meet to review~~ hear the appeal on the ~~accounting statement of expenses~~. The owner may appear and be heard on the questions of whether the ~~accounting statement of expenses~~ and the costs included are accurate and reasonable.

(b) The report of the ~~accounting statement of expenses~~ shall be admitted into evidence. The owner shall bear the burden of proving that the ~~accounting statement of expenses~~ is not accurate or reasonable.

(c) The hearing shall be conducted in the manner prescribed in ~~section 165~~ Article 31 of Chapter 3 of Part I of the Ordinance ~~this~~ Code of Tulare County.

4-01-1390 MODIFICATIONS:

The ~~Board shall~~ County Hearing Officer may make such modifications in the ~~accounting statement of expenses~~ as ~~it~~ he or she deems necessary based on the evidence at the hearing, [comma added] and thereafter shall confirm the ~~accounting statement of expenses in a written decision by resolution~~.

4-01-1395 LIABILITY FOR COST OF ABATEMENT: SPECIAL ASSESSMENT AND LIEN:

(a) The ~~applicable~~ owner of the real property shall be liable for the cost of the abatement, including the cost of administration, and any applicable attorney's fees, as so determined. [¶ added]

(b) The Board may order that the cost of abating public nuisances pursuant to this Chapter, and the applicable ~~cost~~ costs of administration, and any applicable attorney's fees, be placed ~~upon~~ on the County tax roll by the County Auditor as special assessments against any applicable real property, or placed on the unsecured roll, and collected at the same time and in the same manner as ordinary county taxes are collected, if such costs and fees are not paid within five (5) days following service of the County Hearing Officer's decision under section 4-01-1385 or 4-01-1390. The Board may also order that a notice of abatement lien ~~is to~~ be recorded ~~as to~~ against any applicable real property until such costs and fees have been paid in full.

(c) Recovery of costs and fees pursuant to this section shall be in addition to and shall not limit any prevailing party's right to recover costs pursuant to Sections 1032 and 1033.5 of the Code of Civil Procedure or any other provision of law.

4-01-1400 ~~LIABILITY FOR~~ PAYMENT OF COST OF ABATEMENT: CONDITIONS:

The Board may order that the payment of the cost of abating nuisances pursuant to this Chapter, and the applicable ~~cost~~ costs of administration, and any applicable attorney's fees, become a condition precedent to the issuance of any and all pending or future permits or entitlements for use requested from the County by any person found responsible for the payment of such costs.

4-01-1405 SECOND OR SUBSEQUENT ABATEMENT: TREBLE DAMAGES:

As authorized by Government Code section 25845.5, upon a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property is responsible for a condition that may be abated in accordance with this Chapter, except for conditions abated pursuant to section 17980 of the Health and Safety Code, a court may order the owner ~~shall be liable for~~ to pay treble the costs of the abatement.

Section 2. Section 7-15-1005 ("Severability") of Chapter 15 ("Building Regulations" of Part VII ("Land Use Regulation and Planning") of the Tulare County Ordinance Code is amended to read as follows:

7-15-1005 SEVERABILITY:

~~It is declared to be the intention of the Board of Supervisors that if any of the articles, sections, paragraphs, sentences, clauses and phrases of this Chapter are declared unconstitutional by a valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining articles, phrases, clauses, sentences, paragraphs and sections of this chapter. The provisions of this Chapter are hereby declared to be severable. If any section, subsection, subdivision, sentence, clause, phrase, portion, or application of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portions of this Chapter. The Board hereby declares that it would have enacted this Chapter, each section, subsection, subdivision, sentence, clause, phrase, and portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions is declared invalid.~~

Section 3. Section 7-15-1065 (“Violations and Penalties”) of Chapter 15 (“Building Regulations”) of Part VII (“Land Use Regulation and Planning”) of the Tulare County Ordinance Code is amended to read as follows:

7-15-1065 VIOLATIONS AND PENALTIES: PUBLIC NUISANCE

(a) It shall be unlawful and a public nuisance for any person to erect, construct, enlarge, alter, repair, move, remove, demolish, convert, equip, use, occupy, [comma added] or maintain any building or structure, or any portion thereof, in the unincorporated territory of Tulare County, contrary to or in violation of Chapter 15 (Building Regulations) or of this Article, or to cause, permit, or suffer the same to be done. [¶ added]

(b) It shall also be unlawful and a public nuisance for any person to erect, install, alter, repair, relocate, add to, replace, use, [comma added] or maintain heating, ventilating, comfort cooling, or refrigeration equipment in the unincorporated territory of Tulare County contrary to or in violation of any of the provisions of Chapter 15 (Building Regulations), or of this Article, or to cause, permit, or suffer the same to be done. [¶ added]

(c) Any person violating any of the provisions of this Chapter, or any of the said California Codes incorporated pursuant to any of the provisions of this Chapter 15 (Building Regulations), ~~or this Article,~~ shall be guilty of a misdemeanor, and which shall be punishable as provided in Section 125 (Violations) of this Ordinance Code. Any person in violation of Chapter 15 (Building Regulations) or this Article shall be deemed guilty of a separate offense for each and every day, or portion thereof, during which any violation of any such provision of said Codes or this Article is committed, continued, or permitted.

Section 4. Article 15 (“Unsafe and Substandard Buildings”) of Chapter 15 (“Building Regulations”) of Part VII (“Land Use Regulation and Planning”) of the Tulare County Ordinance Code is repealed.

~~ARTICLE 15. UNSAFE AND SUBSTANDARD BUILDINGS~~

~~7-15-1740 ADOPTION OF PORTION OF CALIFORNIA ADMINISTRATIVE CODE:~~

~~The Rules and Regulations which are presently set forth in the State Housing Law Regulations, Articles 1 through 8 of Subchapter 1 of Chapter 1 of Part 1 of Title 25 of the California Administrative Code, Sections 1 through 134, inclusive, are hereby referred to, adopted and made a part of this Article with the same effect as though fully set forth herein and shall be applicable in the unincorporated territory of Tulare County.~~

~~7-15-1745~~ **DEFINITIONS:**

Whenever any of the following terms are used in the Rules and Regulations adopted by this Article, such terms shall have the following meanings:

(a) The term "enforcement agency" shall mean the Resource Management Agency of the County of Tulare.

(b) The term "governing board" shall mean the Board of Supervisors of the County of Tulare.

~~7-15-1750~~ **POSTING SIGNS:**

Immediately upon determining any building or portion thereof to be substandard, the Resource Management Agency may post upon each exit of the building a notice in substantially the following form:

DANGER

DO NOT ENTER

UNSAFE TO OCCUPY

This building has been determined to be substandard and a nuisance and may be dangerous to enter or occupy. It is an infraction to remove or deface this notice without permission of the Tulare County Resource Management Agency or other authorized County entities.

The right to post said notice is in addition to the other notices and posting requirements adopted by this Article. Any person who removes or defaces any notice posted pursuant to this section without the permission of the Tulare County Resource Management Agency or other County entity shall be guilty of an infraction and shall be punishable as provided in Section 125 (Violations) of this Ordinance Code.

~~7-15-1755~~ **USE OF ADMINISTRATIVE RULES AND REGULATIONS:**

As an alternative to the procedures set forth in the Rules and Regulations adopted by this Article, any other procedure for the repair or demolition of unsafe or substandard buildings in the Codes adopted by Chapter 15 (Building Regulations) of this Ordinance Code may be followed for the repair or demolition of unsafe or substandard buildings.

