RESOLUTION NO. 2009-78

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, TO PROVIDE TENANT RELOCATION ASSISTANCE

WHEREAS, in accordance with California Health and Safety Code section 17975.5(a) a city may advance relocation payments to tenant households that are displaced due to city code enforcement activities; and

WHEREAS, in accordance with California Health and Safety Code section 17975.5(a) if a city advances relocation payments pursuant to locally adopted policies, it is entitled to recover from the property owner any amount paid to a tenant household; and

WHEREAS, some residential rental units and single room occupancy buildings in the City have been found to have severe code violations and hazardous and/or substandard living conditions which threaten the health and safety of occupants, and often require that the tenant household vacate the structure to allow for extensive repairs or demolition of the structure; and

WHEREAS, these code violations and/or substandard living conditions are often caused by the negligence, deferred maintenance, or the illegal use of the structure as a residence by the property owner; and

WHEREAS, code violations may breach the owner's implied warranty of habitability, and could constitute constructive eviction of the tenant household from the residence; and

Adopted 3/31/09
Approved 4/9/09
Effective 4/9/09

WHEREAS, the difficulty of finding affordable replacement housing and the burden of incurring moving-related expenses creates a financial hardship for tenant households, particularly those who are low-income; and

WHEREAS, relocation assistance is necessary to ensure that displaced tenant households, as a direct result of a code enforcement activity, are relocated to comparable replacement housing; and

WHEREAS, relocation assistance is consistent with the City's Housing Element, Housing Replacement and Relocation Services policies, Uniform Relocation Assistance and Real Property Policy Act (URA); Section 104(d) of the Housing and Community Development Act of 1974, and State relocation law, under California Health and Safety Code Section 17975 et seq.; and

WHEREAS, property owners who fail to properly maintain residential rental properties, and/or create residential units illegally, should bear responsibility for the hardships their actions, or lack of action, create for the tenant household; and

WHEREAS, relocation is a necessary cost of code enforcement that should be the responsibility of the property owner, and the City should be reimbursed by the property owner for any of these costs that the City incurs in the code enforcement process; and

WHEREAS, the requirement to pay relocation costs under this resolution will encourage property owners to correct code violations and protect the public health, safety, and general welfare of the residents of the City; and

WHEREAS, the level of payments provided for in this resolution is reflective of the actual costs of relocation likely to be incurred by displaced tenant households--in particular, moving costs including, but not limited to, the cost of first and last months' rent, rental

deposits, and utility deposits, as well as other costs, both monetary and nonmonetary, associated with involuntary dislocation; and

WHEREAS, low-income tenant households are generally unable to obtain such sums and, as a result, are at great risk of becoming homeless; and

WHEREAS, delayed payment of relocation benefits may impose extreme hardship upon tenant households who then must themselves obtain the large sums necessary to relocate; and

WHEREAS, delayed payment may also require the City to expend general funds to provide tenant households with financial assistance for relocation; and

WHEREAS, any requirement to pay relocation benefits should contain disincentives for delayed payment in the form of appropriate penalties; and

WHEREAS, Council desires to adopt written policies pursuant to California Health and Safety Code section 17975.5 to allow the City to recover relocation payments to displaced tenant households from the property owner where the relocation was a result of a code enforcement activity.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

SECTION 1. Council adopts the Tenant Relocation Assistance Rules and Procedures attached to this resolution and incorporated herein as Exhibit "A."

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SECTION 2. The City Manager is authorized to take all actions necessary to enforce and administer the Tenant Relocation Assistance Rules and Procedures in Exhibit "A."

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the 31st day of March, 2009.

AYES : Borgeas, Brand, Caprioglio, Dages, Perea, Xiong, Sterling
NOES : None
ABSENT : None
ABSTAIN : None

Mayor Approval: April 9, 2009

Mayor Approval/No Return: N/A, 2009

Mayor Veto: N/A, 2009

Council Override Vote: N/A, 2009

REBECCA E. KLISCH
City Clerk
BY: Rebecca E. Klisch
~~Deputy~~

APPROVED AS TO FORM:

JAMES C. SANCHEZ
CITY ATTORNEY'S OFFICE

BY: _____
Charlotte M. Hylton, Deputy

CMH:ns [48257ns/RESO]- 3/26/09

April 1, 2009

Council Adoption: 3/31/09
Mayor Approval:
Mayor Veto:
Override Request:

RECEIVED
2009 APR 10 PM 1:09
CITY CLERK, FRESNO CA

TO: MAYOR ASHLEY SWEARENGIN

FROM: REBECCA E. KLISCH, CMC
City Clerk

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 3/31/09, Council adopted the attached Resolution No. 2009-78 entitled **Provide policies/procedures, for tenant relocation assistance**, Item No. **9:30 A.M. D-2**, by the following vote:

