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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**
11

12 CITIZENS FOR FREE SPEECH, LLC,
13 and MICHAEL SHAW,

14 Plaintiffs,

15 v.

16 COUNTY OF ALAMEDA; ALAMEDA
17 COUNTY EAST COUNTY BOARD OF
18 ZONING ADJUSTMENTS; FRANK J.
IMHOFF, SCOTT BEYER, and
19 MATTHEW B. FORD, in their official
20 capacity as members of the Alameda
County East County Board of Zoning
21 Adjustments,

22 Defendants.
23

Case No. 4:18-cv-00834-SBA

**Defendants' Request for Judicial
Notice in Opposition to Plaintiffs'
Motion for Preliminary Injunction**

Date: April 11, 2018

Time: 1:00 p.m.

The Hon. Sandra Brown Armstrong

24 Pursuant to Rule 201 of the Federal Rules of Evidence, Defendants request that this
25 Court take judicial notice of the following documents, true and correct copies of which are
26 attached hereto:

27 **Exhibit 1:** Relevant excerpts of Chapters 17.18 and 17.52 of the Alameda County
28 Ordinance Code

Exhibit 2: Chapter 17.59 (Abatement Procedures) of the Alameda County Ordinance Code

Defendants further request that the Court take judicial notice of the following pleadings, orders, and other documents filed in *Citizens for Free Speech, LLC et al. v. County of Alameda*, Case No. C14-cv-02513-CRB, and available via CM/ECF:

- Dkt. 1 Complaint for Civil Rights Violation and Injunctive and Declaratory Relief
- Dkt. 50 Preliminary Injunction
- Dkt. 60 Request for Judicial Notice in Support of Defendant’s Motion for Summary Judgment and Exhibits Thereto
- Dkt. 65 Corrected Exhibit A to Request for Judicial Notice in Opposition to Defendant County of Alameda’s Motion for Summary Judgment
- Dkt. 71 Order Granting in Part and Denying in Part Defendant’s Motion for Summary Judgment
- Dkt. 105 Order Granting in Part and Denying in Part Defendant’s Second Motion for Summary Judgment; Granting in Part and Denying in Part Plaintiffs’ Motion for Summary Judgment
- Dkt. 107 Plaintiffs’ [Proposed] Judgment and Permanent Injunction
- Dkt. 116 Defendant County of Alameda’s Status Report
- Dkt. 117 Request for Judicial Notice in Support of Defendant County of Alameda’s Status Report
- Dkt. 118 Plaintiffs’ Response to County of Alameda’s “Status Report”
- Dkt. 121 Defendant’s Notice of Motion and Motion to Dissolve Preliminary Injunction
- Dkt. 123 Plaintiffs’ Opposition to Defendant County of Alameda’s Motion to Dissolve Preliminary Injunction; Plaintiffs’ Request for Modified Preliminary Injunction

1 Dkt. 125 Minute Entry (Granting Defendant’s Motion to Dissolve Preliminary
2 Injunction)

3 Dkt. 130 Order Granting Motion for Damages and Attorneys’ Fees

4 Dkt. 131 Judgment

5 Dkt. 137 Transcript of Proceedings (Re Defendant’s Motion to Dissolve
6 Preliminary Injunction)

7 Dkt. 138 Transcript of Proceedings (Re Plaintiffs’ Motion for Damages and
8 Attorneys’ Fees)

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 Rule 201 of the Federal Rules of Evidence provides for courts to take notice of any
11 “adjudicative fact” that is “not subject to reasonable dispute” because it “can be accurately
12 and readily determined from sources whose accuracy cannot reasonably be questioned.”
13 Fed. R. Evid. 201(b). The materials that are the subject of this request fit these criteria.

14 Exhibits 1 and 2 contain excerpts from the Alameda County Ordinance Code. As
15 legislative enactments of the Board of Supervisors of Alameda County, these exhibits are
16 subject to notice under Rule 201. *Santa Monica Food Not Bombs v. City of Santa Monica*,
17 450 F.3d 1022, 1025 n.2 (9th Cir. 2006) (taking judicial notice of city ordinances).