~~7-15-1760~~ **STATEMENT OF EXPENSE: COLLECTION:**

~~(a) In the event that the cost of razing or removing a building or structure exceeds the proceeds from the sale of any materials, then the amount of the net expense of abating such nuisance may be made a special assessment against the property pursuant to Section 25845 of the Government Code of the State of California by order of the Board of Supervisors. Such order by the Board of Supervisors may be adopted concurrently with or at any time after the adoption of the statement of expense and shall direct the County Auditor to place such special assessment on the tax roll against the property on which the building or structure was located. The assessment 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 the same procedure and 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. If any person pays the expenses of abatement prior to the placement of the special assessment on the tax roll, then the County Auditor shall not place the special assessment on the tax roll.~~

~~(b) In lieu of following the procedure set forth in subsection (a) of this section, the Board of Supervisors may determine that the net expense to the County of abating the nuisance shall be a personal obligation of the property owner and direct the County Counsel to bring legal action to collect said net expense.~~

Section 5. Article 15 of Chapter 15 (“Building Regulations”) of Part VII (“Land Use Regulation and Planning”) of the Tulare County Ordinance Code is added to read as follows:

ARTICLE 15. (RESERVED)

[no sections enacted under heading]

Section 6. Section 7-15-2940 (“Adoption”) of Article 30 (“1997 Uniform Housing Code”) of Chapter 15 (“Building Regulations”) of Part VII (“Land Use Regulation and Planning”) of the Tulare County Ordinance Code is renumbered and amended to read as follows:

~~7-15-2940~~ **7-15-3000** **ADOPTION OF UNIFORM HOUSING CODE:**

Subject to subsections (a) ~~and (b)~~ through (e) below, the Uniform Housing Code, 1997 Edition, as published by the International Conference of Building Officials, [comma added] is hereby referred to, adopted, [comma added] and made a part of this Article with the same effect as if fully set forth herein. The procedures and proceedings provided in said Uniform Housing Code

may, in the discretion of the Building Official, be used in place of procedures and proceedings that may be provided elsewhere in this ~~Ordinance~~ Code. The provisions of said Uniform Housing Code, [comma added] as adopted and incorporated by this section, [comma added] shall apply to all of the unincorporated territory of the County of Tulare.

(a) Section 203 (Housing Advisory and Appeals Board) and Chapter 12 (Appeal) of the Uniform Housing Code are not adopted. The administrative enforcement of this ~~Chapter~~ Article is subject to the right of appeal as provided by section ~~165 (Administrative Appeals)~~ 7-15-1050 of the ~~Tulare County Ordinance~~ this Code.

(b) Section 201 of the Uniform Housing Code is amended by adding thereto a new Section 201.4, to read as follows:

Section 201.4 Authorized Representatives. In accordance with prescribed procedures and with the approval of the appointing authority, the Building Official may appoint such number of technical officers and inspectors and other employees as shall be authorized from time to time. The Building Official may appoint such inspectors or employees as may be necessary to carry out the provision of the Uniform Housing Code.

(c) Additional Requirement – Caretaker – Notice. In addition to the ~~requirement~~ requirements of the Uniform Housing Code, the following shall be required:

1. Caretaker. A janitor, housekeeper, or other responsible person shall reside upon the premises and shall have charge of every apartment house in which there are sixteen or more apartments and of every hotel in which there are twelve or more guest rooms, in the event that the owner of any such apartment house or hotel does not reside upon the premises.

2. Notice. If the owner does not reside upon the premises of any apartment house in which there are four or more but less than sixteen apartments, a notice stating the owner's name and address or telephone number, or the name and address or telephone number of the owner's agent in charge of the apartment house, shall be posted in a conspicuous place on the premises.

(d) Section 202 of the Uniform Housing Code is amended to read as follows:

Buildings or portions thereof that are determined to be substandard as defined in the State Housing Law or as otherwise determined to be substandard pursuant to the Tulare County Ordinance Code are hereby declared to be public nuisances

and may be abated by repair, rehabilitation, demolition or removal in accordance with the procedure specified in Chapter 11 of the Uniform Housing Code, or such other procedure specified in the Tulare County Ordinance Code.

(e) All references to the Building Code in the Uniform Housing Code shall be interpreted to refer to the California Building Code, as adopted by the California Building Standards Commission.

Section 7. Section 7-15-3010 of Article 30 (“1997 Uniform Housing Code”) of Chapter 15 (“Building Regulations”) of Part VII (“Land Use Regulation and Planning”) of the Tulare County Ordinance Code is added to read as follows:

7-15-3010 MISDEMEANOR:

Maintaining a substandard building in violation of the Uniform Housing Code, as adopted herein, is a misdemeanor, and is punishable as provided in Section 125 (Violations) of this Code.

Section 8. Section 7-15-2945 (“Adoption of California Existing Building Code, Title 24, Part 10”) of Article 31 (“California Existing Building Code, Title 24, Part 10”) of Chapter 15 (“Building Regulations”) of Part VII (“Land Use Regulation and Planning”) of the Tulare County Ordinance Code is renumbered without amendment to read as follows:

**~~7-15-2945~~ 7-15-3100 ADOPTION OF CALIFORNIA EXISTING BUILDING CODE,
TITLE 24, PART 10:**

[No amendments to text]

Section 9. Section 7-15-2950 (“Enforcement”) of Article 31 (“California Existing Building Code, Title 24, Part 10”) of Chapter 15 (“Building Regulations”) of Part VII (“Land Use Regulation and Planning”) of the Tulare County Ordinance Code is renumbered without amendment to read as follows:

~~7-15-2950~~ 7-15-3110 ENFORCEMENT:

[No amendments to text]

Section 10. Section 7-15-2955 (“Fees”) of Article 31 (“California Existing Building Code, Title 24, Part 10”) of Chapter 15 (“Building Regulations”) of Part VII (“Land Use Regulation and Planning”) of the Tulare County Ordinance Code is renumbered without amendment to read as follows:

~~7-15-2955~~ 7-15-3120 **FEES:**

[No amendments to text]

Section 11. Section 7-15-2960 (“Appeals”) of Article 31 (“California Existing Building Code, Title 24, Part 10”) of Chapter 15 (“Building Regulations”) of Part VII (“Land Use Regulation and Planning”) of the Tulare County Ordinance Code is renumbered without amendment to read as follows:

~~7-15-2960~~ 7-15-3130 **APPEALS:**

[No amendments to text – note that text, but not number, was amended in recent ordinance adding Local Appeals Board]

Section 12. Section 7-15-2965 (“Violations and Penalties”) of Article 31 (“California Existing Building Code, Title 24, Part 10”) of Chapter 15 (“Building Regulations”) of Part VII (“Land Use Regulation and Planning”) of the Tulare County Ordinance Code is renumbered without amendment to read as follows:

~~7-15-2965~~ 7-15-3140 **VIOLATIONS AND PENALTIES:**

[No amendments to text]

Section 13. Article 33 of Chapter 15 (“Building Regulations”) of Part VII (“Land Use Regulation and Planning”) is added to the Tulare County Ordinance Code, to read as follows:

ARTICLE 33. UNSAFE AND SUBSTANDARD BUILDINGS

7-15-3300 ADOPTION OF PORTION OF CALIFORNIA CODE OF REGULATIONS:

The State Housing Law Regulations as referenced in California Code of Regulations, Title 25, Division 1, Chapter 1, Subchapter 1, are hereby referred to, adopted and made a part of this Ar-

title with the same effect as though fully set forth herein and shall apply to all of the unincorporated territory of the County of Tulare where not in conflict with the provisions of this Chapter.

