

CITY OF SAN LEANDRO

MEMORANDUM

DATE: April 17, 2017
TO: Rules Committee
FROM: Cynthia Battenberg, Community Development Director
SUBJECT: Overview and Discussion of Community Compliance Administrative Enforcement Procedures

SUMMARY AND RECOMMENDATION

Following a review of the Municipal Code and current practices, minor revisions to the Municipal Code and procedures for handling administrative enforcement of the City's Community Preservation Ordinance, Weed Ordinance and Zoning Code are recommended in order to increase voluntary compliance and decrease the amount of time it takes to abate violations. Staff requests input from the Rules Committee on the proposed changes to the Municipal Code. The proposed revisions are scheduled to be heard by the City Council on June 5th. Assuming adoption of the revisions, the revised administrative enforcement process would be effective July 18, 2017.

BACKGROUND

On March 20, 2017, the City Council provided direction to staff to transfer code enforcement responsibilities related to the City's Community Preservation Ordinance, Weed Ordinance and Zoning Code from the Community Compliance Section of the San Leandro Police Department to the Community Development Department. \$1,000,000 was allocated for start-up costs and funding of a two-year enhanced Community Care program. The goal of the initiative is to rebuild the City's resources to address aesthetic issues and community standards throughout the City.

Operations are scheduled to ramp up in Summer 2017 with the hiring of a Code Enforcement Supervisor and two Code Enforcement Officers. A timeline of the roll-out of services follows:

April 20 th	Code Enforcement Supervisor & Code Enforcement Officer job description updates to Personnel Relations Board
April 24 th	Administrative Enforcement Revisions to Muni Code to Rules Committee
June 5 th	Update of Muni Code to City Council
Apr- June	Revise process, develop procedures and create forms Activate Accela Code Enforcement software Revisions to staff processes for MySQL submissions Establish Reporting Systems
July	Code Enforcement Supervisor starts
August	Comprehensive Public Outreach Campaign
August	Code Enforcement Officers start

Prior to start of operations, staff completed a comprehensive review of the Administrative Enforcement section of the City's Municipal Code and current practices of the Police Services Technicians and Building Inspectors that provide code enforcement. The City retained the services of the consulting firm TRB + Associates to assist in this review. The audit of past practices and current field operations revealed that while current staff follow the guidelines of the municipal code throughout the enforcement process, process improvements could result in voluntary compliance

and abatement in a more expeditious manner. This report provides an overview of current practices and proposed practices and includes recommendations to the Municipal Code to streamline the process of obtaining voluntary compliance and as necessary remediating the violation.

ANALYSIS

Staff becomes aware of potential code violations either through routine inspections of locations that are visible from the public right-of-way, or complaints or comments provided by members of the public (such as via the MySQL app). The table below shows an outline of the existing and proposed enforcement processes from the time at which staff determines that a violation exists. For the most complex cases, the proposed process could result in abatement of the violation in roughly half the time of the existing process.

	Current Process	Proposed Process
Day 1	Step 1: Courtesy Notice of Violation letter mailed to the property owner	Step 1: Courtesy Notice door hanger
Day 14		Step 2: Notice of Violation letter posted at property & mailed to the property owner
Day 28		Step 3: Administrative Citation with \$150 fine posted at property & mailed to property owner
Day 30	Step 2: Notice of Violation letter with \$150 fine mailed to the property owner and posted at the property	
Day 42		Step 4: Administration Citation with \$300 fine posted at property & mailed to property owner
Day 56		Step 5: Administration Citation with \$600 fine posted at property & mailed to property owner
Day 60	Step 3: Notice of Violation letter with \$300 fine mailed to the property owner and posted at the property	
Day 70		Step 6: Judicial Order to Abate
Day 90	Step 4: Notice of Administrative Hearing and \$600 fine mailed to property owner and posted at property	
Day 120	Step 5: Administrative Hearing	
Day 150	Step 6: Administrative Order issued	
Day 175	Step 7: Judicial Order to Abate	

Appeals of fines or determinations of a violation can be made to the City Clerk's Office and the person or entity requesting an Appeals Hearing pays an appeals processing fee, which is currently \$75. Staff is not recommending a change to the appeal fee in FY 2017-18. Appeals are heard by an Administration Hearing Board appointed by the City Manager.

The Administrative Hearing Board (Board) is administered by the City Clerk's Office and recommended changes to the process are outlined below.