18 Defendants also request that the Court take judicial notice of the pleadings, orders,
19 and other documents filed in *Citizens for Free Speech, LLC et al. v. County of Alameda*,
20 Case No. C14-cv-02513-CRB. The Court may take notice of proceedings in other courts
21 that have “a direct relation to matters at issue.” *United States ex rel. Robinson Rancheria*
22 *Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (citation omitted); *Aniel*
23 *v. TD Serv. Co.*, No. C 10-05323 WHA, 2011 U.S. Dist. LEXIS 3978, at *7 (N.D. Cal. Jan.
24 13, 2011) (taking judicial notice of a show-cause order, dismissal order, and judgment in
25 an earlier action).

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DATED: March 21, 2018

SHUTE, MIHALY & WEINBERGER LLP

By: /s/
MATTHEW D. ZINN
WINTER KING
AARON M. STANTON

Attorneys for Defendants

EXHIBIT 1

17.18.010 - Planned development districts—Intent.

Planned development districts, hereinafter designated as PD districts, are established to encourage the arrangement of a compatible variety of uses on suitable lands in such a manner that the resulting development will:

- A. Be in accord with the policies of the General Plan of the county;
- B. Provide efficient use of the land that includes preservation of significant open areas and natural and topographic landscape features with minimum alteration of natural land forms;
- C. Provide an environment that will encourage the use of common open areas for neighborhood or community activities and other amenities;
- D. Be compatible with and enhance the development of the general area;
- E. Create an attractive, efficient and safe environment.

(Ord. 2006-36 § 1 (part): Prior gen. code § 8-31.0)

17.18.120 - Land use and development plan shall control.

Any use of land within the boundaries of a planned development district adopted in accordance with the provisions of this chapter shall conform to the approved land use and development plan.

(Ord. 2006-36 § 1 (part): Ord. 2004-61 § 1 (part): prior gen. code § 8-31.17)

(Ord. No. 2010-71, § 36, 12-21-10)

17.52.515 - Billboards and advertising signs.

- A. General Provision. Notwithstanding any other provision in Title 17, no person shall install, move, alter, expand, modify, replace or otherwise maintain or operate any billboard or advertising sign in the unincorporated area of Alameda County, except:
 - 1. Those billboards or advertising signs which legally exist as of the time this section is first adopted;
 - 2. Those billboards or advertising signs for which a valid permit has been issued and has not expired;
 - 3. Pursuant to an agreement relocating presently existing, legal billboards or advertising signs pursuant to Business and Professions Code Section 5412; provided that every billboard or advertising sign relocated pursuant to a relocation agreement shall fully comply with the site development review process and criteria in Sections 17.54.220 and 17.54.226, further provided such signs are located:
 - a. On a parcel that does not contain residential or agricultural uses,

- b. On or adjacent to a parcel with interstate or primary highway frontage,
 - c. Within six hundred sixty (660) feet of the edge of the right-of-way of an interstate or primary, and
 - d. highway; or
4. As required under federal or state law.

For purposes of this section, "billboard" shall mean a permanent structure or sign used for the display of offsite commercial messages and shall include and be synonymous with "advertising sign" as that term is defined in Section 17.04.010

