

ADMINISTRATIVE HEARING

CITY OF PACIFIC GROVE, CALIFORNIA

IN THE MATTER OF

Lisa and Mark Hanes,

Respondents.

FILE NO. 16-013

ADMINISTRATIVE DECISION/ORDER

I

STATEMENT OF THE CASE

This matter came on regularly for hearing before Administrative Hearing Officer Kim Murdock on June 22, 2016 at 10:00 a.m. at the Pacific Grove City Council Chambers, City Hall, 300 Forest Avenue, in the City of Pacific Grove, California (“City”).

Terri C. Schaeffer, Code Compliance Officer (“Compliance Officer”), appeared for the City.

Lisa Hanes and Mark Hanes (“Respondents”) appeared.

Michael R. Lykken, Attorney, appeared for Respondents (“Respondents’ Attorney”).

Also present was Michael D. Laredo, Deputy City Attorney, and Jocelyn Francis, Administrative Services Officer for the Pacific Grove Police Department.

The Hearing was held pursuant to Pacific Grove Municipal Code (“PGMC”) §1.19 to determine the degree of Respondents’ compliance with Compliance Officer’s Administrative Compliance Order dated May 19, 2016 (the “Order”), in regard to violations of PGMC set forth below. Violation address is 987 Ransford Avenue, Pacific Grove, California (the “Property”).

Section 10.08.050(c) – Animal excretion shall not be permitted to accumulate so as to become offensive to any neighboring property, nor accumulate in any amount within 15 feet of any neighboring property, nor on any public property or private property belonging to others.

Section 10.08.050(a) – The animal shall be confined in such place and manner as does not constitute a public or private nuisance.

Section 10.08.101 – WITHDRAWN AT HEARING.

Section 9.16.020(a) – Solid Waste. It is unlawful for any person to place, deposit, or keep any solid waste on any premises, except in containers as hereinafter addressed.

Section 9.16.030(a) – WITHDRAWN. Referenced in the Code Compliance Staff Report, but not included in the final Compliance Order.

Section 9.16.110 – Waste Disposal Prohibitions. No person shall throw, deposit, leave, maintain, keep, or permit to be thrown or deposited, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the storm drain system, or waters of the U.S., any pollutant, refuse, rubbish, garbage, litter, or other discarded or abandoned object, so that the same may cause or contribute to pollution.

II WITNESSES

Compliance Officer and Elizabeth Conti-Yeo, Animal Control Officer (“Officer Conti-Yeo”), testified for the City.

Raymond Trok Magsalay testified on behalf of himself and his wife, Carol Magsalay (“Complainants”).

Respondents testified on their own behalf.

Respondents’ Attorney testified for Respondents.

Robert Lucius and Bruce Cardoza testified on behalf of Respondents.

III DOCUMENTS AND EXHIBITS

Prior to the hearing, Compliance Officer submitted a package of documents pertinent to this matter, and sent it to all Parties by Certified and regular mail. This package included:

NOTICE OF HEARING, dated June 9, 2016.

CODE COMPLIANCE STAFF REPORT, signed by Compliance Officer and dated June 9, 2016 (“Report”). The Report also included a copy of *Administrative Hearing Rules and Procedures*, and a copy of the Certificate of Service signed by Compliance Officer and executed June 9, 2016.

Attachment 1: Copy Police Report PC1400844 – Officer Daniel Deis reports Complainants requested information about city codes regarding animal feces. Officer Deis reports that Respondents stated they clean up after their animals regularly.
Dated 9/5/14

Attachment 2: Copy of Police Report PC1501523 – Officer Conti-Yeo documents Complainants’ report of an offensive odor coming from their neighbors’ yard. Officer Conti-Yeo confirms the smell and that she could see feces in Respondents’ yard and flies in both yards. She notes that she photographed what she witnessed, and that she informed Respondents of the need to contact Code Compliance for a permit for “hoof stock.”
Dated 12/2/15

Photographs were not included in this Attachment, but are included in Attachment 14.

Attachment 3: Copy of email – Officer Conti-Yeo asks Administrative Technician Haroon Noori (“Administrative Technician”) for the status of Respondents’ Animal Keeping Permit. No request received by that date and time.
Dated 12/8/15

Attachment 4: Copy of Animal Keeping Permit – Signed by Mark Hanes.
Dated 12/14/15

Copy of PGMC §10.08.030 – requirements for keeping animals in the City.