7-15-3310 DEFINITIONS FOR STATE HOUSING LAW REGULATIONS:

Whenever any of the following terms are used in the provisions of the California Code of Regulations adopted pursuant to this Article, such terms shall have the following meanings:

(a) The term "enforcement agency" shall mean the Resource Management Agency of the County of Tulare, unless otherwise required or specified by State Housing Law.

(b) The term "governing board" shall mean the Board of Supervisors of the County.

7-15-3320 DECLARATION OF PUBLIC NUISANCE:

The following conditions are hereby declared to be public nuisances:

(a) Any residential building that, as the result of development, has become unsafe, injurious to health, indecent, offensive to the senses, or that unlawfully obstructs the free passage or use, in the customary manner, of any county park, square, street or highway, or that constitutes a fire hazard;

(b) Any dangerous building or structure;

(c) Any substandard housing or dwelling;

(d) Any unused service station.

7-15-3330 NUISANCE ABATEMENT AUTHORITY:

Without limiting any other rights, remedies, or enforcement mechanisms available at law, upon discovering a public nuisance related to unsafe buildings or substandard building, the enforcement agency may take one or more of the following actions:

(a) Abate the nuisance in accordance with the administrative abatement procedures provided in this Chapter, or any other applicable provisions of this Code;

(b) Determine and collect an administrative civil penalty in accordance with the procedures provided in Chapter 23 of Part I of this Code.

(c) Seek relief from any court of competent jurisdiction to abate the nuisance and/or collect civil penalties, without first going through the administrative procedures set forth in this Chapter; or

(d) Refer violations to the District Attorney for prosecution under applicable criminal laws.

7-15-3340 POSTING SIGNS:

Immediately upon determining any building or portion thereof to be substandard and a public nuisance, the enforcement agency may post upon each entrance of the building a notice in substantially the following form:

D A N G E R

DO NOT ENTER

UNSAFE TO OCCUPY

This building has been determined to be substandard and a nuisance and may be dangerous to enter or occupy. It is an infraction to remove or deface this notice without permission of the Tulare County Resource Management Agency or other authorized County entities.

The right to post said notice is in addition any other notices or posting requirements in this Chapter, or as otherwise authorized by law. Any person who removes or defaces any notice posted pursuant to this section without the permission of the Tulare County Resource Management Agency or other County entity shall be guilty of an infraction and shall be punishable as provided in Section 125 (Violations) of this Code.

Section 14.Article 35 of Chapter 15 (“Building Regulations”) of Part VII (“Land Use Regulation and Planning”) is added to the Tulare County Ordinance Code, to read as follows:

ARTICLE 35. SUBSTANDARD HOUSING NUISANCE ABATEMENT

7-15-3500 LEGISLATIVE AUTHORIZATION: TITLE:

(a) Pursuant to the authority granted to it by section 25845 of the Government Code, and by Article XI, section 7 of the California Constitution, the Board of Supervisors hereby enacts this Article 35 of Chapter 15 of Part VII of the Tulare County Ordinance Code, which shall be known, and may be cited, as the “Substandard Housing Nuisance Abatement Ordinance.”

(b) The Board of Supervisors hereby determines that the procedures for substandard housing abatement incorporated in this Article are equivalent to the procedures provided in Article 6 (Actions and Proceedings, commencing with section 48) of Subchapter 1 (State Housing Law Regulations) of Chapter 1 (State Housing Law Regulations and Earthquake Protection Law Regulations) of Division 1 (Housing and Community Development) of Title 25 (Housing and Community Development) of the California Code of Regulations.

7-15-3510 PURPOSE AND INTENT:

(a) The purpose of this Article is to protect the health, safety, and welfare of the residents of the County of Tulare through the prevention and abatement of substandard housing nuisances in the County. It shall be construed liberally to that end.

(b) It is the intention of the Board of Supervisors to minimize the burden placed upon property owners and taxpayers in carrying out the purpose set forth in subsection (a) above. Accordingly, those methods of abatement are to be favored that are least costly and that are most directly related to protecting the public health, safety and welfare.

7-15-3520 NOT EXCLUSIVE REGULATION:

This Article is not the exclusive regulation of substandard housing nuisances. It shall supplement and be in addition to the other regulating statutes and ordinances heretofore or hereafter enacted by the State, the County, or any other legal entity or agency having jurisdiction.

7-15-3530 APPLICATION:

This Chapter applies to all real property owned by an individual, firm, partnership, joint venture, association, corporation, estate, or trust. In addition, it applies to any real property owned by the United States and any agency of the United States, the State of California and any agency of the State, any city, and a public district or political subdivision of the State of California, insofar as it is legally possible to enforce this Chapter, or any portion thereof, against such entities.

7-15-3540 DEFINITIONS:

Except where the context otherwise requires, the following definitions shall govern the construction of this Article:

(a) "Agent" means a person or entity acting on behalf of and subject to the control of the owner of real property or of a person legally in possession of the real property.

(b) "Board" means the Board of Supervisors of the County.

(c) "Cost of abatement" means the direct cost to the County of physically abating a public nuisance.

(d) "Cost of administration" means the cost to the County of performing the various administrative acts required under this Chapter with regard to the abatement of a public nuisance, including, without limitation, the costs of investigating such nuisance and the cost of prosecuting the public nuisance, but not including the actual cost of physically abating the nuisance.

(e) "County" means the County of Tulare, acting by and through the Board, the County Administrative Officer, or any appropriate County agency, department, or division.

(f) "Department" means the County department that employs the enforcement officer.

(g) "Director" means the head of the Department that issued the notice of violation and order to abate a nuisance, or his or her designee.

(h) For the purposes of this Article, "enforcement officer" means and includes the following County officials and their deputies, assistants, or other duly authorized representatives:

(1) Director of Resource Management Agency;

(2) Such other persons as may be designated by the Board.

(i) "Owner" means the person in whom is vested the ownership, dominion, or title of real property.

(j) "Real property" includes all of the surface or subsurface areas described in the most recently recorded deed or deeds relating to such property, and all improvements on the real property.

7-15-3550 INSPECTION WARRANT:

Where there is a report of the existence of a substandard housing nuisance, or other reason to believe that such a nuisance exists on certain real property, but the owner or person legally in possession of the real property refuses consent for the enforcement officer to inspect it, or where circumstances justify the failure to seek consent to inspect, the County may proceed to obtain an inspection warrant pursuant to Code of Civil Procedure section 1822.50 et seq. to enter and inspect such real property.

7-15-3560 EXCEPTION TO INSPECTION WARRANT:

No inspection warrant shall be required where there is an immediate threat or danger to the public health or safety, and immediate abatement of a public nuisance is justified as provided in section 7-15-3710 of this Article.

7-15-3570 ABATEMENT OF SUBSTANDARD BUILDINGS

All structures, or portions thereof, that are determined by the enforcement officer to constitute a substandard building and also a public nuisance may be abated by repair, rehabilitation, or removal in accordance with this Article and/or Health and Safety Code section 17980 et seq. In cases of extreme hardship to owner-occupants of the dwellings, the enforcement officer or the County Hearing Officer may provide for deferral of the effective date of orders of abatement.

7-15-3580 DETERMINATION OF NUISANCE: NOTICE OF VIOLATION: ORDERS TO ABATE AND TO VACATE: SERVICE:

(a) Whenever an enforcement officer determines that a building is substandard and also a public nuisance, the enforcement officer shall prepare a notice of violation and order to abate, and shall serve a copy thereof upon the owner of the property upon which the nuisance exists, as shown on the last equalized assessment roll, or to the current owner if otherwise known to the enforcement officer. The enforcement officer shall also serve copies of the notice/order upon anyone known to the enforcement officer to be in possession of the property (including tenants); and upon any mortgagee, beneficiary under a deed of trust, or other lienholders of record.