- B. Purpose. The purpose and intent of this section is:
 1. To protect and advance the county's interests in community aesthetics by the control of visual clutter, pedestrian and driver safety, and the protection of property values;
 2. To implement the county's general plan by insuring that billboards and advertising signs within the county's unincorporated area are compatible with their surroundings and are in keeping with the goals and objectives of the those plans; and
 3. To maintain the attractiveness and orderliness of the county's unincorporated area's appearance.
- C. Substitution of Messages. Subject to the property owner's consent, a noncommercial message of any type may be substituted for any duly permitted or allowed commercial message or any duly permitted or allowed noncommercial message in an advertising sign, provided that the sign structure or mounting device is legal, without consideration of message content. Such substitution shall not involve an addition to, enlargement of, or other modification or change in use of the advertising sign other than the message substitution. Such substitution of message may be made without any additional approval or permitting. This provision prevails over any more specific provision to the contrary within this section. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over noncommercial speech, or favoring of any particular noncommercial message over any other noncommercial message. This provision does not create a right to increase the total amount of signage on a parcel, lot or land use; does not affect the requirement that a sign structure or mounting device be properly permitted; does not allow a change in the physical structure of a sign or its mounting device; does not allow the substitution of an off-site commercial message in place of an on-site commercial message; and does not allow one particular on-site commercial message to be substituted for another without a permit.
- D. Removal of Existing Billboards and Advertising Signs.
 1. In accordance with California Business and Professions Code Section 5412.1, those billboards or advertising signs meeting all of the following criteria shall be removed within the time periods set forth below without compensation:
 - a. The billboard or advertising sign is located within an area shown as residential in

the county's general plan;

- b. The billboard or advertising sign is located within an area zoned for residential use;
 - c. The billboard or advertising sign is not located within six hundred sixty (660) feet from the edge of the right-of-way of, and the copy is visible from, an interstate or primary highway, nor is placed or maintained beyond six hundred sixty (660) feet from the edge of the right-of-way of an interstate or primary highway with the purpose of its message being read from the main traveled way; and
 - d. The billboard or advertising sign is not required to be removed because of an existing overlay zone, combining zone, or any other special zoning district whose primary purpose is the removal or control of signs.
2. Any billboard or advertising sign meeting all criteria listed in subsection (D)(1) of this section shall be removed at the close of the amortization period listed below:

Fair Market Value on Date of Notice of Removal Requirement	Minimum Years Allowed
Under \$1,999.00	2
\$2,000.00 to \$3,999.00	3
\$4,000.00 to \$5,999.00	4
\$6,000.00 to \$7,999.00	5
\$8,000.00 to \$9,999.00	6
\$10,000.00 and over	7

The amounts provided in this section shall be adjusted each January 1st after January 1, 1983 in accordance with the changes in building costs as indicated in the United States Department of Commerce Composite Index for Construction Costs.

- E. Determination of Fair Market Value. The director of the Alameda County community development agency ("director"), or his/her designee, shall determine the fair market value ("FMV") of the billboard or advertising sign and the resulting amortization period. The

amortization period shall run from the date of the notice of amortization, which shall be sent to billboard or advertising sign owners and underlying property owners via registered U.S. Mail. Underlying property owners, for the purposes of this section, are those names contained on the latest available equalized assessment role. Failure to receive the notice of amortization shall not invalidate or otherwise affect the amortization period.

F. Administrative Appeal Procedure.

1. Any interested party may appeal a determination of FMV or the resulting amortization period to the board of supervisors by filing an appeal with the clerk of the board. That appeal must be in writing and must be actually received by the clerk of the board no later than 5:00 p.m. on or before the 45th calendar day following the date of mailing of the notice of amortization.
2. The written appeal shall identify the specific grounds for the appeal and state whether, for example, appellant is asserting there was an error or abuse of discretion by the county or that the county's determinations are not supported by the evidence in the record. The burden is on the appellant to provide sufficient evidence and argument to overturn the county's determinations. In addition, the appellant shall include the following information in the written appeal:
 - a. Location and identification of specific billboard or advertising sign under appeal;
 - b. Specific determination(s) of the county being challenged;
 - c. Current photograph of billboard or advertising sign;
 - d. Legal argument and factual evidence, including all relevant documentation, supporting the appeal including, without limitation, building permits (if applicable) and repair and/or improvement records.

The county may request additional information as it deems reasonably necessary to evaluate the appeal.