Ayes	:	Borgeas, Brand, Caprioglio, Dages, Perea, Xiong, Sterling
Noes	:	None
Absent	:	None
Abstain	:	None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before April 13, 2009. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

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APPROVED:

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

Ashley Swearengin, Mayor

Date: 4/9/09

COUNCIL OVERRIDE ACTION:

Date:

Ayes	:
Noes	:
Absent	:
Abstain	:

Exhibit "A" to Resolution No. 2009-78

TENANT RELOCATION ASSISTANCE RULES AND PROCEDURES

1. **Purpose**. The primary purpose of these rules and procedures is to provide for owner-paid relocation payments and assistance to residential tenants who are displaced due to City code enforcement activities consistent with Cal. Health and Safety Code section 17975.5.

2. **Definitions.** For purposes of this policy, certain terms, phrases, words and their derivatives shall be construed as specified in this section:

(a) "Code Enforcement Activities" means activities initiated by the City to determine the condition of a building and require the property owner to make necessary repairs, to vacate the building, or to take other action as necessary to bring the property into compliance with applicable state or local zoning, building or housing standards, including but not limited to standards contained in the Fresno Municipal Code, adopted Planning Guidelines and Standards, and the California Fire Code as adopted by the City, and other technical codes adopted and enforced by the City for existing residential properties, including codes addressing dangerous or hazardous buildings. Code enforcement activities shall include drug nuisance abatement actions taken by the City pursuant to California Health and Safety Code Section 11570, et seq.

(b) "Day" means calendar day, unless otherwise specified.

(c) "Notice To Vacate" means a notice and/or order, however denominated, issued by the City or a court of competent jurisdiction to a property owner and/or a tenant household pursuant to the City's code enforcement activities requiring that a residential building, unit or room be vacated, either immediately or at some future specified time, as a result of a determination that such building, unit or room is substandard, blighted,

unsafe, a public nuisance, a drug nuisance, or in noncompliance with applicable building, housing, zoning, or other code standards. For purposes of these guidelines, the term "notice to vacate" includes a complaint or action filed by the City with a court of competent jurisdiction and served on the property owner pursuant to the City's code enforcement activities in which the City asks for vacation of the property as requested relief. The term "notice to vacate" for purposes of these guidelines includes a closure order obtained by the City as part of a drug nuisance abatement action brought pursuant to California Health and Safety Code Section 11570, et seq.

(d) "Property Owner" means a person, persons, corporation, partnership, limited liability company, or any other entity holding fee title to the subject real property, and the agent of the property owner. In the case of multiple ownership of the subject real property, "property owner" refers to each entity holding any portion of the fee interest in the property, and the property owner's obligations in these guidelines shall be joint and several as to each property owner.

(e) "Rental Unit" means a dwelling space in the City containing a separate bathroom, kitchen, and living area, including a single-family dwelling or unit in a multifamily or multipurpose dwelling, or a unit in a condominium or cooperative housing project, which is hired, rented, or leased to a household within the meaning of California Civil Code Section 1940. This definition applies to any dwelling space that is actually used for residential purposes whether or not the residential use is legally permitted.

(f) "Room" means an unsubdivided portion of the interior of a residential building in the City which is used for the purpose of sleeping, and is occupied by a tenant household for at least 30 consecutive days. This includes, but is not limited to single

room occupancy (SRO) living space. This definition applies to any space that is actually used for residential purposes whether or not the residential use is legally permitted.

(g) "Tenant Household" means one or more individuals who rent or lease a rental unit or room as their primary residence and who share living expenses.

3. RELOCATION BENEFITS PAYABLE TO DISPLACED TENANTS BY OWNER. Any tenant household who is displaced from any rental unit or room which is leased, rented or occupied for habitable dwelling purposes as a result of an order issued by the City under the Fresno Municipal Code or State law or any other applicable provision that the rental unit or room is to be vacated due to unsafe or hazardous conditions shall be entitled to receive relocation benefits from the property owner as specified in these guidelines.

4. RELOCATION BENEFITS – WHEN PAYABLE.

(a) The relocation benefits required hereunder shall be payable by the property owner within ten days after the date the order to vacate is first mailed to the property owner or posted on the premises, or at least 20 days prior to the vacation date set forth in the order to vacate, whichever occurs later.

