ORDINANCE NO. 1668

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF INDIO, CALIFORNIA, AMENDING THE MUNICIPAL CODE TO ADOPT PROVISIONS RELATING TO COST RECOVERY FOR CODE ENFORCEMENT ACTIONS AND MUNICIPAL CODE VIOLATIONS

THE CITY COUNCIL OF THE CITY OF INDIO DOES ORDAIN AS FOLLOWS:

<u>Section 1</u>. Section 10.20 (Right of City to Bring Legal Action) of Chapter 10 (General Provisions) of Title I (General Provisions) is hereby amended in its entirety to read as follows:

"10.20 Recovery of Enforcement Costs and Attorney Fees.

A. The City shall be entitled to recover its costs related to enforcing any code violation or nuisance abatement.

B. In addition to any other remedies set forth in this Code or otherwise provided by law, the City is authorized to initiate an administrative or civil action to impose and recover all costs, expenses, and fees (including attorneys' fees) expended by the City related to any nuisance abatement or code enforcement action. Costs, expenses, and fees include, but are not limited to, administrative fines, administrative costs (i.e. time spent by a city employee or contractor for nuisance or code enforcement activities related to the violation), inspection costs, investigation costs, enforcement expenses (i.e. notices, service of process, etc.), legal services including litigation costs, court costs, and attorneys' fees, and any other direct costs and expenses arising as a consequence of the nuisance or violation.

C. The prevailing party in any action, administrative proceeding, or special proceeding to abate a public nuisance, or in any appeal or other judicial action arising therefrom, may recover its reasonable attorneys' fees. In no case, however, shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding. The non-prevailing parties shall be jointly and severally liable for all costs, expenses, and fees, including attorneys' fees, owed to the prevailing parties."

<u>Section 2</u>. A new Section 10.23 (Cost Recovery Procedure) is hereby added to Chapter 10 (General Provisions) of Title I (General Provisions) to read as follows:

"10.23 Procedures for Recovering Costs, Expenses, and Fees, Including Confirmation of Costs

A. This section governs the administrative procedure for recovery of costs, expenses, and fees ("Enforcement Costs") incurred in abating a public nuisance or

enforcing a provision of this Code. This cost recovery procedure is in addition to any other procedure authorized by law.

B. Upon the administrative, civil, or criminal determination that a party or parties is/are responsible for a nuisance condition or violation of this Code ("Responsible Party"), the Responsible Party shall become personally liable for the City's Enforcement Costs incurred in abating that public nuisance or prosecuting that violation. In addition, if the nuisance or violation is related to a parcel of real property within the City ("Nuisance Property"), the City's Enforcement Costs incurred in abating that nuisance or prosecuting that violation shall constitute and may be collected as a lien or special assessment against the Nuisance Property as further described in Section 10.24.

C. The City shall send an invoice of the Enforcement Costs ("Invoice") to the Responsible Party, as well as to all persons or entities with a recorded interest in the Nuisance Property (hereinafter "Interested Party"), by certified mail. The Invoice shall be sent to the last known address of the Responsible Party and Interested Party and shall be considered served on the date of deposit in the mail with the postal service. The Responsible Party shall have 45 calendar days to pay the Enforcement Costs to the City. The invoice shall provide written notice to the Responsible Party and/or Interested Party informing such party that a lien or assessment (as the case may be) will be recorded or charged against the Nuisance Property unless the City receives full payment of the Invoice as set forth therein.

D. The Invoice shall provide notice that the Responsible Party and/or Interested Party has 15 calendar days from the date of the Invoice to request a hearing regarding the amount of the Enforcement Costs. The procedures for requesting the hearing shall be specified in the Invoice. Failure to timely request a hearing shall constitute a waiver of the Responsible Party's and/or Interested Party's right to appeal the Invoice or further challenge the City's cost recovery rights.

E. If a hearing is timely requested, the City shall serve notice of the date, time, and place of the hearing to be held before a Hearing Officer as described in Section 10.25. The hearing shall be set for a date that is not less than 15 days and not more than 60 days from the date the request for hearing is received, or on a date otherwise agreed to by all parties to the hearing. Notice of the hearing shall be served on the Responsible and/or Interested Parties by certified mail at least 10 calendar days prior to the scheduled hearing. Notice shall be deemed served on the date of deposit with the postal service.

F. The City's representatives, the Responsible Party, and the Interested Party shall be entitled to be present and heard at the hearing. The Hearing Officer shall consider all evidence presented at the hearing and shall issue a written decision to uphold or amend the amount of the Enforcement Costs. The decision of the Hearing Officer shall be final. The cost of the hearing shall be borne by the non-prevailing party.