3. Failure to timely file an appeal will result in a waiver of any rights to further challenge the county's determinations contained in the notice of amortization.
4. Appeal Fee. Established per fee schedule.
5. Notification of Completeness. The county will notify appellant within twenty (20) business days of actual receipt of the written appeal whether the appeal application is deemed complete. The county's failure to notify appellant within said time period will result in the application being deemed complete, except that the county may subsequently request additional information it deems reasonably necessary in order to evaluate the appeal.
6. The board of supervisors shall promptly provide appellant with a written decision on the appeal, but in no event later than ninety (90) calendar days after notifying the appellant that the appeal is complete or, in the case when the application is deemed

complete, after the date the application is deemed complete, unless an extension is agreed to by the appellant. Requests by the county for additional information after the application has been deemed complete will not modify the timing of the ninety (90) day period during which the written determination is being made, provided that the appellant responds in a timely manner to the county's request. Failure of the county to timely issue a written decision shall result in granting of the appeal.

7. The written decision of the board of supervisors is final and not administratively appealable.

- G. Severance. If any section, sentence, clause, phrase, word, portion or provision of this section is held invalid or, unconstitutional, or unenforceable, by any court of competent jurisdiction, such holding shall not affect, impair, or invalidate any other section, sentence, clause, phrase, word, portion, or provision of this section which can be given effect without the invalid portion. In adopting this section, the board of supervisors affirmatively declares that it would have approved and adopted the section even without any portion which may be held invalid or unenforceable.

(Ord. No. 2008-59, § 1, 9-9-08; Ord. No. 2010-49, § 12, 9-14-10)

17.52.520 - Signs permitted.

The following signs are permitted in any district and may be located in required yards, other sign control provisions notwithstanding; and need not be included in any computation of permitted aggregate sign area.

- A. One unilluminated temporary sign, maximum one square foot in area, on each lot for up to ninety (90) days;
- B. House numbers, mail box identification, street names, "no trespass" signs, and other warning signs;
- C. Courtesy signs identifying a benefactor, a location of historic interest, or a statue or monument;
- D. One name plate, two square feet maximum area and shall not be illuminated;
- E. Pedestrian signs:
 1. Must be suspended from a canopy over a sidewalk which is directly in front of the door of the business thereby identified,
 2. Must be perpendicular to the business building wall,
 3. Must not be more than ten square feet in area if double-faced, five square feet in area if single-faced,
 4. Must provide a minimum of eight-foot clearance to the sidewalk below,
 5. Are limited to one per business per building elevation;

- F. Signs serving to direct the flow of pedestrian and vehicular traffic, with eight square feet per sign, except pavement markings which are not so restricted as to maximum area;
- G. Temporary nonstructural signs promoting public health, safety, or welfare programs and activities: Eight square feet aggregate area per lot;
- H. Temporary political sign(s) eighteen (18) square feet aggregate area per lot;
- I. Sale or lease sign, with two signs permitted per lot, six square feet maximum area per sign and shall not be illuminated; provided, however, that sale or lease signs in any C or M district shall not exceed twenty-four (24) square feet. One such sign may be placed for each one hundred (100) feet of street frontage;
- J. Subdivision sale, rent, or lease sign, to advertise the original sale, rent, or lease of buildings or lots in connection with a subdivision development: sixty-four (64) square feet plus one additional sign of like dimension for each thirty-five (35) lots or buildings for sale, rent, or lease, twenty (20) feet maximum height, and shall not be illuminated;
- K. Apartment rental sign, for apartment complexes of no less than five dwelling units: One sign, thirty-two (32) square feet maximum area, ten feet maximum height, shall not be illuminated; and shall be removed when initial occupancy occurs within eighty (80) percent or more of the dwelling units;
- L. A bulletin board used to display announcements relative to meetings held on the premises of a church, school, auditorium, or other place of public assembly, twenty-four (24) square feet in area, unless otherwise approved under a conditional use permit, variance, or site development review, attached to the wall or regulated as to height by those limitations on fences and hedges contained in Section 17.52.430;
- M. A directory or other exclusively informational listing of tenants' names attached to the wall at the entrance of a building, or if freestanding, regulated as to height by those limitations on fences and hedges contained in Section 17.52.430, and other provisions of this section notwithstanding, may not be located within a required front or street side yard, twelve (12) square feet maximum aggregate area;
- N. Identification sign, thirty-two (32) square feet maximum area unless otherwise approved under a conditional use permit, variance; or site development review or if freestanding, regulated as to height by those limitations on fences, walls, and hedges contained in Section 17.52.430;
- O. Not more than two service station price signs thirty-two (32) square feet maximum aggregate area, six feet maximum height and may be attached to and made part of service station sign structure pursuant to Section 17.38.140;
- P. Signs located inside a building or structure, provided any such sign is neither attached to windows with its sign copy visible from the outside nor otherwise so located inside so as to be conspicuously visible and readable without intentional and deliberate effort from outside