Copy of Approved Animal Keeping Permit – Signed by Administrative Technician and Compliance Officer. Compliance Officer signed for Community & Economic Development Director Mark Brodeur (“Development Director”).
Dated 12/23/15

Attachment 5: Copy of appeal requesting denial of permit – Signed by Complainants. Complainants state that Respondents’ 3 animals (2 large dogs and a “micro pig”) cause the odor of feces to enter their kitchen, dining area, and backyard. States their fear that inhaling the fumes is unhealthy, and recounts a September of 2015 incident in which Respondents left on vacation for five days, in which time the animals were fed, but the yard was not cleaned. They state they can no longer entertain in their backyard and that they have worked with Respondents for a year and have not found a satisfactory solution.
Dated 1/4/16

Copy of photographs taken by Officer Conti-Yeo of feces piles in Respondents’ backyard.
Taken 1/4/16

Attachment 6: Copy of Letter from Compliance Officer to Respondents – Notice of Findings informs Respondents that a complaint was filed in opposition to granting their permit; that the permit will be denied unless Respondents provide guarantees that Conditions of Approval 1-4 have been met.
Dated 1/4/16

Copy of PGMC §10.08.030 – requirements for keeping animals in the City.

Copy of Approved Animal Keeping Permit – see description under Attachment 4.

Attachment 7: Copy of Notice of Permit Cancellation from Compliance Officer to Respondents – Informs Respondents that the City has reclassified their pig as a pet under PGMC §10.08.020, and must be kept in a way manner which does not constitute a nuisance. The letter refers to ongoing concerns with the excrement and odor gives Respondents 90 days in which to remedy this. The letter included suggestions to help Respondents solve the issue including 1) a solid wooden fence, 2) engaging someone to clean the yard while Respondents are away; and 3) dedicating an enclosed animal run in the backyard.
Dated 1/18/16

Photographs of pig feces at the Property.

Copy of PGMC §10.08.050.

Attachment 8: Copy of new complaint sent by Complainants to City Manager Ben Harvey (“City Manager”), City Attorney, and City Council.
Dated 2/3/16

Copy of Notice of Intention to Grant a Permit to keep a pig at the Property.
Posting Dates: 12/23/15 through 1/7/16

Copy of Notice of Findings – see description under Attachment 6.

Copy of PGMC §10.08.030 – requirements for keeping animals in the City.

Copy of Complainant’s appeal requesting denial of permit – see description under Attachment 5.

Copy of PGMC Chapter 10.12 NUISANCES.

Copy of Approved Animal Keeping Permit – see description under Attachment 4.

Photographs taken by Complainants of their yard, back of their house, and piles of feces in Respondents’ backyard.¹

Attachment 9: Copy of memo from Officer Conti-Yeo to Interim Chief of Police Steve Belcher (“Interim Chief”) – Re: Complaint for keeping a pig at the Property. Lists status of actions to date.
Dated 2/4/16

Attachment 10: Copy of email thread between Compliance Offer and Respondents – Compliance Officer requests a meeting regarding ongoing questions and concerns about animals on the Property.
Dated 2/5/16

Attachment 11: Copy of Letter titled Follow Up Notice Letter from Compliance Officer to Respondents – Re: Animal Keeping Guidelines. Letter states that Respondents told her they were keeping the yard free of accumulation and that she saw no evidence of feces that day. The letter advised Respondents that as long as they continued in this way, and provided a pen for the animals when Respondents are not present, the complaints should stop.
Dated 2/25/16

Attachment 12: Copy of Police Report PC1600358 – Officer Conti-Yeo reports she immediately smelled the odor of pig feces and saw feces and flies in Respondents’ yard.
Dated 3/24/16

Copy of memo from Officer Conti-Yeo to Compliance Officer, Interim Chief, Jocelyn Francis, and herself – Officer Conti-Yeo recounts her Police Report and asserts that Respondents have done little to comply with requests made to keep the yard clean and the pig penned. Attached photographs include several piles of feces, some covered in mold, and the pig walking freely in the yard.
Dated 3/24/16

Attachment 13: Copy of Notice of Violation – Letter from Compliance Officer to Respondents re: Animal Keeping Complaint. Letter gives Respondents until April 17 to build a metal pen to confine their animals when Respondents are not present

¹ In testimony, Respondents objected to the photograph at page 43 of the Report, asserting that it looked retouched. Hearing Officer excludes that photograph from consideration. The other photographs in Attachment 8 do not appear to be altered other than red marks used to circle feces, and remain under consideration.

in the backyard. Informs them the Notice of Violation was sent because a further complaint was received, and any further complaints would result in a Compliance Order.