(b) Where the enforcement officer has determined that the condition causing the nuisance is imminently dangerous to human life or limb, or to public health or safety, the enforcement officer may include in the notice/order an order that the property, building or structure affected shall be vacated pending abatement of the conditions causing a nuisance, if the enforcement officer proceeds pursuant to the procedures described in subdivision (c) of section 17980 of the Health and Safety Code.

7-15-3590 NOTICE OF VIOLATION AND ORDER TO ABATE CONTENTS:

(a) The notice/order described in section 7-15-3580 of this Article shall include the following:

(1) The name, address, and telephone number of the enforcement officer who issued the notice/order.

(2) The name of the owner of the real property upon which the nuisance exists, as the name appears on the records of the County Assessor/Clerk-Recorder.

(3) The street address, assessor's parcel number, or any other description sufficient to identify the real property affected.

(4) A statement that the County has determined that a public nuisance exists on the real property and that the building or structure on said property has been determined to be substandard.

(5) A description of the condition(s) constituting the nuisance and creating the substandard housing, including any facts upon which the determination is based.

(6) Identification of the specific provision(s) of law the enforcement officer has determined are being violated.

(7) An order to completely abate the nuisance within forty-five (45) days after the notice/order is served, or sooner if deemed necessary to remedy an immediate threat to the health/safety of public or occupants. The time to abate shall be extended up to sixty (60) days after a person takes title to a property if that person has purchased and is in the process of diligently abating that property, unless a shorter time is deemed necessary to remedy immediate threat to the health/safety of public or occupants.

(8) If the enforcement officer determines that the condition(s) causing the nuisance and substandard building can be corrected or abated by repair or corrective action, then the notice shall state the repairs or corrective actions that shall be required.

(9) If appropriate to protect the public health and safety of possible occupants or entrants, an order that the building, or any portion thereof, be vacated until the nuisance is abated;

(10) A statement of the right to request administrative review of the Notice of Violation by filing a written request for administrative review with the Director within fifteen (15) calendar days of service of the notice/order. The notice/order shall include a local contact number and an Internet website (if applicable) where a property owner may obtain a copy of an appeal form. A copy of the appeal form shall also be included with the notice/order.

(11) A statement explaining the consequences of failing to abate or appeal within the applicable time periods, including (i) that the notice/order becomes a final order; (ii) that the County may abate the public nuisance at the owner's expense; and (iii) that the County may seek recovery of its civil, administrative, and abatement costs, and may impose fines or penal-

ties pursuant to this Article and any other applicable laws, including through the use of liens and/or special assessments against the subject real property that will be collected at the same time and in the same manner as ordinary real property taxes.

(12) If the enforcement officer determines that sufficient information about the nuisance and subject property is available, then the notice/order shall also be accompanied by an estimate of the potential total abatement costs that may be charged to the owner if the County abates the nuisance, as well as any related civil and administrative costs and estimated fines and penalties, along with a statement that any such estimate is provided as a courtesy, is simply an estimate, and in no way limits the type or amount of costs and penalties the County may impose under this Article.

(13) A statement that, with respect to said substandard housing, and in accordance with sections 17274 and 24436.5 of the Revenue and Taxation Code, a tax deduction may not be allowed for interest, taxes, depreciation, or amortization paid or incurred in the taxable year.

(b) Any estimate furnished by the County to the property owner of potential abatement costs, civil and administrative costs, and penalties that the County may impose under this Article if the County abates a nuisance is simply an estimate, and in no way limits the type or amount of costs and penalties the County may ultimately impose under this Article.

7-15-3600 METHODS OF SERVICE: RECORDING: TIMING OF SERVICE:

(a) The notices required by this Article shall be given by conspicuously posting at least one copy of any order or notice to repair or abate on the building alleged to be substandard, and by also serving the notice through one of the following methods:

(1) Sending a copy of the notice by certified mail, postage prepaid, return receipt requested, to the person owning the land on which the building is located, either as that person's name and address appear on the last equalized assessment roll, or if the records of the County Assessor/Clerk-Recorder show that the ownership has changed since the last equalized assessment roll was compiled, notice shall be mailed to the new owner, or as otherwise known to the enforcement officer. A copy shall also be sent to any mortgagee, beneficiary of a deed of trust, or lienholder of record for the real property. Such service by mail shall be deemed effective two (2) days after the date of mailing. If any address is unknown to the enforcement officer, this fact shall be stated in the copy so mailed and the notice shall be addressed to the affected party at the Clerk of the Board's office; or

(2) Personally serving the party or attorney on whom the service is required to be made. Personal service is deemed effective once made.

(b) A proof of service or affidavit of mailing shall be prepared for every notice mailed or served pursuant to this section.

(c) When instituting an action or proceeding pursuant to this article, a notice of pendency of the action and/or copy of any notice/order served pursuant to this section shall be recorded in the office of the County Recorder.

(d) If the County Department charged with serving a notice pursuant to this Article serves the notice in the manner and within the time limits required by this section, then the failure of any person to receive actual notice of any proceedings shall not affect the validity of any proceedings taken pursuant to this Article.

7-15-3610 NOTICE TO TENANTS

(a) Tenants in a residential building shall be provided copies of any of the following:

(1) The notice of a violation described in Health and Safety Code section 17980, subdivision (a), that affects the health and safety of the occupants and that causes the building to be substandard pursuant to Section 17920.3 or in violation of Section 17920.10.

(2) An order of the enforcement officer issued after inspection of the premises declaring the dwelling to be in violation of a provision described in Health and Safety Code section 17980, subdivision (a).

(3) The enforcement officer's decision to repair or demolish.

(4) The issuance of a building or demolition permit following the abatement order of an enforcement agency.

(b) At least one copy of any order or notice to repair or abate pursuant to Health and Safety Code sections 17980 or 17980.6 shall also be conspicuously posted on the building alleged to be substandard, and provided to tenants of a residential property by either: (i) first-class mail to each affected residential unit; (ii) or by posting a copy of the order or notice in a prominent place on each affected residential unit.

(c) Such orders or notices must contain the following information:

(1) The name, address, and telephone number of the Department and enforcement officer that issued the notice or order.

(2) The date, time, and location of any public hearing or proceeding concerning the order or notice.

(3) Information that the lessor cannot retaliate against a lessee pursuant to section 1942.5 of the Civil Code.

7-15-3620 ADMINISTRATIVE REVIEW: REQUEST:

(a) Any person affected by the determination of an enforcement officer that a public nuisance exists may request administrative review of that determination by filing a written request with the Director of the County department that issued the determination on or before the fifteenth (15th) calendar day following the date of posting and mailing or personal delivery of the notice.

(b) Unless the nuisance is abated as specified in the notice/order, or the real property owner or other party with a legally protected interest in the real property requests administrative review of the determination that a public nuisance exists within fifteen (15) calendar days after the date the notice/order was served, then the enforcement officer's notice/order shall constitute a final administrative order or decision. It cannot be appealed and cannot be judicially reviewed, because the aggrieved person failed to exhaust available administrative remedies.

7-15-3630 ADMINISTRATIVE REVIEW: NOTICE:

The Director, or his or her designee, as administrative review officer, shall give notice to the person requesting the administrative review of the date, time and place when the administrative review will be held, which date shall not be less than five (5) calendar days after the date of mailing the notice. The notice shall be mailed to the address given by the person in his or her request for administrative review.