the building or structure, provided, however, that any sign or signs which in the aggregate have an area not exceeding twenty-five (25) percent of the window area from which they are viewed are also permitted and need not be included in any computation of permitted aggregate sign area;

- Q. Signs placed on or attached to bus stop benches or transit shelters in the public right-of-way either sponsored by, or placed pursuant to a contract with, AC Transit or another common carrier.

(Prior gen. code § 8-60.65)

(Ord. No. 2010-49, § 13, 9-14-10; Ord. No. O-2014-43, § 1, 11-4-14; Ord. No. 2016-51, § 2, 10-4-16)

EXHIBIT 2

Chapter 17.59 - ABATEMENT PROCEDURES^[2]

Sections:

17.59.010 - Declaration of public nuisance by enforcement officer.

Any property found by the enforcement officer to be maintained in violation of Title 17 is declared to be a public nuisance and shall be abated by rehabilitation, removal, demolition, or repair pursuant to the procedures set forth herein. The procedures for abatement set forth herein shall not be exclusive and shall not in any manner limit or restrict the county from enforcing other county ordinances or abating public nuisances in any other manner provided by law.

(Ord. 2004-13 § 2 (part))

17.59.020 - Notification of nuisance.

Whenever the enforcement officer determines that any property within the county is being maintained contrary to one or more of the provisions of Title 17, the enforcement officer shall give written notice in accordance with provisions of Section 17.59.030 covering service in person or by mail.

(Ord. 2004-13 § 2 (part))

17.59.030 - Notice to abate.

Notice to abate shall be provided in person or by pre-paid certified mail, return receipt requested and shall include a copy of this chapter and a statement describing the section(s) found to be violated. It shall further set forth a reasonable time for correcting the violation(s), but in no event less than ten nor more than sixty (60) calendar days and may also set forth suggested methods of correcting the same. The enforcement officer shall inspect the property within the time limit for correcting the violation(s) to determine whether the violation(s) has been corrected. If the property is found to be in compliance with this chapter, the matter will be dropped and no further enforcement action taken. If the property is not found to be in compliance with this chapter, further enforcement action shall occur as set forth herein.

(Ord. 2004-13 § 2 (part))

(Ord. No. 2009-32, 7-21-09)

17.59.040 - Administrative hearing to abate nuisance.

In the event said owner shall fail, neglect or refuse to comply with notice to abate a nuisance, an administrative hearing shall be conducted.

(Ord. 2004-13 § 2 (part))

17.59.050 - Notice of hearing.

Notice of said hearing shall be served upon the owner not less than seven calendar days before the time fixed for the hearing. Notice of hearing shall be served in person, or by prepaid certified mail, return receipt requested to the owner's last known address. Service shall be deemed to be complete at the time notice is personally served or deposited in the mail. Failure of any person to receive notice shall not affect the validity of any proceedings hereunder. Notice shall be substantially in the format set forth below.