Dated 3/24/16

Attachment 14: Copy of photos taken in Respondents' yard by Compliance Officer on site visits on 2/24/16 and 4/24/16. Also included are photos taken by Officer Conti-Yeo during complaint response described in Attachment 2 on 12/2/15.

Attachment 15: Copy of Police Report PC1600493 – Officer Billy Hawkins states that Complainants reported that Respondents were not keeping their animal penned.

Dated 4/29/16

Attachment 16: Copy of Police Report PC1600548 – Officer Conti-Yeo reports Complainants' call regarding pig feces accumulating at the Property. She states she could "see and smell feces in the neighbors yard," that she observed at least five piles of pig feces as well as piles of dog feces.

Dated 5/9/16

Photographs of piles of feces taken by Officer Conti-Yeo.

Dated 5/9/16

Attachment 17: Copy of Police Report PC 1600573 – Officer Conti-Yeo reports observing and photographing approximately 9 piles of pig feces in Respondents' yard.

Dated 5/16/16

Attachment 18: Copy of Police Report PC1600574 Officer Hawkins reports that Respondent Ms. Hanes was worried about Complainant Ray Magsalay watching her animals and always calling Animal Control.

Dated 5/18/16

Attachment 19: Copy of Notice of Compliance Order – see description of alleged violations on page 1 of this Administrative Decision/Order. In addition, "Correction Required" of Respondents states 1) clear and properly dispose of all animal excrement from the yard; 2) relocate the animal (pig) off residential property and provide proof of relocation; and 3) obtain all City of Pacific Grove final approvals. Compliance Deadline is June 20, 2016.

Dated 5/19/16

Copy of Administrative Remedies for Code Violations

Copies of Notice of Violation, Follow Up Notice, and Notice of Permit Cancellation – see descriptions at Attachments 13, 11, 7.

Copy of Certificate of Service signed by Compliance Officer.

Dated 5/19/16

Attachment 20: Copy of Police Report PC1600596 – Officer Conti-Yeo reports Respondents' request to document their yard. She notes the yard was clean with no feces, Respondents had installed a "wire X Pen" to pen the pig, and have attached a metal "extension" to the top of Complainants' fence to keep others from

viewing their yard.
Dated 5/20/16

Attachment 21: Copy of email from Respondent Lisa Hanes to Compliance Officer, Environmental Programs Manager Jessica Kahn (“EP Manager”), City Manager, Public Works Director Daniel Gho, Sewer Maintenance Supervisor Vince Gentry, Development Director, Officer Conti-Yeo, with cc: to Mr. Lykken, Respondent Mark Hanes – Re: Request for Compliance Hearing to Contest Compliance Order. Respondent states she wants her request for hearing in writing. In regard to setting a date, they will be out of state June 4-10.
Dated 5/29/16

Attachment 22: Copy of Declaration of EP Manager – provides requested clarification of PGMC §9.16.020 and §9.16.110 in regard to solid waste and storm water management discharge.
Dated 6/2/16

Attachment 23: Copy of emails between Roger Beretti, Environmental Health Specialist II, Monterey County Health Department to Compliance Officer – regarding County Septic ordinance 04055 and its application in enforcing pollution issues.
Dated 5/31/16
Copy of Ordinance No. 04055.

Received from Respondents and Entered as Exhibits by Compliance Officer at the request of Hearing Officer:

Exhibit A: Copy of correspondence from Roger Beretti to Michael Lykken
Dated 6/16/16

Exhibit B: Copy of email from City Manager to Mayor Bill Kampe (“Mayor”), Compliance Officer, and Development Director – provides status regarding compliance order and references to “the so-called ‘pig people’ that live next to” Complainants.
Dated 5/23/16

Exhibit C: Copy of email thread between Officer Conti-Yeo and Interim Chief of Police Steve Belcher (“Interim Chief”) – discusses how to address nuisance at the Property.
Dated 3/25/16

Exhibit D: Copy of email thread between Administrative Technician and Officer Conti-Yeo – Officer Conti-Yeo requests the status of the Animal Keeping Permit from Administrative Technician. In response, he says, “we are hoping that he will remove the pig.”
Dated 1/8/16

Exhibit E: Copy of email from City Manager to Compliance Officer – City Manager mentions that Complainant visited him, asks for the status on the “pigsty”

neighbors and requests the due date for 90-day window mentioned in Attachment 7. He also requests options if Respondents do not come into compliance.