- Current Hearing Board- The current Board consists of members of the City's management team. Three members serve on each hearing. The Administrative Hearing Board conducts hearings on cases that have not been corrected and issues Administrative Orders regarding the violations including collection of penalties, abatement of violations and recovery of the City's cost of abatement.
- Proposed Hearing Board- The proposed Board would consist of seven individuals from the community (five members and two alternates). Three members would serve on each hearing. The Administrative Hearing Board would conduct hearings on cases that have been appealed and issue Administrative Orders regarding violations including collection of penalties, abatement of violations and recovery of the City's cost of abatement.

No change is recommended to the process to appeal an Administrative Order of the Board. Appeals must be made to the City Manager within fifteen days of the date of issuance of the decision. The City Manager, or his designee, will review and consider the case and issue a final written decision within thirty days.

Unpaid fines and the actual costs of abatement can be liened annually on the property tax roll as part of the City's annual lien process.

Modifications to Municipal Code

Staff recommends minor modifications to Chapter 1-12 Citation- Violations of the Municipal Code to address the following. A redline/strike-out version is provided in Attachment 3.

- Revisions to the Notice of Violation process to remove penalties from this step of the process as penalties are proposed to be handled in the three-step Administrative Citation process.
- Revision to abatement process to provide responsible party with an opportunity to seek an appeal hearing before administrative body prior to the City initiating abatement proceedings through a judicial warrant. Failure to seek an appeal hearing will result in the enforcement officer proceeding to seek a judicial warrant for abatement and precludes judicial review of the notice of violation.
- Addition of an Administrative Citation process to replace the multiple Notices of Violation. Citations should result in swifter action as a citation clearly fines the property owner for non-compliance. The three-step Administrative Citation process would include the fines removed from the Notice of Violation process. 1st violation: \$150; 2nd violation \$300; 3rd violation \$600.
- Modification of Appeal and Administrative Hearing section to more clearly detail the process for consideration of appeals.

Attachments:

Attachment 1 – Current Administrative Enforcement Process

Attachment 2 – Proposed Administrative Enforcement Process

Attachment 3 – Proposed Chapter 1-12 Citation- Violations of the Municipal Code

Attachment 4 – Redline Strikeout Version of Proposed Revisions to Chapter 1-12 Citation – Violations of the Municipal Code

Attachment 1 - Current Administrative Enforcement Process

An outline of the current administrative enforcement process that can take upwards of six months follows.

Step 1 - Courtesy Notice of Violation: In order to provide residents, businesses and property owners sufficient notification, a Courtesy Notice of Violation (CNOV) is the first step in the process of enforcement. The CNOV clearly identifies the violation and required corrective action and generally provides 30-days to abate the violation. The CNOV is mailed to the Responsible Party, i.e. the person or business who have caused the violation and the owner or tenant of the affected property.

Step 2 – Notice of Violation: In cases where the violation is not abated after the specified period, a Notice of Violation with a \$150 fine is sent to the Responsible Party via first class mail, certified mail and a copy of the NOV is posted at the affected property on the date of issuance. The time provided to abate the violation takes into consideration the circumstances of the particular violation. In all cases except those that pose a health and safety threat, the Responsible Party is generally provided 30-days for abatement.

Step 3 – Second Notice of Violation: If the violation remains after the specified deadline identified in the NOV, a Second Notice of Violation (that closely resembles the first NOV) is sent to the Responsible Party with a \$300 fine.

Step 4 – Notice of Administrative Hearing: If the violation is not corrected, the Responsible Party is notified of an Administrative Hearing to abate the issue. The hearing date is set not less than fifteen days nor more than sixty days from the date of the Notice of Administrative Hearing. The maximum amount of fines that can be assessed to a Responsible Party is \$5,000.

Step 5 – Administrative Hearing: Staff from the City Attorney's Office advises the Administrative Hearing Board and assists in the preparation of Administrative Orders. The hearings are open to the public. The City's Community Compliance staff presents the cases to the Board and the Responsible Party is provided an opportunity to present their side of the case. The Administrative Hearing Board issues Administrative Orders within thirty days of the hearing date.

Step 6 – Obtain Judicial Warrant and Abate: In order to legally abate a nuisance on a property, staff must obtain a warrant from a judge proving that multiple attempts have been made to remedy the situation and proper notification has been provided to the Responsible Party. Additionally, staff must arrange for abatement.