COUNTY OF ALAMEDA
NOTICE OF ADMINISTRATIVE HEARING
ON ABATEMENT OF NUISANCE

This is a notice of hearing before the board of zoning adjustments to ascertain whether certain property situated in the County of Alameda, state of California, known and designated as (street address) in said county and more particularly described as (assessor's parcel number) constitutes a public nuisance subject to abatement by the rehabilitation of such property or by the repair removal or demolition and removal of buildings situated hereon. If said property in whole or part, is found to constitute a public nuisance as defined in this chapter and the same is not promptly abated by the owner, such nuisance may be abated by the County of Alameda, in which case the cost of such rehabilitation, repair, removal or demolition will be assessed upon such property and such costs together with interest thereon, will constitute a lien upon such property until paid; in addition, you the owner(s) may be cited for violation of the provisions of county ordinances and subject to a fine.

Said alleged conditions consist of the following:

In violation of Alameda County General Ordinance Code section(s):

The recommended method(s) of abatement are:

All persons having an interest in said matters may attend the hearing and their testimony and evidence will be heard and given due consideration.

Dated this _____ day of _____, 20 ____ .

Board of Zoning Adjustments

Time and Date of Hearing: _____

Location of Hearing: _____

(Ord. 2004-13 § 2 (part))

(Ord. No. 2010-71, § 110, 12-21-10)

17.59.060 - Administrative hearing by board of zoning adjustments.

At the time stated in the notice, the board of zoning adjustments shall hear and consider all relevant evidence, objections or protests, and shall receive testimony relative to such alleged public nuisance and to proposed rehabilitation, repair, removal or demolition of such property. Said hearing may be continued from time to time.

If the board of zoning adjustments finds that such public nuisance does exist and that there is sufficient cause to rehabilitate, demolish, remove or repair the nuisance, the enforcement officer shall prepare findings and an order for the board of zoning adjustments adoption, which shall specify the nature of the nuisance, the method(s) of abatement and the time within which the work shall be commenced and completed which shall not exceed sixty (60) calendar days. The order shall include reference to the right to appeal set forth in Section 17.59.090

(Ord. 2004-13 § 2 (part))

17.59.070 - Service of board of zoning adjustments order to abate.

A copy of the findings and order shall be served on all owners of the subject property in the same manner as provided for notice of hearing in Section 17.59.050. In addition, a copy of the findings and order shall be forthwith conspicuously posted on or near the property.

(Ord. 2004-13 § 2 (part))

17.59.080 - Procedure—No appeal.

In the absence of any appeal, the nuisance shall be abated in the manner and means specifically set forth in said findings and order. In the event the owner fails to abate the nuisance as ordered, the enforcement officer shall cause the nuisance to be abated by county employees or private contract. The costs shall be billed to the owner as specified in Section 17.59.140.

(Ord. 2004-13 § 2 (part))

17.59.090 - Procedure—Appeal to Board of Supervisors.

The owner(s) may appeal to the Alameda County Board of Supervisors the board of zoning adjustments findings and order by filing an appeal with the clerk of the board within ten calendar days from the date of service of the board of zoning adjustments decision. The appeal shall contain:

- A. A specific identification of the subject property;
- B. The names and addresses of all appellants;

- C. A statement of appellant's legal interest in the subject property;
- D. A statement of ordinary and concise language of the specific order or action protested and the grounds for appeal, together with all material facts and support thereof;
- E. The date and signatures of all appellants; and
- F. The verification of at least one appellant as to the truth of the matters stated in the appeal.

As soon as practicable after receiving the appeal, the clerk of the board shall set a date for the Board of Supervisors to hear the appeal which date shall not be less than seven calendar days from the date the appeal was filed. The clerk of the board shall give each appellant written notice of the time and the place of the hearing at least five calendar days prior to the date of the hearing either by causing a copy of the notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address(es) shown on the appeal. Continuances of the hearing from time to time may be granted by the Board of Supervisors on request of the owner for good cause shown, or on the Board of Supervisors' own motion.

(Ord. 2004-13 § 2 (part))

(Ord. No. 2010-71, § 111, 12-21-10)

17.59.100 - Decision by Board of Supervisors.