Dated 2/29/16

Exhibit F: Copy of Permit for fencing at the Property – has notation that Development Director will make findings for “unique or exceptional circumstances” and allow a fence above 6 feet “to provide privacy for homeowner and neighbor.”
Dated 4/4/16

Exhibit G: Copy of email thread between Mayor, City Manager, Compliance Officer, and Development Director –

- Mayor tells City Manager that he spoke with Complainant Ray Magsalay on or about 5/2/16, who told him of a continuing “stench” next door.
- City Manager forwards Mayor’s email to Development Director and Compliance Officer requesting status of drafting a “pig permit.”
- Development Director responds that he is not going to do that but has required a fence and a pen for “a BIG potbellied pig.”
- Separately, Compliance Officer responds with a report of the most recent contact with Respondents, and expresses her difficulty with the situation, suggests the possibility of changing the code to prohibit pigs, and says “I don’t know what more to do.”

Dated 5/4/16

Exhibit H: Copy of email between City Manager, Deputy City Clerk Sandra Kandell, Compliance Officer, and Development Director – the Director provides Compliance Officer with two links to products intended to control odor.
Dated 5/18/16

Exhibit I: Copies of photos taken by Respondents – two photos of the fence line, one close up and one longer view; two photos of pet pig in his pen taken from two slightly different angles.
Undated

The Hearing Officer takes Administrative Notice of the following public information:

First: Web site – http://www.pigs4ever.com/pot_bellied_pig_products/odor_control.php – describes odor control products for pet pigs.

Second: GreenWaste informational brochure at <http://www.greenwaste.com/sites/default/files/PacificGrove-SingleFamily-RecycleGuide-English-2015-Online.pdf> – describes waste container in which to properly dispose of animal waste.

IV SUMMARY OF ARGUMENTS

A. Overview

The City claims this case is about “a smell, an odor” created by the accumulation of animal feces on the Property. The City presented documentation and testimony to attempt to demonstrate this was a recurring issue.

Respondents claim this case is about the City and Complainant colluding to “get rid of our pig.” Respondents presented documentation and testimony to attempt to demonstrate they were being unfairly treated.

B. The City’s Position

The City asserts that, as a result of Respondents keeping a pig on their residential property, a recurring accumulation of feces created offensive odor. It was described variously as “strong,” “noxious,” and “obnoxious.” The odor was also described as being carried by the wind into Complainants’ home and yard. The City contends that the accumulation was of such volume and duration as to create a public or private nuisance under PGMC §§10.08.050 (a) and (c). The City presented documentation and testimony supporting these contentions. The City also presented a Declaration by the City’s Environmental Programs Manager clarifying PGMC §9.16.020(a) and §9.16.110.

The City provided supporting documentation and testimony that Respondents were aware of the complaints and of PGMC regulations regarding the responsibilities of a citizen when keeping a pet within the City.

The City provided documentation that Compliance Officer and Officer Conti-Yeo offered suggestions on how Respondents might abate the nuisance.

Officer Conti-Yeo testified that on her documented site inspection of May 20, 2016, she observed that Respondents had installed a pen that would not keep the pig from getting loose, and was not a permanent structure. She stated that Respondent Lisa Hanes told her that while she was home she would listen to determine if the pig got loose.

Officer Conti-Yeo also testified that as of May 20, 2016, Respondents had done nothing to ensure the 15 foot perimeter, or to keep the pig from latrining next to the fence. She further stated that the pen was unoccupied on most of her visits and the pig was usually free-roaming in the yard.

Complainants provided documentation and testimony stating that the smell is offensive, compliance is not consistent, and it has been ongoing for two years despite attempts to work with Respondents. Complainants testified that since the Order was issued, the smell is better, but has not gone away, and that it may have gotten better because “everyone has gone on notice.”

Compliance Officer testified that accumulation of animal feces constitutes further violations of the City’s waste disposal methods. She pointed to documentation of accumulation as an indication of the potential for pollutants due to negligent waste disposal practices and asserts this evidence suggests violations of PGMC §§9.16.020 and 9.30.110, cited in the Report.

Compliance Officer stated that because complaints and subsequent corroboration continued, the City found it had no recourse but to issue the Order and require relocation of the pig.

C. Respondent's Position

Respondents assert they have “done everything the City has asked and more.” They further stated that things “were not pleasant and so we addressed that.” Respondents presented documentation and testimony supporting their contentions. They also testified that they’ve lived at the Property for 10 years, and everything was fine until the time that they brought their pig home.

In the course of their testimony, Respondents asserted that accumulation cannot be proven without a specific definition of volume and/or elapsed time, and further, that there is no odor, nor proof of odor. Respondents and Respondents’ Attorney both stated there was only one report referring to odor.