7-15-3640 ADMINISTRATIVE REVIEW: DECISION

(a) At the administrative review, the administrative review officer shall review the determination, any and all relevant documents, and such other relevant information as shall be presented. The administrative review shall be informal.

(b) After reviewing all of the available information, the administrative review officer shall determine whether to uphold the determination of the existence of a nuisance and the order to abate, modify the notice/order, or direct that the notice/order be withdrawn. This decision may be made orally at the administrative review, but the decision shall be reduced to writing and mailed to the person requesting the appeal at the address given by the person in his or her request for administrative review, unless otherwise requested in writing by the party to be served.

The notice of decision shall also include a description of the right to appeal the decision to the County Hearing Officer, as provided in this Article.

7-15-3650 APPEAL TO COUNTY HEARING OFFICER: NOTICE:

(a) Within fifteen (15) calendar days after service of the administrative review officer's decision issued pursuant to section 7-15-3640 determining that a nuisance exists on real property, a property owner, a person in possession of real property, mortgagee, lienholder of record, or beneficiary under a deed of trust may appeal the decision to the County Hearing Officer, as provided by Article 31 of Chapter 3 of Part I of this Code. An appeal pursuant to this section shall specifically set forth the grounds of the appeal, in writing, and shall be filed with the Clerk of the Board.

(b) At the time of filing the appeal, the appellant shall pay a fee in an amount adequate to cover the cost of processing and hearing the appeal, as established from time to time by resolution of the Board of Supervisors. The appellant may request a waiver of the fee pursuant to section 1-31-1060 of this Code.

(c) The Clerk of the Board shall mail notice to the appellant of the date and time that the County Hearing Officer will hear the appeal, which date shall be not less than ten (10) calendar days after the date of mailing of the notice.

7-15-3660 HEARING ON APPEAL: DETERMINATION:

(a) At the time fixed by the Clerk of the Board, the County Hearing Officer shall hear the appeal from the administrative review officer's decision.

(b) The written determination that a nuisance exists on the subject real property shall be admitted into evidence. The owner shall bear the burden of proving that the determination is not accurate.

(c) The hearing shall be conducted, and the County Hearing Officer's decision shall be issued, in the manner prescribed in Article 31 of Chapter 3 of Part I of this Code.

7-15-3670 SERVICE OF COUNTY HEARING OFFICER'S DECISION: EXTENSIONS OF TIME TO ABATE:

(a) Within 60 days of the issuance of a final decision by the County Hearing Officer determining the existence of a nuisance, the enforcement officer shall cause a copy of the Hearing Officer's decision to be posted on the affected building or property. The Clerk of the Board shall

also cause a copy of the decision to be mailed by certified mail, postage prepaid, return receipt requested, to the person owning the land on which the building is located as such person's name and address appear on the last equalized assessment roll or as known to the Clerk of the Board. A copy of said notice shall also be mailed to each mortgagee, lienholder, or beneficiary under any deed of trust, of record, at their last known addresses. If the address of any person designated to receive notice pursuant to this section is unknown, then that fact shall be stated in the mailed copy and the notice shall be addressed to that party, at the Clerk of the Board's office.

(b) After the County Hearing Officer determines that a nuisance exists, and orders the nuisance to be abated, the enforcement officer retains the authority to grant any extension of time to abate said nuisance that the Department or enforcement officer deems justifiable, upon good cause therefore being shown.

7-15-3680 ABATEMENT FOLLOWING JUDICIAL DECREE:

If a substandard housing public nuisance is declared by judicial decree, then after the defendant(s) receive(s) notice of entry of judgment as prescribed by law, and the time within which an appeal may be filed has expired, all procedures of this Article shall be applicable and may be followed in the same manner as if the County had issued a final administrative determination declaring a public nuisance to exist.

7-15-3690 ABATEMENT BY OWNER:

(a) Any owner may voluntarily abate a nuisance described in this Article at any time prior to commencement of abatement by the County. The County shall have discretion to request such voluntary correction or abatement prior to proceeding with the formal abatement procedures provided by this Article.

(b) The enforcement officer is also authorized to enter into voluntary abatement settlement agreements with the owner(s) of a property, to allow the County to enter onto an owner's real property and to abate nuisances on behalf of a property owner. Any such agreement must be approved as to form by County Counsel, and will require the owner to: admit the existence of the nuisance(s); consent to the County's entry on the subject real property and to County's conducting related abatement activities on the real property through County's representatives and/or independent contractors; accept all liabilities and costs related to the abatement; and allow the County to collect such abatement costs by liening the subject real property, or by pursuing a personal lien against the property owner(s). Nothing in this paragraph is intended to require a property owner to enter into a voluntary abatement settlement agreement with the County.

7-15-3700 ABATEMENT: ENTERING PRIVATE PROPERTY:

If a public nuisance is not voluntarily corrected or abated by the owner or other responsible person, and if no request for administrative review has been made; or if no appeal to the County Hearing Officer has been made; or if the public nuisance is not abated pursuant to the decision of the County Hearing Officer within 30 days of service and posting of the County Hearing Officer's decision, or within the time prescribed pursuant to section 7-15-3670, subsection (b) above, whichever is longer; then the County may cause the public nuisance to be abated. The County or its representatives and/or independent contractors who are to perform the abatement work may enter upon the real property on which the public nuisance exists for the purpose of abating the nuisance. If necessary, the enforcement officer shall apply to a court of competent jurisdiction for a warrant authorizing entry upon the subject real property for purposes of undertaking the work of abatement.

7-15-3710 SAME: EMERGENCIES:

Regardless of the notice and hearing requirements provided by this Article, if it appears to the County that a public nuisance represents an immediate threat or danger to the public health or safety, then the County may abate such public nuisance to the extent necessary to eliminate such threat or danger to the public health or safety without following the notice and hearing requirements set forth in this Article.

7-15-3715 RECOVERY OF ATTORNEY'S FEES:

In any action, administrative proceeding, or special proceeding to abate a nuisance pursuant to this Article, attorney's fees may be recovered by the prevailing party. Recovery of attorneys' fees by the prevailing party is limited to those actions or proceedings in which the County elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the County in the action or proceeding.

7-15-3720 SALE OF MATERIALS:

The building materials contained in any building razed or removed pursuant to this Article may be sold by the Board or the Purchasing Agent at public sale to the highest responsible bidder after not less than five (5) days' notice of intended sale, published at least once in a newspaper of general circulation published in the city or county wherein such building is located, either before or after said building has been razed or removed. Any amount received from the sale of such building materials shall be deducted from the expense of razing or removing said build-

ing. Nothing herein shall be construed to require the County to sell any such building materials. Unsold building materials may be disposed of by the enforcement officer by any lawful means, and the costs of such disposal included in the expenses of abatement.

7-15-3730 STATEMENT OF EXPENSES:

(a) Any enforcement officer who abates a public nuisance pursuant to this Article shall keep an accounting of the cost of each abatement, and shall prepare a ~~report~~ statement of expenses in writing showing the gross and net cost of abatement actions taken by the Department, including the expense of inspections; repairs, if any; and the cost of the razing or removing of the building, if applicable; and any other cost of abatement, including the applicable cost of administration. If multiple properties are included in the same report, then the account shall separately itemize the costs for the abatement for each impacted parcel/real property. The statement of expenses or its supporting attachments shall include the following information:

- (1) Name(s) of the contractor(s) who performed the abatement;
- (2) Dates when abatement activities were conducted on the real property, and information about what activities were conducted on which dates;
- (3) Number of individuals who worked on each type of abatement activity on the property;
- (4) Total number of hours the contractor's agents spent on each type of abatement activity;
- (5) Rate for each type of abatement activity performed;
- (6) Itemized list of other fees or charges incurred in conducting the abatement, including, but not limited to, dump fees or travel fees; and
- (7) Costs of administration, including any applicable postage and attorneys' fees.