Upon the conclusion of the hearing, the Board of Supervisors shall determine whether the property or any part thereof as maintained constitutes a public nuisance if a public nuisance is found the Board of Supervisors shall adopt a resolution declaring such property to be a public nuisance setting forth its findings and ordering the abatement of the same by having such property rehabilitated, repaired or demolished and removed in the manner and means specifically set forth in said resolution. The resolution shall set forth the time within which such work shall be completed by the owner, in no event less than three calendar days. The decision and order of the Board of Supervisors shall be final.

(Ord. 2004-13 § 2 (part))

17.59.110 - Service of Board of Supervisors order to abate.

A copy of the resolution of the Board of Supervisors ordering the abatement of said nuisance shall be served upon the owner of said property in the same manner as provided for notice of hearing in Section 17.59.050. Upon abatement in full by the owner as determined by the county the proceeding hereunder shall terminate.

(Ord. 2004-13 § 2 (part))

17.59.120 - Limitation of filing judicial action.

Any action appealing the Board of Supervisors decision and order shall be commenced within thirty (30) calendar days of the date of service of the decision.

(Ord. 2004-13 § 2 (part))

17.59.130 - Procedure—Hearing before board of zoning adjustments and Board of Supervisors.

- A. All hearings shall be electronically tape recorded.
- B. Hearings need not be conducted according to the California Code of Evidence.
- C. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state. Any relevant evidence shall be admitted if it is the type of evidence on 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 in courts of competent jurisdiction in the state.
- D. Irrelevant and unduly repetitious evidence shall be excluded.

(Ord. 2004-13 § 2 (part))

(Ord. No. 2010-71, § 112, 12-21-10)

17.59.140 - Abatement by county.

- A. If such nuisance not abated as ordered within said abatement period, the enforcement officer shall cause the same to be abated by county employees or private contract. The enforcement officer, county employees and/or private contractor are expressly authorized to enter upon said property for such purposes. The cost of abating the nuisance shall be billed to the owner and shall become due and payable to the enforcement agency thirty (30) calendar days thereafter.
- B. No person(s) shall obstruct, impede or interfere with the enforcement officer or designated representative, or with any person who owns or holds any interest or estate in any property in the performing of any necessary act, preliminary to or incidental, carrying out an abatement order issued pursuant to Sections 17.59.010, 17.59.050 and 17.59.080.

(Ord. 2004-13 § 2 (part))

17.59.150 - Powers of abatement.

No property shall be found to be a public nuisance under Section 17.59.010 and ordered demolished unless there is no reasonable way other than demolition and removal to correct such nuisance, as determined by the county.

(Ord. 2004-13 § 2 (part))

17.59.160 - Notice of intent to demolish.

A copy of any order or resolution requiring abatement by demolition under Sections 17.59.060 and 17.59.100 shall be recorded with the Alameda County recorder.

(Ord. 2004-13 § 2 (part))

17.59.170 - Record of cost of abatement.

The enforcement officer shall keep an account of the cost, including incidental expenses, of abating such nuisance on each separate lot or parcel of land where the work is done by or under contract with the county and shall render an itemized report in writing to the Board of Supervisors showing the cost of abatement, including the rehabilitation, demolition and all nuisances removed; or repair of said property provided that before said report is submitted to the Board of Supervisors copy of the same shall be posted for at least five days upon or in front of property hereinafter described, to be removed, repaired or demolished in order to abate a public nuisance on said real property together with a notice of the time when said report shall be heard by the Board of Supervisors for continuation. A copy of said report and notice shall be served upon the owner of said property in accordance with the provisions of Section 17.59.050 at least five calendar days prior to submitting the same to the Board of Supervisors. Proof of said posting and service shall be made by affidavit filed with the clerk of the board.

(Ord. 2004-13 § 2 (part))

17.59.180 - Assessment lien.