Attachment 2 – Proposed Administrative Enforcement Process

An outline of the recommended administrative enforcement process, which would take approximately three months, follows:

Step 1- Courtesy Notification: The notification process would begin with a Courtesy notice in the form of a multi-lingual door hanger to advise the individual of the violation.

Step 2 – Notice of Violation: 10-days later, should the violation still exist, a NOV with information on the particular violation and needed remedy is posted on site and a copy is sent to the property owner via First Class mail and certified mail. The property owner is provided 10-days to remedy the violation. Notifications will be provided in English, Spanish & Chinese. The NOV will state that the City will abate the violation and provide the responsible party with an opportunity to appeal the notice of violation and show cause at a hearing as to why such condition should not be abated by the City at the responsible party's expense. Failure to appeal constitutes a waiver of the right to appeal the notice of violation and a failure to exhaust administrative remedies.

Step 3 – Administrative Citation: Should the violation remain after the specified period, an Administrative Citation of \$150 would be issued to the property owner.

Step 4 – Administrative Citation: Should the violation remain after the specified period, an Administrative Citation of \$300 would be issued.

Step 5 – Administrative Citation: Should the violation remain after the specified period, an Administrative Citation of \$600 would be issued. The City could continue to issue Administrative Citations up to the amount of \$5,000 cumulatively.

Step 6 – Obtain Warrant from Judicial Court to Abate: A public works maintenance worker has been added to the Community Care team to assist with abatement which should decrease the amount of time it takes to abate nuisances.

ATTACHMENT 3 – PROPOSED CHAPTER 1-12 CITATION—VIOLATIONS OF THE MUNICIPAL CODE

ARTICLE 1. CODE ENFORCEMENT

1-12-100 TITLE.

This Ordinance shall be known as the “Code Enforcement Ordinance,” and is hereinafter referred to within this Chapter 1-12 as “this Chapter.”

1-12-105 PURPOSE.

The purpose of this Chapter is to provide the City of San Leandro (“City”) with criminal, civil, and administrative remedies, which shall be in addition to all other legal remedies that may be pursued by the City, to prevent, discourage, abate, or otherwise address any violation of this Code, as that term is defined below.

1-12-110 DEFINITIONS.

(a) **AFFECTED PROPERTY.** “Affected property” shall mean the lands, or portions thereof, within the City, and/or improvements on such lands, on, in, or concerning which a violation has occurred.

(b) **THIS CODE OR THE CODE.** “This Code” or “the Code” shall mean the San Leandro Municipal Code and shall include the City’s Zoning Code, the Administrative Code, all incorporated Uniform Codes, and any applicable state laws and regulations.

(c) **DAY OR DAYS.** “Day” or “days” shall mean calendar days.

(d) **ENFORCEMENT OFFICER.** “Enforcement Officer” means the City Manager or any person who is authorized or directed by the City Manager to enforce any provision of this Code. In addition to any other powers conferred upon him or her by this Code or by other state, county or federal law, any such designated Enforcement Officer shall have the authority to arrest a person without a warrant, issue a notice to appear, as described in Penal Code Section 948, or issue a notice of violation or administrative penalty, as described in Sections 1-12-400, 1-12-410 and 1-12-415 below, if such Enforcement Officer has cause to believe that a violation of this Code was, or is being, committed.

(e) **HEARING BODY.** “Hearing Body” shall mean the City Manager, or any person or persons appointed by the City Manager to conduct a hearing authorized by this Chapter.

(f) **OWNER.** “Owner” shall mean the owner or owners of record of the affected property.

(g) **PENALTY.** “Penalty” shall mean an administrative penalty imposed by an Enforcement Officer, pursuant to Section 1-12-415 of this Code.

(h) **RESPONSIBLE PARTY.** “Responsible party” shall mean any natural persons, firm, association, club, organization, corporation, partnership, business trust, trustee, or entity, and the parents or legal guardian of any person under eighteen (18) years of age, whose acts or omissions have caused or contributed to a violation of this Code, and shall include any owners, tenants, or holders of other estates or rights in, the affected property.

1-12-115 VIOLATION A PUBLIC NUISANCE, ALTERNATIVE REMEDIES PROVIDED.