(b) If there are fewer than ten days between the first posting and mailing of the order to vacate and the vacation date, the relocation benefits shall be payable by the property owner within 24 hours after the notice is posted and mailed. The Director of the Planning and Development Department and/or his or her designee shall attempt to provide telephonic or written notice to the property owner to notify the property owner that benefits are payable immediately. Failure to provide the notice as specified herein shall not relieve the property owner of any obligation imposed by these guidelines.

(c) Relocation benefits may be payable immediately in cases in which the conditions on the premises require the Director of the Planning and Development Department and/or his or her designee to order the premises vacated immediately. In such cases the Director of the Planning and Development Department and/or his or her designee shall attempt to provide telephonic or written notice to the property owner to notify the property owner that benefits are payable immediately. Failure to provide the notice as specified herein shall not relieve the owner of any obligations imposed by these guidelines.

(d) The City shall provide either telephonic or written notice to any tenant household entitled to relocation benefits under these guidelines of its entitlement to relocation benefits.

5. RELOCATION BENEFITS –AMOUNTS PAYABLE. The relocation benefits shall be a sum equal to two months of the established fair market rent for the area as determined by the Department of Housing and Urban Development pursuant to Section 1437f of Title 42 of the United States Code. In addition, the relocation payment shall include an amount, as determined by the Director of the Planning and Development Department and/or his or her designee, sufficient for utility service deposits. The relocation benefits shall be paid in addition to the return, as required by law, of any deposit held by the property owner.

6. DAMAGES FOR UNTIMELY PAYMENT.

(a) Any property owner who does not make timely payment as specified in Paragraph 4 of these guidelines shall be liable to the tenant household for an amount equal to one and one-half times the relocation benefits payable pursuant to Paragraph 5 of these guidelines.

(b) Subsection (a) of this section shall not apply when relocation benefits are payable pursuant to Paragraph 4 subsections (b) and (c) of these guidelines if the property owner makes the payments within ten days after it is first mailed or posted, or if the city has paid relocation benefits and the owner reimburses the city for all its expenditures within 30 days of receipt of a bill or notice of benefits paid.

7. WHEN RELOCATION BENEFITS NOT PAYABLE.

(a) No relocation benefits shall be payable by the property owner to any tenant household that has caused or substantially contributed to the condition giving rise to the order to vacate as determined by the Director of the Planning and Development Department and/or his or her designee.

(b) No relocation benefits shall be payable by the property owner if the rental unit or room became unsafe or hazardous during the tenancy as a result of earthquake, flood, fire, act of the public enemy, or other disaster not proximately caused by building, plumbing, electrical, mechanical or fire code violations, and it occurred no more than six months prior to the order to vacate.

8. PAYMENT OF RELOCATION COSTS BY CITY.

(a) In the event the property owner fails, neglects or refuses to pay a displaced tenant household relocation benefits due pursuant to these guidelines, the City may, within budgetary limitations, make payment of such relocation benefits as the Director of the Planning and Development Department and/or his or her designee determines is necessary to assist the displaced tenant household to relocate, up to the amount payable by the owner under Paragraph 5 of these guidelines, including, without limitation, the following costs:

(1) Transportation of the tenant's personal property to the new location;

(2) Packing, crating, unpacking and uncrating the tenant's personal property;

(3) Insurance of the tenant's property while in transit;

(4) The reasonable replacement value of property lost, stolen, or damaged in the process of moving, where insurance covering such loss, theft or damage is not reasonably available, and it was through no fault or negligence of the displaced person, his or her agent or employee.

(5) The cost of disconnecting, dismantling, removing, reassembling, reconnecting and reinstalling machinery, equipment or other personal property of the tenant household, including connection charges imposed by utility companies for starting utility service;

(6) Any other sums needed by the tenant to obtain substitute housing, such as deposits or prepaid rent;

(7) Temporary housing and living costs incurred while tenant household locates a replacement dwelling. Such cost may include food and hotel/motel expenses. The amount of benefits payable under this section is to be determined by the Director of the Planning and Development Department and/or his or her designee depending on the facts of the situation presented.

(b) Any displaced tenant household who needs relocation benefits because a property owner fails to pay benefits due hereunder shall apply to the Director of the Planning and Development Department and/or his or her designee for benefits no later

than 15 days after the vacation date. The Director of the Planning and Development Department and/or his or her designee shall grant benefits only if the Director of the Planning and Development Department and/or his or her designee determines that the tenant household is eligible for benefits from the property owner and shall take into consideration the amount needed by the tenant household to secure alternative housing and the amount of the tenant's income. Any applicant, who objects to the decision of the Director of the Planning and Development Department and/or his or her designee, to grant or not to grant benefits, or as to the amount granted, may appeal the decision to a hearing officer. The Director of the Planning and Development Department and/or his or her designee's decision shall be appealed pursuant to Chapter 1, Article 4 of the Fresno Municipal Code. If no appeal is filed within the time prescribed, the action of the Director of the Planning and Development Department and/or his or her designee shall be final.