Mr. Lucius, introduced as an expert on pigs, stated that “it is impossible for a pet pig ... to emit odors from the feces any stronger than a box of cat litter.” He stated that it was his understanding that Respondents’ pig subsists on grains and vegetables and as a result he would expect less odor in the feces.

Respondents’ Attorney, restated much of Respondents’ testimony, adding that “smells are very subjective,” and that a pet pig’s “excrement really doesn’t smell because it’s vegetable matter.” He stated that Complainants are the only neighbors to complain. He also stated that the City could not prove accumulation, so it is now claiming odor.

Respondents assert that because there is no odor and no accumulation, Complainant only wants to get rid of the pig. Respondents believe that Complainant has harassed the City into colluding with him to get rid of their pig and that the City wants to get rid of the pig to make the issue go away. Respondents cited emails between staff members and City management to support their contention.

Respondents assert Complainants falsified a photograph, alleging that Complainants will do anything to get their way.

Additionally, Respondents allege that Complainant is stalking them and stated they feared Complainant might be capable of poisoning Respondents’ pets.

Respondents stated that if their pet is guilty of violating PGMC §10.08.050, then all pets are guilty of it, since lots are small and many people leave their pets unattended during the day.

Respondents stated that Officer Conti-Yeo told them they should put their animal waste in the Yard Waste bin. Officer Conti-Yeo stated that she didn’t remember telling them specifically to put it in the Yard Waste bin, but rather into a closed container.

V DISCUSSION

The violations being considered are not about the pig. The right of the owners to keep a pig in their yard in Pacific Grove, either as a pet, a hooved animal, a farm animal, or an emotional support animal, is not under consideration at this Hearing. Rather, this Hearing concerns whether or not Respondents' actions or inactions created a nuisance.

Compliance Officer alleges the following violations of the PGMC by the Respondents:

1. PGMC §10.08.050(c) – Animal excretion shall not be permitted to accumulate so as to become offensive to any neighboring property, nor accumulate in any amount within 15 feet of any neighboring property, nor on any public property or private property belonging to others.
2. PGMC §10.08.050(a) – The animal shall be confined in such place and manner as does not constitute a public or private nuisance.
3. PGMC §9.16.020(a) – Solid Waste. It is unlawful for any person to place, deposit, or keep any solid waste on any premises, except in containers as hereinafter addressed.
4. PGMC §9.16.110 – Waste Disposal Prohibitions. No person shall throw, deposit, leave, maintain, keep, or permit to be thrown or deposited, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the storm drain system, or waters of the U.S., any pollutant, refuse, rubbish, garbage, litter, or other discarded or abandoned object, so that the same may cause or contribute to pollution.

At the Hearing, Mark Hanes said, “We just want to be respected. We want to be heard. We just want to live.”

At the Hearing, Ray Magsalay said, “This is very unfair for my wife and I to live under these conditions.”

English Common Law balances the rights of individuals. That is, individuals have the right to swing their arm to the point where their closed fist contacts another individual's nose. At that point, the other individual's right not to be assaulted prevails.

California Civil Code states, in pertinent part:

“Anything which is ... indecent or offensive to the senses, ... so as to interfere with the comfortable enjoyment of life or property, ... is a nuisance.”

CVC §3479

PGMC §10.08.050 states, in pertinent part:

“Any person who keeps or maintains an animal in the city, whether or not under special permit granted under PGMC 10.08.030, shall comply with the following regulations:

“(a) The animal shall be confined in such place and manner as does not constitute a public or private nuisance;

“(c) Animal excretion shall not be permitted to accumulate so as to become offensive to any neighboring property, nor accumulate in any amount within 15 feet of any neighboring property, nor on any public property or private property belonging to others.”

(Emphasis added.)

In other words, Respondents brought their pig home — it is their responsibility to ensure that it does not “become offensive” to their neighbors.

A. Alleged Violation of PGMC §10.08.050(c) – Accumulation of Feces.

The City asserts the accumulation of pig feces has become offensive to the neighboring property and accumulated within 15 feet of any neighboring property thus violating the Municipal Code.

Respondents challenge the issue of accumulation as being unmeasurable. However, PGMC addressed it as that amount which causes a nuisance. That is, if it creates an offensive smell then it has accumulated to the point of constituting a nuisance. Here, the City and Complainant have produced evidence supporting the presence of offensive odors. (See Attachments 1, 2, 5, 12, 16, testimony of Officer Conti-Yeo, testimony of Complainants.)