(b) The enforcement officer shall mail a copy of the accounting, and a notice explaining the owner's right to appeal the accounting to the County Hearing Officer as provided in section 7-15-3740 of this Article, to the owner of the affected real property at the address described in section 7-15-3600 of this Article, unless the owner has otherwise requested in writing, and to any mortgagee, lienholders of record, or beneficiary under a deed of trust.

7-15-3740 APPEAL ON STATEMENT OF EXPENSE: NOTICE:

(a) The owner or other interested person may appeal for a modification of the statement of expense to the County Hearing Officer. Any appeal to the County Hearing Officer shall be in writing and shall be filed with the Clerk of the Board within ten (10) calendar days after the date of mailing of the notice and statement of expense. An appeal shall specifically set forth the grounds of the appeal. At the time of filing the appeal, the appellant shall pay a fee adequate to cover the cost of processing and hearing the appeal as established from time to time by resolution of the Board of Supervisors. The appellant may request a waiver of the fee pursuant to section 1-31-1060 of this Code.

(b) The Clerk of the Board shall mail notice to the appellant of the date and time that the County Hearing Officer will hear the appeal, which date shall be not less than ten (10) calendar days after the date of mailing the notice.

(c) Unless otherwise expressly stated by the owner, payment of the cost of abatement and the cost of administration prior to said hearing shall be deemed a waiver of the right thereto and an admission that said statement of expenses is accurate and reasonable.

7-15-3750 HEARING ON APPEAL: STATEMENT OF EXPENSE

(a) At the time fixed by the Clerk of the Board, the County Hearing Officer shall hear the appeal on the statement of expense. The owner or other interested party may appear and be heard on the questions of whether the accounting and the costs included are accurate and reasonable.

(b) The statement of expense shall be admitted into evidence. The owner shall bear the burden of proving that the statement of expense is not accurate or reasonable.

(c) The hearing shall be conducted in the matter prescribed in Article 31 of Chapter 3 of part I of this Code.

7-15-3760 MODIFICATIONS

The County Hearing Officer may make such modifications in the statement of expense as he or she deems necessary based on the evidence at the hearing, and thereafter shall confirm the accounting in a written decision.

7-15-3770 LIABILITY FOR COST OF ABATEMENT: SPECIAL ASSESSMENT AND LIEN:

(a) The owner of the real property shall be liable for the costs of the abatement, including the cost of administration, and any applicable attorney's fees, as so determined.

(b) If the costs related to abating public nuisances pursuant to this Article, including the applicable cost of administration, and any applicable attorney's fees, exceed the proceeds from the sale of any materials obtained from razing the property, if any, then the Board may order that any such costs and fees that remain unpaid on or after the fifth (5th) calendar day following service of the County Hearing Officer decision confirming the costs and fees and demanding payment shall be placed upon the County tax roll by the County Auditor as special assessments against the property on which the building(s) or structure(s) were located, and collected at the same time and in the same manner as ordinary county taxes are collected, or placed on the unsecured roll. Service of the resolution confirming the abatement costs and fees, and demand for payment shall be completed in the manner outlined in section 7-15-3600, though the statement of expenses need not be recorded. All laws applicable to the levy, collection, and enforcement of County taxes shall be applicable to such special assessments. If any person pays the expenses of abatement prior to the placement of the special assessment on the tax roll, then the County Auditor shall not place the special assessment on the tax roll.

(c) If the Board orders the costs and fees to be specially assessed against the real property, the Board may also order that a notice of abatement lien be recorded against the affected real property until such costs and fees have been paid in full. The notice shall, at a minimum, identify the record owner or possessor of property, set forth the last known address of the record owner or possessor, set forth the date upon which abatement of the nuisance was ordered, and the date the abatement was complete, and include a description of the real property subject to the lien and the amount of the abatement cost and fees.

(d) In lieu of specially assessing and liening the abatement costs pursuant to subsections (b) and (c), above, the Board of Supervisors may determine that the net expense to the County of abating the nuisance shall be a personal obligation of the property owner(s) and direct the County Counsel to bring legal action to collect said net expense.

(e) Recovery of costs and fees pursuant to this section shall be in addition to and shall not limit any prevailing party's right to recover costs pursuant to Sections 1032 and 1033.5 of the Code of Civil Procedure or any other provision of law.

7-15-3780 PAYMENT OF COST OF ABATEMENT AS CONDITION PRECEDENT TO FUTURE ENTITLEMENTS:

The Board may order that the payment of the cost of abating nuisances pursuant to this Chapter, and the applicable cost of administration, become a condition precedent to the issuance of any and all pending or future permits or entitlements for use requested from the County by any person found responsible for the payment of such costs.

7-15-3790 SECOND OR SUBSEQUENT ABATEMENT: TREBLE DAMAGES:

As authorized by Government Code section 25845.5, upon a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property is responsible for a condition that may be abated in accordance with this Chapter, except for conditions abated pursuant to section 17980 of the Health and Safety Code, a court may order the owner shall be liable for to pay treble the costs of the abatement.

7-15-3800 NOTICE OF FINAL DISPOSITION:

The enforcement officer shall record notice of final disposition of any action or proceeding instituted pursuant to this Article immediately following final resolution of the action or proceeding.

7-15-3810 APPEAL FROM BOARD DECISION:

Judicial review of a decision of the County Hearing Officer made after a hearing pursuant to this Article shall be made pursuant to section 1094.6 of the California Code of Civil Procedure where and to the extent said section may be applicable.

Section 15. The foregoing ordinance shall take effect thirty (30) days from the date of the passage hereof, and prior to the expiration of fifteen (15) days from the passage hereof a summary shall be published once in a newspaper printed and published in the County of Tulare, State of California, together with the names of the Board of Supervisors voting for and against the same.

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THE FOREGOING ORDINANCE was passed and adopted by the Board of Supervisors of the County of Tulare, State of California, on the ____ day of _____, 2019, at a regular meeting of said Board duly and regularly convened on said day by the following vote:

AYES: _____
NOES: _____
ABSTAIN: _____
ABSENT: _____

COUNTY OF TULARE

By: _____
Chairman, Board of Supervisors

ATTEST:

JASON T. BRITT
County Administrative Officer/
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Approved as to Legal Form:
COUNTY COUNSEL

By: _____
Deputy
Matter No. 2018749

Attachment “C”

Pre-Adoption Summary of Proposed Ordinance

ORDINANCE NO. _____

PURSUANT TO GOVERNMENT CODE SECTION 25124(b)(1), THE FOLLOWING IS A SUMMARY OF AN ORDINANCE AMENDING CHAPTER 1 OF PART IV OF THE ORDINANCE CODE OF TULARE COUNTY, PERTAINING TO ABATEMENT OF NUISANCES, AND AMENDING CHAPTER 15 OF PART VII OF THE ORDINANCE CODE OF TULARE COUNTY, PERTAINING TO BUILDING REGULATIONS AND ABATEMENT OF RELATED NUISANCES, INCLUDING SUBSTANDARD HOUSING NUISANCES.