- A. The total cost of abating such nuisance as so confirmed by the Board of Supervisors, shall constitute a special assessment against the respective lot or parcel of land to which it relates, and upon recordation in the office of the county recorder of a notice lien, as so made and confirmed, shall constitute a lien on said property for the amount of such assessment.
- B. After such confirmation and recordation, a certified copy of the Board of Supervisors' decision shall be filed with the Alameda County auditor-controller. For filings made on or before August 1st each year, it shall be the duty of said auditor-controller to add the amounts of the respective assessments to the next regular tax bills levied against said respective lots and parcels of land for municipal purposes and thereafter said amounts shall be collected at the same time and in the same manner as ordinary property 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 property taxes. Filings made after August 1st shall apply to the following year's regular tax bills. All laws applicable to the levy collection and enforcement of property taxes shall be applicable to such special assessment.

- C. In the alternative, after such recordation, such lien may be foreclosed by judicial or other sale in the manner and means provided by law.
- D. Such notice of lien for recordation shall be in form substantially as follows:

NOTICE OF LIEN

(Claim of County of Alameda)

Pursuant to the authority vested by the provisions of Section _____ of Alameda County Ordinance No_____, the board of zoning adjustments of the County of Alameda did on or about the day of _____, 20____ cause the property hereinafter described, to be rehabilitated or the building or structure on the property hereinafter described, to be removed, repaired or demolished in order to abate a public nuisance on said real property; and the Board of Supervisors of the County of Alameda did on the day of _____, 20____, assess the cost of such rehabilitation, removal, repair or demolition upon the real property hereinafter described, and the same has not been paid nor any part thereof, and that said County of Alameda does hereby claim a lien on such rehabilitation, removal, repair or demolition in the amount of said assessment, to wit the sum of \$ _____; and the same, shall be a lien upon said real property until the same has been paid in full and discharged of record.

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

(description)

Dated this ____ day of _____, 20____.

Board of Zoning Adjustments, County of Alameda.

(Ord. 2004-13 § 2 (part))

(Ord. No. 2010-71, § 113, 12-21-10)

17.59.190 - Alternative actions available.

Nothing in this chapter shall be deemed to prevent the Board of Supervisors from ordering the commencement of a civil proceeding to abate a public nuisance pursuant to applicable law.

(Ord. 2004-13 § 2 (part))

(Ord. No. 2010-71, § 109, 12-21-10; Ord. No. 2009-32, 7-21-09)

17.59.200 - Violation and penalties.

- A. Any person, firm or corporation shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this title is committed, continued or permitted by such person and shall be punishable accordingly.
- B. The enforcement officer shall have the power to designate particular officers or employees to enforce particular provisions of this title. Officers or employees so designated shall have the authority to impose fines and/or fees.
- C. If the planning director determines that a nuisance does not necessitate immediate summary abatement under the procedures set forth in Section 17.59.040 et seq., the nuisance shall be deemed a violation and fines or fees will be imposed on the owner of the property and/or anyone known to the planning director to be in possession of the property.
- D. The following is a schedule of fines and fees:

	Fines and Fees
Initial inspection fee (to verify violation)	None
Re-inspection fee (violation corrected)	None
Re-inspection fee (violation not corrected)	1 hour staff time
Each additional inspection fee	1 hour staff time
Administrative hearing/public nuisance hearing fee (board of zoning adjustments)	\$50.00
Fee for appeals to the board of supervisors	\$25.00
Abatement fees	Staff time plus actual abatement costs
Fine for violations of non-permitted uses in any district	\$250.00 for 1st failed re-inspection
	\$500.00 for 2nd failed re-inspection

	\$1,000.00 for 3rd failed re-inspection
	\$1,500.00 for 4th and subsequent failed re-inspections
Fine for violations of non-permitted uses in any district that remain beyond six months (penalty will be assessed every six (6) months until violations are corrected)	\$5,000.00

The owner(s) may appeal to the board of zoning adjustments any fines or fees imposed by the enforcement officer by filing an appeal with the planning department within ten calendar days from the mailing date of written notification of the action. Staff time shall be billed at the rate noted on the most current Alameda County Community Development Agency Planning Department Billable Rate schedule.

(Ord. 2004-13 § 2 (part))

(Ord. No. 2009-32, 7-21-09)