(c) Any displaced tenant household who has vacated the premises based on the Director of the Planning and Development Department and/or his or her designee's order to immediately vacate the premises due to conditions rendering it immediately dangerous to the life, limb, property or safety of the public or the tenant household, may request temporary housing and living expenses as provided in Paragraph 8, subsection (a)(7) of these guidelines. Temporary benefits may be paid to the tenant household in the sole discretion of the Director of the Planning and Development Department and/or his or her designee and only in cases in which the Director of the Planning and Development Department and/or his or her designee believes a tenant household is substantially likely to be entitled to receive other relocation benefits. The Director of the Planning and

Development Department and/or his or her designee shall have sole discretion to determine the amount, type and duration of the temporary benefits. The Director of the Planning and Development Department and/or his or her decision is final. Notwithstanding the finality of the Director of the Planning and Development Department and/or his or her designee's decision, any displaced tenant household who has been denied temporary relocation benefits shall be entitled to meet with the Director of the Planning and Development Department and/or his or her designee to present facts demonstrating that temporary relocation benefits should be paid. There is no right to appeal the Director of the Planning and Development Department and/or his or her designee's decision.

(d) The City may recover from the property owner any amount paid to a tenant household pursuant to these guidelines. The City shall also be entitled to recover from the property owner an additional amount equal to one-half the amount so paid as a penalty for failure to make timely payment to the displaced tenant household and the City's actual costs, including direct and indirect costs, of administering the provision of benefits to the displaced tenant household.

(e) Any amounts paid by the City and any applicable penalties and administrative costs may be made a personal obligation of the property owner and assessed as a lien against the property.

(f) The City may recover relocation costs and administrative penalties and costs in the manner set forth in Chapter 1, Article 5 of this Code.

(g) Nothing contained in these guidelines shall be construed to require the City to pay any relocation benefits to any tenant household, or assume any obligation, requirement, or duty of the property owner pursuant to these guidelines.

(h) The damages which a displaced tenant household may receive under Paragraph 6 shall be reduced by the amount of any benefits received from the City.

9. EXECPTION TO PENALTIES AND ADMINISTRATION COSTS.

(a) Notwithstanding Sections Paragraph 4, subsection (b) and Paragraph 8, subsection (d) of these guidelines, if there are fewer than ten days between the first posting or mailing of the order to vacate and the vacation date, and if the City advances relocation benefits to any tenants, no penalty shall be payable by the owner if reimbursement is made to the City within 30 days after an itemized accounting of all benefits paid by the City to the tenant household and any penalties or costs the City is seeking to recover, is mailed to the property owner.

(b) If the property owner contends that not all of the benefits are chargeable to the property owner because the recipients were not a displaced tenant household, no benefits were payable pursuant to Paragraph 7, or on other grounds, the property owner shall submit a written appeal to the City pursuant to Chapter 1, Article 4 of this Code, however, the property owner shall have 20 days after receipt by the property owner of the itemized accounting to file the appeal rather than the 15 days provided in Chapter 1, Article 4.

(c) If the property owner fails to obtain a more favorable decision then that set forth in the itemized accounting, the property owner shall be liable to the City for the costs of the administrative hearing and appeal.

(d) The failure to receive the itemized accounting shall not relieve the owner of any obligation to the City.

10. REMEDIES CUMULATIVE. The remedies hereunder are cumulative and in addition to any other remedies available under federal, state, or local law.

11. ATTORNEY FEES. In any action brought by a tenant household or the City to recover benefits payable hereunder, the court shall also award reasonable attorney fees to the prevailing party whether or not the matter proceeds to judgment.

12. SUMMARY OF PROVISIONS. Any order to vacate issued to a property owner or tenant household shall be accompanied by a summary of the provisions of these guidelines. Failure to provide a summary shall not relieve any person of the obligations imposed by these guidelines.

13. ESTABLISHMENT OF RELOCATION BENEFITS ACCOUNT. The City shall establish a relocation benefits expenditure account and provide appropriations through City council action. A relocation revenue account will be established to account for revenue generated by this program. The Director of the Planning and Development Department and/or his or her designee shall make periodic reports to the City council on the activity and status of these accounts.

14. EXCEPTIONS. The provisions of these guidelines shall not apply to property owned by the City, the Fresno Redevelopment Agency, the Fresno Housing Authority, the county, the State or any other governmental agency.