A violation of this Code, including any continuing violation as set forth in Section 1-12-140, below, is hereby declared to be a public nuisance. In addition to the remedies for nuisance abatement provided in this Chapter, the City expressly reserves the right to utilize other enforcement remedies found within specific chapters of the Code, remedies available under any applicable state or federal statute or pursuant to any other lawful power the City may possess.

All such remedies shall be alternative to or in conjunction with, and not exclusive of, one another. The election of remedies provided by this Chapter shall be at the sole discretion of the City and its officials.

The City Manager may direct that any required hearing be conducted before a Hearing Body. An Enforcement Officer, or a Hearing Body designated by the City Manager, may order the abatement of any public nuisance, as defined in this Code or in any state or federal statute, following notice and an opportunity for a hearing. However, no notice or hearing is required to abate a nuisance pursuant to the summary abatement authority set forth in Section 1-12-500, below.

1-12-120 VIOLATION OF LICENSE, PERMIT, AGREEMENT OR APPROVAL.

It shall be a violation of this Code to violate any term or condition of any license, permit, agreement, or approval granted or issued pursuant by the City. Any person, whether as principal, agent, employee or otherwise, violating or contributing to the violation of any such term or condition shall be subject to the sanctions provided in this Chapter or any other law.

1-12-130 CAUSING, PERMITTING, ETC., A VIOLATION.

Causing, permitting, aiding, abetting, contributing to, or concealing a violation of any provision of this Code shall constitute a violation of such provision.

1-12-140 SEPARATE AND CONTINUING VIOLATIONS.

A separate offense shall be deemed committed each day a violation of this Code occurs or continues. Any condition of real property that constitutes a violation of this Code, where the same, substantially similar, or related violations have been the subject of two (2) or more enforcement actions within any twelve (12) month period, is deemed to be a continuing violation. For the purposes of this section, "enforcement action" shall mean any notice of violation, including a warning or courtesy notice, hearing, citation, complaint or petition, or any administrative or judicial order under authority of this Chapter or pursuant to any other legal authority. Any subsequent enforcement action with respect to such continuing violation may include issuance of a written order prohibiting future violations of this Code, establishing fines for subsequent violations, and authorizing the City, or an agent or contractor of the City, to enter onto the affected property and abate the condition that is the subject of said enforcement action, and allowing recovery by the City of the costs of future enforcement actions.

1-12-150 AUTHORITY TO INSPECT.

An Enforcement Officer may exercise all lawful authority to enter upon any real property or premises to ascertain whether the provisions of this Code are being obeyed and to make any examinations and surveys as may be necessary in the performance of his or her code

enforcement duties. Inspections may include and/or involve the taking of photographs, samples, or other physical evidence and conferring with persons present.

ARTICLE 2. VIOLATIONS

1-12-200 CRIMINAL ENFORCEMENT OF CODE VIOLATIONS.

(a) A violation of this Code may be prosecuted as a criminal offense. Unless expressly described as an infraction, a violation of any provision of this Code, or failing to comply with any mandatory requirement hereof, shall constitute a misdemeanor. Notwithstanding the preceding sentence or any other section of this Code, a violation of this Code may, in the discretion of the enforcing authority, be charged and prosecuted as an infraction.

(b) Any person convicted of a misdemeanor under the provisions of this Code, unless provision is otherwise herein made, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment in the County jail for a period of not more than six (6) months or by both fine and imprisonment.

(c) Any person convicted of an infraction under this Code shall be punished by a fine of not more than One Hundred Dollars (\$100.00) for a first violation, or a fine of not more than Two Hundred Dollars (\$200.00) for a second violation of the same Code section within one year. A third (or more) violation of the same code section by the same person within a twelve (12) month period may be charged and prosecuted as a misdemeanor.

(d) Upon entry of a second or subsequent conviction against the same responsible party within a two (2) year period for a condition of real property constituting a public nuisance under this Chapter, the court may require the responsible party to pay to the City treble the cost of the abatement. Any costs awarded to the City may be enforced in the manner described in Section 1-12-600, below.

1-12-210 CRIMINAL CITATION PROCEDURE.

(a) If an Enforcement Officer arrests a person for a violation of this Code and elects to charge the violation as a misdemeanor or infraction, such Officer shall prepare in duplicate a written notice to appear, pursuant to Penal Code §948, containing the name and address of such person, the offense(s) charged, and the time and place where and when such person shall appear in court. The arresting Enforcement Officer shall deliver one copy of the notice to appear to the violator and the violator, in order to secure release, must give his written promise to so appear in court by signing the duplicate notice which shall be retained by the Officer. The time specified in the notice to appear must be at least thirty (30) days after the date of the arrest.