SUMMARY OF PROPOSED ORDINANCE

This Ordinance amends the County's general nuisance abatement ordinance (Part IV, Chapter 1 of the Ordinance Code of Tulare County) to clarify terms, add new requirements, and to modify the current abatement process. Highlights of these ordinance amendments include: (1) adds new or expands definitions of significant terms; (2) clarifies information that should be contained in a notice and order to abate; (3) changes the appeal process by requiring an appellant to first appeal a determination of a nuisance to the Department that employs the enforcement officer, followed by a right to appeal the Department's decision to a County Hearing Officer, to be established pursuant to a separate ordinance enacting Article 31 of Chapter 3 of Part 1 (to be considered at the same meeting); (4) eliminates a fee for a departmental review of a determination of a nuisance, and authorizes adoption of a new fee for the County Hearing Officer appeal hearing, but with a waiver provision in cases of financial hardship; (5) codifies the authority of an enforcement officer to enter into voluntary abatement agreements, pursuant to certain limitations; (6) allows the prevailing party in an appeal to recover attorney's fees in an action, administrative proceeding, or special proceeding to abate a nuisance if the County so elects at the initiation of the action or proceeding; (7) establishes more robust requirements for a statement of expense regarding abatement activities; (8) provides that the County Hearing Officer will confirm any appealed statements of expenses at a hearing, and that the Board of Supervisors may order the abatement costs to be specially assessed or liened against the property through later Board action; (9) clarifies language that must be included in a notice of abatement lien; (10) clarifies service and posting requirements for all notices/orders; and (11) adds provisions clarifying that ordinance sections, provisions, etc., are severable and that the ordinance does not create a duty to enforce.

The ordinance also amends various sections in the County's Building Regulations Ordinances (Part VII, Chapter 15 of the Ordinance Code of Tulare Code) to clarify terms and processes. Highlights of these ordinance amendments include: (1) clarifies that constructing, altering or maintaining a building in violation of the requirements of that Chapter, or installing, using or maintaining heating and ventilation equipment in violation of the requirements of that Chapter are a public nuisance subject to abatement; (2) clarifies and revises certain provisions of the Uniform Housing Code, 1997 Edition, as adopted by the County in section 7-15-2940 of the Ordinance Code, and clarifies that appeals of determinations by the Building Official pursuant to the Uniform Housing Code are appealable to a new Local Appeals Board, to be established

by a separate amendment to section 7-15-1050 of the Ordinance Code (to be considered at the same meeting); (3) moves the "Unsafe and Substandard Buildings" regulations in the Ordinance Code from Article 15 in Chapter 15 of Part VII to Article 33 of the same Chapter; (4) codifies various options for the County to exercise its nuisance abatement authority with respect to substandard or unsafe buildings; and (5) adds a new "Substandard Housing Nuisance Abatement Ordinance" as Article 35 of Chapter 15 of Part VII. Article 35 establishes a local administrative abatement process that is substantially equivalent to the procedures provided in State Housing Law's implementing regulations (See Title 25 of the California Code of Regulations, sections 1 et seq.), but includes an appeal process similar to that being established by the County for general nuisance abatement (an informal, department-level appeal, to be followed by an appeal to the County Hearing Officer established pursuant to the new ordinance enacting Article 31 of Chapter 3 of Part I of the Ordinance Code).

The effective date of these changes will be thirty (30) days after adoption by the Board of Supervisors.

The ordinance herein summarized, as well as the proposed changes to Section 15.3 of the Zoning Ordinance, will be considered by the Board of Supervisors of the County of Tulare, State of California, on **Tuesday, June 4, 2019**, at a regular public meeting of said Board.

At least five (5) days prior to **Tuesday, June 4, 2019**, a certified copy of the full text of the proposed ordinance shall be posted in the office of the Clerk of the Board of Supervisors and shall be available for public inspection at that location.

COUNTY OF TULARE

By: _____
Chairman, Board of Supervisors

ATTEST: JASON T. BRITT
County Administrative Officer/
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

JLK/JET/5-09-2019/2018749/1307288

Attachment “D”

Post-Adoption Summary of Proposed Ordinance

ORDINANCE NO. _____

PURSUANT TO GOVERNMENT CODE SECTION 25124(b)(1), THE FOLLOWING IS A SUMMARY OF AN ORDINANCE AMENDING CHAPTER 1 OF PART IV OF THE ORDINANCE CODE OF TULARE COUNTY, PERTAINING TO ABATEMENT OF NUISANCES, AND AMENDING CHAPTER 15 OF PART VII OF THE ORDINANCE CODE OF TULARE COUNTY, PERTAINING TO BUILDING REGULATIONS AND ABATEMENT OF RELATED NUISANCES, INCLUDING SUBSTANDARD HOUSING NUISANCES.

SUMMARY OF ORDINANCE

This Ordinance amends the County's general nuisance abatement ordinance (Part IV, Chapter 1 of the Ordinance Code of Tulare County) to clarify terms, add new requirements, and to modify the current abatement process. Highlights of these ordinance amendments include: (1) adds new or expands definitions of significant terms; (2) clarifies information that should be contained in a notice and order to abate; (3) changes the appeal process by requiring an appellant to first appeal a determination of a nuisance to the Department that employs the enforcement officer, followed by a right to appeal the Department's decision to a County Hearing Officer, to be established pursuant to a separate ordinance enacting Article 31 of Chapter 3 of Part 1 (to be considered at the same meeting); (4) eliminates a fee for a departmental review of a determination of a nuisance, and authorizes adoption of a new fee for the County Hearing Officer appeal hearing, but with a waiver provision in cases of financial hardship; (5) codifies the authority of an enforcement officer to enter into voluntary abatement agreements, pursuant to certain limitations; (6) allows the prevailing party in an appeal to recover attorney's fees in an action, administrative proceeding, or special proceeding to abate a nuisance if the County so elects at the initiation of the action or proceeding; (7) establishes more robust requirements for a statement of expense regarding abatement activities; (8) provides that the County Hearing Officer will confirm any appealed statements of expenses at a hearing, and that the Board of Supervisors may order the abatement costs to be specially assessed or liened against the property through later Board action; (9) clarifies language that must be included in a notice of abatement lien; (10) clarifies service and posting requirements for all notices/orders; and (11) adds provisions clarifying that ordinance sections, provisions, etc., are severable and that the ordinance does not create a duty to enforce.

The ordinance also amends various sections in the County's Building Regulations Ordinances (Part VII, Chapter 15 of the Ordinance Code of Tulare Code) to clarify terms and processes. Highlights of these ordinance amendments include: (1) clarifies that constructing, altering or maintaining a building in violation of the requirements of that Chapter, or installing, using or maintaining heating and ventilation equipment in violation of the requirements of that Chapter are a public nuisance subject to abatement; (2) clarifies and revises certain provisions of the Uniform Housing Code, 1997 Edition, as adopted by the County in section 7-15-2940 of the Ordinance Code, and clarifies that appeals of determinations by the Building Official pursuant to the Uniform Housing Code are appealable to a new Local Appeals Board, to be established

by a separate amendment to section 7-15-1050 of the Ordinance Code (to be considered at the same meeting); (3) moves the "Unsafe and Substandard Buildings" regulations in the Ordinance Code from Article 15 in Chapter 15 of Part VII to Article 33 of the same Chapter; (4) codifies various options for the County to exercise its nuisance abatement authority with respect to substandard or unsafe buildings; and (5) adds a new "Substandard Housing Nuisance Abatement Ordinance" as Article 35 of Chapter 15 of Part VII. Article 35 establishes a local administrative abatement process that is substantially equivalent to the procedures provided in State Housing Law's implementing regulations (See Title 25 of the California Code of Regulations, sections 1 et seq.), but includes an appeal process similar to that being established by the County for general nuisance abatement (an informal, department-level appeal, to be followed by an appeal to the County Hearing Officer established pursuant to the new ordinance enacting Article 31 of Chapter 3 of Part I of the Ordinance Code).