Respondents challenge the issue of accumulation within 15 feet of the fence line as not being feasible on the small lots of Pacific Grove. Their contention is that if animal waste is not allowed within 15 feet of any fence in Pacific Grove, then all animal owners must get rid of their pets.

This assertion is flawed. PGMC §10.08.050(c) merely prohibits the accumulation of feces. Whether pet owners have a big yard, or no yard, PGMC does not prohibit them from responsibly maintaining a pet. Latrining in a backyard is not the only means available.

B. Alleged Violation of PGMC §10.08.050(a) – Nuisance.

The City asserts the pig is creating a public or private nuisance, thus violating the Municipal Code.

Respondents and Respondents’ Attorney contend the odor doesn’t currently exist and hasn’t since the initial complaint. On more than one occasion during testimony, Respondents and Respondents’ Attorney stated fervently that odor was mentioned only once in police reports. That claim is not accurate. (Attachments 2, 12, 16.)

The City’s documentation and testimony consistently indicates that strong odor was detectable throughout the process of trying to resolve this issue. (See Attachments 1, 2, 5, 12, 14, 16, 17, testimony of Officer Conti-Yeo.) Complainants’ documentation and testimony do the same. (See Attachments 5, 8, testimony of Complainants.)

Further, Officer Conti-Yeo testified that Respondents admonished her not to refer to either accumulation or odor in her reports, telling her that the odor was her opinion.

Mr. Lucius testified that he would expect very little odor from the diet that Respondents say they feed the pig. He did not address the effect of time and accumulation. Common sense suggests the smell would compound with accumulation and time exposed.

In Exhibit H, there is a link to a website for pet pig odor control. Hearing Officer also took Administrative Notice of the *Pigs 4 Ever* web site, which offers several “Potbellied Pig Odor Control Products.” So, products exist to abate the exact problem the City contends to be at issue. If odor is not an issue as Respondents claim, it seems unlikely that they would remain on the market.

Respondents’ attorney stated, “smells are very subjective.” Subjectivity doesn’t relate to the presence of a smell, but the reaction to it. One person might love the smell of lavender, while another finds it abhorrent. A reasonable person would say most people find the smell of pig excrement abhorrent.

The odor of feces was repeatedly corroborated by Officer Conti-Yeo. (See Attachments 1, 2, 5, 12, 14, 16, 17, testimony of Officer Conti-Yeo.) She also documented and testified that when she was invited to visit Respondents’ yard, she did *not* smell anything. (Attachment 20, testimony of Officer Cinti-Yeo.) This indicates that Officer Conti-Yeo was easily able to distinguish between the presence and absence of the odor in question.

Respondents argue that the City did not check often enough to determine that odor or accumulation was persistent, asserting the City had to have been there every day to prove it. The City does not claim the odor and accumulation is persistent, but that it frequently recurs, and has presented ample evidence to support its claim.

C. Alleged Violation of PGMC §9.16.020(a) – Solid Waste.

Respondents testified that they had been disposing of animal waste in their Yard Waste container. They testified Officer Conti-Yeo advised them that this was a proper container to use. (Testimony of Respondents.)

Officer Conti-Yeo testified that she recalled this conversation, but did not recall advising them to use the Yard Waste container in particular, stating instead that the waste should be in a closed container. (Testimony of Officer Conti-Yeo.)

Hearing Officer took administrative notice of the GreenWaste informational brochure, provided to all residential customers in Pacific Grove, which states that animal waste should not be disposed of in the yard waste container, but in the garbage container.

It was Respondents’ responsibility, and was within their means, to determine proper methods of disposal.

D. Alleged Violation of PGMC §9.16.110.

The City asserts the accumulation of feces creates pollutants which violate the Municipal Code.

Respondents did not refute non-compliance with regard to PGMC §9.16.110 except in regard to the disposition of animal waste in the yard waste container. They did not address the possibility that letting their animal waste accumulate in their yard might release pollutants. They did request the results of any testing prior to the Hearing that showed they were responsible for pollution.

Compliance Officer stated that the act of allowing waste to accumulate is, by itself, a violation of PGMC §9.16.110 because the code states that animal excrement on private property has

the *potential* to cause contamination and pollution. Compliance Officer offered the Declaration of EP Manager to provide clarification.

However, EP Manager did not address Respondents' situation in particular. Nor did Compliance Officer specifically address how Respondents' animal waste might become a danger to the environment. As such, the City left this issue largely unresolved.

E. Respondents Have Shown Inconsistency in Abating the Nuisance.

Respondents have requested on-site inspections which have resulted in documentation attesting to a clean yard, penned pig, and no offensive odor.