(b) In any matter where the City Attorney is charged with prosecuting the violation, the arresting Enforcement Officer shall, as soon as practicable, send a duplicate notice to appear to the City Attorney, who will process the citation with the Superior Court of Alameda County (hereinafter, "the court"). In all other cases, the matter shall be referred directly to the District Attorney's office for prosecution. Thereupon the clerk of the court shall fix the amount of bail according to the City's approved bail schedule. The defendant may, prior to the date upon which he promised to appear in court, deposit with the court the amount of bail thus set. Thereafter, at the time when the case is called for arraignment before a Magistrate, if the defendant does not

appear in person or by counsel, the Magistrate may declare bail forfeited, and may, in his/her discretion, order that no further proceedings be had in such case.

(c) The City Council shall establish, by resolution, a recommended bail schedule which may be amended from time to time. The amount of recommended bail imposed for violations that are prosecuted as criminal offenses pursuant to this Chapter shall be set forth in the bail schedule. The bail schedule shall include a recommended amount for any increased bail amount for repeated violations of the same provisions by the same person within a twelve (12) month period from the date of the issuance of a notice to appear.

(d) Any person willfully violating his/her written promise to appear in court is guilty of a misdemeanor regardless of the disposition of the charge upon which he/she was originally arrested.

1-12-220 VIOLATIONS OF RULES AND REGULATIONS OF SUBORDINATE BOARDS OR COMMISSIONS.

Except as expressly provided in this Code, any conduct or activity that violates any rule or regulation adopted by any subordinate board or commission established pursuant to a resolution adopted by the City Council, shall be prosecuted as an infraction, if the Enforcement Officer elects to pursue criminal enforcement of such violation.

ARTICLE 3. CIVIL ACTION

1-12-300 CIVIL ACTION — COLLECTION OF COSTS BY THE CITY.

The provisions of this Code may be enforced by a civil court action, prosecuted by the City Attorney in the name of the City.

(a) Whenever the City Attorney is authorized or directed to commence or sustain any civil action or proceeding, either at law or in equity, to enforce any provision of this Code, or any rule, regulation or order promulgated or issued pursuant to this Code, or any condition of an approval, permit or license granted pursuant to this Code, or to enforce any provision of any contract or agreement, or to enjoin or restrain any violation thereof, or to otherwise abate a public nuisance or collect any sums of money on behalf of the City, then the City shall be entitled to collect all costs and expenses of the same, including, without limitation, reasonable attorney's fees and the reasonable investigation costs, which shall be set by the court and made a part of and judgment in any such action or proceeding.

(b) Upon entry of a second or subsequent civil judgment against the same property owner within a two (2) year period for a condition of real property constituting a public nuisance under this Chapter, the court issuing judgment may order the owner to pay treble the cost of the abatement.

(c) Any costs awarded to the City under this section may be enforced and collected upon in the manner described in Section 1-12-600, below.

ARTICLE 4. ADMINISTRATIVE ENFORCEMENT

1-12-400 ADMINISTRATIVE ENFORCEMENT OF CODE VIOLATIONS.

Any Enforcement Officer shall have the authority to gain compliance with all provisions of this Code. These powers include the power to issue a notice of violation and administrative

penalties, as described below in Sections 1-12-410 and 1-12-415, the power to inspect public and private property, and to seek and employ whatever remedies are available under this Code.

1-12-410 NOTICE OF VIOLATION.

(a) Subject to subsection (e), below, whenever an Enforcement Officer finds that a provision of this Code has been violated, including but not limited to a failure to comply with a condition imposed by any agreement, entitlement, permit, license or environmental document issued or approved by or on behalf of the City or failure to comply with any County, State or Federal laws the violation of which constitutes a public nuisance, and such officer determines to pursue administrative enforcement of the violation pursuant to this Chapter, he or she shall issue the responsible party a written notice of the violation providing that the City will abate the violation and providing the responsible party with an opportunity to appeal the notice of violation and show cause at a hearing as to why such condition should not be abated by the City at the responsible party's expense ("notice of violation"). Failure to appeal pursuant to Section 1-12-425 of this Chapter constitutes a waiver of the right to appeal the notice of violation and a failure to exhaust administrative remedies. Such notice of violation shall be served on the Responsible party in the manner described in subsection (b), below. The Enforcement Officer shall include in the notice of violation the following information:

(1) The date and location of the violation, including the address or other definite description of the location where the violation occurred, or is occurring;

(2) The sections of the Code being violated and a description of each such violation;

(3) Actions required to correct or abate the violation, and the period of time during which such required actions shall be commenced and completed, such period of time to be determined in the manner set forth in subsection (d), below.