The decision shall be served on all parties by certified mail and shall be deemed to be served on the date the decision is deposited with the postal service. The failure of the Responsible Party or Interested Party to receive a properly addressed decision shall not invalidate the hearing officer's decision. The Responsible Party and/or Interested Party shall have 30 days from the date the decision is served to pay the Enforcement Costs as determined by the Hearing Officer.

G. Upon the expiration of 45 days after the Invoice has been served, or upon the expiration of 30 days after the hearing officer's decision has been served, if the full amount of the confirmed Enforcement Costs have not been paid, any unpaid Enforcement Costs shall be enforceable pursuant to Section 10.24. In addition, the City may pursue any means of collection against the responsible parties as authorized by law.

<u>Section 3</u>. A new Section 10.24 (Nuisance Abatement Lien or Special Assessment) is hereby added to Chapter 10 (General Provisions) of Title I (General Provisions) to read as follows:

"10.24 Nuisance Abatement Lien or Special Assessment

If the Responsible Party and/or Interested Party fails to pay the Invoice or the Enforcement Costs as determined by the Hearing Officer, the City may:

A. Assess a nuisance abatement lien pursuant to Government Code section 38773.1 by following the procedures set forth below.

(1) A nuisance abatement lien shall be recorded in the Riverside County Recorder's office and from the date of recording shall have the force, effect, and priority of a judgment lien. The nuisance abatement lien shall specify the amount of the lien, the City's name, the date of the abatement order, the street address, legal description, and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the owner of the parcel.

(2) Before recordation, the City shall provide to the Responsible Party and/or Interested Party a written "Notice of Intent to Record Nuisance Abatement Lien" informing such party that a nuisance abatement lien will be recorded unless the City receives full payment for the outstanding Invoice and/or Enforcement Costs within the time period set forth in the notice. Such notice shall be served in the manner set forth in Government Code Section 38773.1, as the same may be amended from time to time and by this reference said section is incorporated herein. Payment shall be due 10 calendar days from the date of mailing.

(3) In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in subsection (1) of this section shall be recorded by the City. A nuisance abatement lien and the release of the lien shall be indexed in the grantor-grantee index.

(4) A nuisance abatement lien may be foreclosed by the City as a money judgment. The City may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien or as a condition of removing the lien upon payment.

B. As an alternative to the procedures set forth in Paragraph A of this Section 10.24, the City Council may impose a special assessment pursuant to Government Code section 38773.5.

(1) The City shall provide the owner with notice of the imposition of the special assessment. Such notice shall be served in the manner set forth in Government Code section 38773.5, as the same may be amended from time to time and by this reference said section is incorporated herein.

(2) The notice shall specify that that the property may be sold after three years by the tax collector for unpaid delinquent assessments.

(3) Pursuant to Government Code section 38773.6, the Riverside County Tax Collector may collect the assessment at the same time and in the same manner as ordinary municipal 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 municipal taxes. All laws applicable to the levy, collection, and enforcement of municipal taxes shall be applicable to the special assessment.

C. Pursue any means of collection against the Responsible Party and/or Interested Party as authorized by law."

<u>Section 4</u>. A new Section 10.25 (Appointment of Hearing Officer) is hereby added to Chapter 10 (General Provisions) of Title I (General Provisions) to read as follows:

"10.25 Appointment of Hearing Officer

The City Manager or his designee shall establish procedures for the selection of a hearing officer required in Section 10.23. A hearing officer shall be a neutral third party contracted by the City and selected in a manner that avoids the potential for pecuniary or other bias. In no event shall the hearing officer be the citing official. The compensation, if any, of the administrative hearing officer shall be paid by the City. Compensation shall not be directly or indirectly conditioned upon the hearing officer's employment status or affected by the outcome of the hearing."

<u>Section 5</u>. A new Section 10.100 (Public Nuisance) is hereby added to Chapter 10 (General Provisions) of Title 1 (General Provisions) to read as follows:

"10.100. Public Nuisance.

In addition to other penalties provided by law, any violation of any provision of this code or any state law enforceable by the City shall be deemed a public nuisance and may be summarily abated as such by the City, and each day such condition continues shall constitute a new and separate offense."

Section 6. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance or its application to any person or circumstance, is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, phrase hereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

<u>Section 7</u>. The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be published or posted in the manner prescribed by law.

PASSED, APPROVED AND ADOPTED this 17th day of December, 2014, by the following vote:

AYES: Holmes, Miller, Strange, Wilson, Ramos Watson NOES: None

SON. MAYOR

ATTEST:

CÝNTHIA HERNANDEZ, CMO CITY CLERK