In two of the three incidents, the inspections have been followed by new, corroborated complaints that the smell had returned. The third inspection, which took place after the Order was issued, was not followed by another complaint, but when asked at Hearing, Complainants testified that the smell was better, but still present.

Respondents say they are busy people. Respondents leave town for several days at a time. Respondents testified that Complainants wait until they are out of town before calling in a new complaint and that this isn't proper because "we're on vacation."

Rather than assuming Complainants lie in wait, a reasonable person would assume cause and effect; while Respondents are gone, clean-up is neglected, leading to offensive odors, leading to a complaint.

It is Respondents' responsibility, whether or not they are away from the Property, to ensure that their animals do not create a nuisance.

F. It is Illogical to Assume Complainants Want Anything Other Than Mitigation of the Nuisance.

Respondents and Respondents' Attorney repeatedly claim this case is not about odor or accumulation, but the evidence clearly illustrates the opposite. Respondents repeatedly stated Complainants have always wanted the pig removed from the Property because Complainants do not like their pig.

For several years, Respondents and Complainants lived next door to each other amicably. Complaints arose for the first time not long after Respondents adopted their pet pig. Complainants and Respondents initially agreed to cooperate and address the problem.

Complainants' grievances consistently focused on offensive odor, and most complaints were explicitly corroborated in writing or testimony of City staff. Compliance Officer's letters to Respondents all mentioned accumulation of feces and odor arising from it.

Furthermore, if Complainants wanted to have the pig removed from the Property, a reasonable person would assume it was due to the recurring offensive smell Complainants consistently reported.

Respondents offered no evidence to support their statement.

G. It is Illogical to Assume the City Desires Anything Other Than Mitigation of the Nuisance.

The City has been consistent in their messages to Respondents. Compliance Officer's letters, visits, and meetings have all included suggestions to assist Respondents in resolving the complaints. Officer Conti-Yeo offered suggestions in December 2015 and at the site visit in May.

Respondents offered emails and testimony to assert the City had a prejudice against the pig, claiming this prejudice was at the root of an unjust prosecution of the complaints. (Exhibit B, D, E, H.) However, no evidence was presented by the Respondents that the City acted on any prejudice.

In fact, the preponderance of evidence illustrates the City's interest in helping Respondents abate the nuisance.

Respondents and Respondents' Attorney claim the City singled them out and treated them unfairly. However, they did not point to any evidence to support this conclusion. They only claim that other pig owners in the City are not being treated as they are. However, a reasonable person would assume that no complaints have been filed because the other pig owners are not creating a nuisance.

H. It is Respondents' Sole Responsibility to Ensure Their Pets Do Not Create a Nuisance.

PGMC §10.08.050 clearly states it is Respondents' responsibility to keep their pets so that others are not adversely impacted. By their actions, Respondents are willfully disregarding the right of their neighbors to enjoy their own home.

Respondents stated repeatedly they have done "everything the City asked them to do." Still, those efforts have not resulted in mitigation of the nuisance. It is not the City's obligation to resolve this issue. If remedies offered by the City have not abated the nuisance, it falls to Respondents to find remedies that do.

Respondents have publicly and repeatedly stated that they will "do anything to keep their pig." Since the Notice of Violation was issued, Respondents have erected a portable pig pen and installed a partial fence at Complainants' property line. However, the evidence indicates that they have not consistently achieved the one goal that would have stopped their neighbors' complaints, would have put them in compliance with City codes, and would have rendered this Hearing and its orders unnecessary.

I. Additional Comments.

I do not take lightly that this decision affects the composition of the Hanes Family. I recognize that they regard the pig as a pet and member of the family. For that reason, I seriously considered giving Respondents another chance.

However, weighing against that choice are two critical considerations:

First, respondents have already been given several chances to no avail.

- 9/2014 – Neighbors first made them aware the odor was a nuisance, and Respondents agreed, promising to remedy it.
- 12/2/2015 – Officer Conti-Yeo informed them of the violations and discussed remedies for the problem.

- 1/18/2016 – Compliance Officer gave them 90 days to remedy the problem.
- 3/24/2016 – Compliance Officer informed them they had 30 days to remedy the problem, or an order would be issued.
- 5/19/2016 – Compliance Officer issued the order, giving them 30 days to remove the pig and all animal excrement.

As a result of this consideration given to them, the citizens of Pacific Grove have spent an inordinate amount of money on repeated visits, reports, letters, and notices by City staff.

Second, giving Respondents another chance would put an additional burden on Complainants to be whistle-blowers once again. That is unfair.