The effective date of these changes will be thirty (30) days after adoption by the Board of Supervisors.

The ordinance herein summarized was passed and adopted by the Board of Supervisors of the County of Tulare, State of California, on the 4th day of June, 2019, at a regular meeting of said Board duly and regularly convened on said day by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

COUNTY OF TULARE

By: _____
Chairman, Board of Supervisors

ATTEST: JASON T. BRITT
County Administrative Officer/
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Attachment “E”

Notice of Exemption

Notice of Exemption

Fee Exempt per Government Code Section 6103

To: Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

Tulare County Clerk
Room 105, Courthouse
221 South Mooney Boulevard
Visalia, California 93291

Dated received for filing at the County Clerk

Lead Agency: County of Tulare Resource Management Agency
5961 South Mooney Blvd.
Visalia, CA 93277
Ph: (559) 624-7000
Attn: hguerra@co.tulare.ca.us

Applicant: County of Tulare Resource Management Agency
2800 W Burrell Ave.
Visalia, CA 93277
Ph: (559) 624-7000

Project Title: Ordinance updates amending Chapter 1 of Part IV of the Tulare County Ordinance Code, pertaining to abatement of nuisances and amending Chapter 15 of Part VII of the Ordinance Code of Tulare County, pertaining to building regulations and abatement of related nuisances, including substandard housing nuisances.

Project Location - Specific: N/A, throughout all the unincorporated areas of the County of Tulare, CA

Project Location – General: Throughout all the unincorporated areas of the County of Tulare, CA

Project Location City: N/A

Project Location County: Tulare

Description of Nature, Purpose, and Beneficiaries of Project: The Tulare County Resource Management Agency is requesting that the County of Tulare amend Chapter 1 of Part IV of the Tulare County Ordinance Code, pertaining to abatement of nuisances and amending Chapter 15 of Part VII of the Tulare County Zoning Ordinance.

There are various types of nuisances that Resource Management Agency (RMA) encounters in fulfilling its duties as the agency that houses the Planning Department, Building Official, and general code enforcement. However, after recently reviewing the County's nuisance abatement procedures, staff determined that it would like to improve and clarify the County's abatement processes. Accordingly, this agenda item proposes an update to both the general nuisance abatement ordinance (located in Chapter 1 of Part IV, of the Ordinance Code, and which affects other departments apart from RMA) and the Building Regulation Ordinances (located in Chapter 15 of Part VII of the Ordinance Code, and which primarily impacts RMA). Staff believes that these changes will improve code enforcement's ability to enforce regulations that protect the public's health, safety and welfare, both for general nuisances and for nuisances related to substandard housing, specifically.

The most significant changes proposed for general nuisance abatement include changes to the abatement appeals process. The current appeals process includes an appeal to the Department, which requires prospective appellants to pay an administrative hearing fee. In the proposed amendment to the new appeals process, prospective appellants would appeal to the Department without having to pay a fee, however; the matter remains appealable to a new County Hearing Officer position that the Board is considering. Appellants would have to pay an appeals fee (to be set by the Board of Supervisors) which includes a hardship fee waiver provided sufficient evidence of inability to pay is presented by appellant and discretion (of the County Hearing Officer) that the fee may also be returned to the appellant if the appeal was determined to be non-frivolous. Other changes to the general nuisance abatement ordinance include the following:

- (1) adds new or expands definitions of significant terms;
- (2) clarifies information that should be contained in a notice and order to abate;
- (3) codifies the authority of an enforcement officer to enter into voluntary abatement agreements, pursuant to certain limitations;
- (4) requires the Department to utilize a competitive procurement process to procure nuisance abatement services, or else justify why this it cannot;
- (5) allows the County to recover attorney's fees in an action, administrative proceeding, or special proceeding to abate a nuisance if the County so elects at the initiation of the action or proceeding;
- (6) establishes more robust requirements for a statement of expense regarding abatement activities;

- (7) clarifies that the Board of Supervisors will confirm all statements of expenses in a public hearing;
- (8) clarifies language that must be included in a notice of abatement lien;
- (9) clarifies service and posting requirements for all notices/orders; and
- (10) adds provisions clarifying that ordinance sections, provisions, etc., are severable and that the ordinance does not create a duty to enforce.

The proposed ordinance would also amend various sections in the County’s Building Regulations Ordinances (Part VII, Chapter 15 of the Ordinance Code of Tulare Code). The most significant change to these ordinances includes the addition of a new abatement ordinance specific to substandard housing (which would be located at Article 35 of Chapter 15 of Part VII). The “Substandard Housing Nuisance Abatement Ordinance” establishes a local administrative abatement process that contains similar procedures and requirements to many provisions in the general nuisance abatement ordinance, but with some variations to provide substantial equivalency with the processes and protections provided by State Housing Law and it’s implementing regulations (See Health & Safety Code sections 17910 et seq. and Title 25 of the California Code of Regulations, sections 1 et seq.). The appeal process in the Substandard Housing Nuisance Abatement Ordinance will similarly include an informal, department level appeal, to be followed by a formal appeal to the County Hearing Officer established pursuant to the new ordinance enacting Article 31 of Chapter 3 of Part I of the Ordinance Code. Additional highlights of the Building Regulations Ordinance amendments include:

- (1) clarifies that constructing, altering or maintaining a building in violation of the requirements of that Chapter, or installing, using or maintaining heating and ventilation equipment in violation of the requirements of that Chapter are a public nuisance subject to abatement;
- (2) clarifies and revises certain provisions of the Uniform Housing Code, 1997 Edition, as adopted by the County in section 7-15-2940 of the Ordinance Code, and clarifies that appeals of determinations by the Building Official pursuant to the Uniform Housing Code are appealable to a new Local Appeals Board, (which will also be established by a separate amendment to section 7-15-1050 of the Ordinance Code, to be considered at this same meeting);
- (3) moves the “Unsafe and Substandard Buildings” regulations in the Ordinance Code from Article 15 in Chapter 15 of Part VII to Article 33 of the same Chapter; and
- (4) codifies various options for the County to exercise its nuisance abatement authority with respect to substandard or unsafe buildings.

Excluded / Exempt Status:

- Ministerial (Sec. 21080(b)(1); 15268)
- General Rule: **CEQA guidelines 15061(b)(3)**
- Categorical Exemption:
- Statutory Exemptions:

Reasons why project is excluded/exempt: The proposed project is exempt from CEQA under the General Rule exemption. CEQA Guidelines Section 15061(b)(3) sets forth the general rule exemption, which provides that CEQA only applies to projects which “have the potential for causing a significant effect on the environment; where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.” Adoption of the ordinance amendments does not have the potential to result in individual or cumulative significant effects on the environment. Furthermore, no special circumstances exist that would create a reasonable possibility that approving the ordinance amendments would have a significant effect on the environment. Thus, adoption of the proposed ordinance amendments is exempt from review under CEQA pursuant to CEQA Guidelines Section 15061(b)(3).

Name of Public Agency Approving Project: County of Tulare Board of Supervisors

Project Planner/Representative: Aaron Bock, Dir, Economic Dev. & Planning Branch Telephone: 559-624-7050

Signature: _____ Date: _____ Title: Chief Environmental Planner
 Hector Guerra (559) 624-7121

Signature: _____ Date: _____ Title: Director and Environmental Assessment Officer
 Reed Schenke P.E. (559) 624-7000

Signed by Lead Agency