Complainants are the victims in this case. These next-door neighbors have endured the recurring odor of pig feces in their kitchen, dining room, and yard for nearly two years. They have had to complain repeatedly to the City. Their right to enjoy their own home must be restored now.

VI FINDINGS OF FACTS

1. Respondents own and occupy the property at 987 Ransford Avenue in Pacific Grove, California. [Report.]
2. Complainants own and occupy the property at 985 Ransford Avenue in Pacific Grove, California. [Testimony of Complainants.]
3. Respondents and Complainants have been neighbors for approximately ten years. [Testimony of Respondents.]
4. On or around June of 2014, Respondents acquired a pig. [Attachment 5, testimony of Complainants, testimony of Respondents.]
5. The City classified Respondents' pig as a pet, not requiring a special permit. [Attachment 7, testimony of Compliance Officer.]
6. In September of 2014, Complainants called police to complain about offensive odor of feces coming from Respondents' yard and to ask about what they could do. [Attachments 1 & 5; testimony of Compliance Officer, testimony of Officer Conti-Yeo.]
7. Offensive odor of feces and flies recur in Respondents' yard. [Attachments 1, 2, 5, 12, 16, testimony of Officer Conti-Yeo, testimony of Complainants.]
8. Respondents have allowed accumulation of feces to occur in their yard in a manner that creates a nuisance. [Attachments 2, 5, 12, 16, testimony of Officer Conti-Yeo, testimony of Complainants.]
9. Respondents' travel out of town for several days at a time, leaving their animals at home. [Attachments 5, 21; testimony of Complainants; testimony of Respondents.]
10. Respondents were aware of odor complaints before issuance of the Order. [Attachments 1-3, 6, 7, 11-13, & 17; testimony of Compliance Officer; testimony of Complainants; testimony of Officer Conti-Yeo.]
11. Respondents were aware of their obligations under PGMC §10.08.050 before issuance of the Order. [Attachments 6, 7, 11, & 13; testimony of Compliance Officer.]
12. Respondents were informed of possible methods of abating the nuisance on more than one occasion. [Attachments 7, 11-13; testimony of Compliance Officer; testimony of Officer Conti-Yeo.]
13. Respondents improperly disposed of animal waste in their yard waste bin. [Testimony of Respondents; testimony of Officer Conti-Yeo.]
14. There is no direct evidence addressing how Respondents' animal waste might become a danger to the environment in accordance with PGMC §9.16.110, waste disposal prohibition.

VII
DETERMINATION OF ISSUES

As to the issues of this Hearing, based upon a preponderance of evidence and testimony presented, the Pacific Grove Municipal Code, California State Law, and in accordance with PGMC §1.19.190, the following determination of issues are made:

1. By reason of finding of facts 7 through 12, Respondents violated PGMC §10.08.050(c), accrual of animal excrement.
2. By reason of findings of fact 7 through 12, Respondents violated PGMC §10.08.050(a), a private or public nuisance created by a pet.
3. By reason of findings of facts 13, Respondents violated PGMC §6.16.020(a), improper disposal of solid waste.
4. By reason of findings of facts 14, Respondents are not in violation of PGMC §9.16.110, waste disposal prohibitions.

VIII ORDERS

Based upon a preponderance of the evidence that the above violations have occurred and have not been corrected within the time specified in the Order, and in accordance with PGMC §1.19.190, it is hereby ordered:

1. Respondents shall, within thirty (30) days of the date of this order:
 - a. Relocate their pig to a location outside the City of Pacific Grove;
 - b. Properly dispose of all animal excrement at the Property; and
 - c. Provide written proof of relocation to the City.
2. Respondents shall be assessed Administrative Penalties by the City of Pacific Grove in the amount of \$50 a day for each day the pig remains within the City after thirty (30) days from the date of this order. Respondents shall be assessed further Administrative Penalties in the amount of \$500 a day for each day the pig remains in the City after forty-five (45) days.
3. On or before August 20, 2016, Respondents shall pay Administrative Costs to the City of Pacific Grove in the amount of \$467.50. This sum shall be separate from, and in addition to, the Administrative Penalties described above.
4. This decision is effective and final on the date below.

Dated: July 21, 2016

//Kim Murdock//

Kim Murdock
Administrative Hearing Officer

This decision may be appealed in accord with PGMC Chapter 1.20.010. To obtain judicial review of this decision, a petition for review must be filed with the Monterey Superior Court in accordance with the timelines and provisions set forth in Section 1094.6 of the California Code of Civil Procedure.