(4) A statement that the failure to correct and abate the violation, will result in the Enforcement Officer ordering the violation or violations abated, and ordering that the responsible party bear the costs of such abatement including all administrative costs incurred by the City.

(5) An order prohibiting the continuation or repeated occurrence of a violation of this Code described in the notice of violation.

(6) A statement that the responsible party may appeal the notice of violation by filing with the City Clerk, on the form provided for that purpose, a request for hearing within fifteen (15) calendar days of the date the notice of violation is served that includes the following information:

(i) If the responsible party appeals the notice of violation, the responsible party may appear before the Hearing Body and show cause why the violations and conditions specified in the notice of violation should not be abated by the City at the responsible party's expense.

(ii) Upon failure to appear for the hearing, or the failure to correct and abate a condition which is determined to constitute a violation, the Hearing Body may order the violation or violations abated, and may order that the responsible party shall bear the costs of such abatement including all administrative costs incurred by the City.

(iii) Failure to appeal the notice of violation constitutes a waiver of the right to appeal the notice of violation and a failure to exhaust administrative remedies.

(7) The signature of the citing Enforcement Officer.

(b) Service of notice of violation shall be made upon the responsible party or the owner, personally or by First Class U.S. Mail, with Certificate of Mailing, and if by such mail to the owner it shall be sent to the last known address listed on the most recent tax assessor's records. In the case of personal service, service shall be deemed complete at the time of such delivery. In the case of service by First Class U.S. Mail, service shall be deemed complete at the time of deposit into the United States mail. Where service is by First Class U.S. Mail upon the owner, a copy of the notice of violation shall be conspicuously posted at the affected property for a period of not less than three (3) calendar days prior to the first date that commencement of corrective action or abatement is to be undertaken. The failure of any person to receive a notice of violation that was sent via First Class U.S. Mail shall not affect the validity of any enforcement proceedings under this Chapter.

(c) Proof of service of the notice of violation shall be certified by a written declaration under penalty of perjury executed by the person effecting service, declaring the date, time, and manner that service was made, and the date and place of posting, if applicable. The declaration, along with the Certificate of Mailing, shall be affixed to a copy of the notice of violation and retained by the Enforcement Officer.

(d) The time allowed for abatement of a violation shall be a "reasonable time" in the judgment of the Enforcement Officer, based upon the circumstances of the particular violation, taking into consideration the means required to abate the violation, the period of time that the nuisance has existed, and the potential threat to public health and safety created by the violation. If the violation pertains to building, electrical, or other similar structural or zoning issues where the violation does not create an immediate threat to health or safety, the responsible party shall be provided not less than ten (10) calendar days in which to correct, abate, or otherwise remedy the violation before a penalty is imposed.

(e) The failure of a notice of violation to satisfy all of the requirements of this provision shall not affect the validity of any other enforcement proceedings under this Code.

1-12-415 ISSUANCE OF ADMINISTRATIVE PENALTIES.

(a) Whenever an Enforcement Officer finds that a provision of this Code has been violated, including but not limited to a failure to comply with a condition imposed by any agreement, entitlement, permit, license or environmental document issued or approved by or on behalf of the City or failure to comply with any County, State or Federal laws the violation of which constitutes a public nuisance, such Enforcement Officer is authorized to issue administrative penalties. Administrative penalties may be issued for the enforcement of any section or provision of this Code. Such penalties may be issued to the responsible party.

(b) Administrative penalties shall be issued on forms approved by the City Attorney. Each penalty shall indicate, at a minimum, the following information:

- (1) The name of the person or entity to whom the penalty is issued.
 - (2) The address or location where the violation is observed.
 - (3) The section of this Code that is being violated.
 - (4) The date by which an appeal of the penalty must be sought before the penalty becomes final.
 - (5) The procedure for seeking an appeal of the penalty.
 - (6) The amount of the administrative penalty to be imposed for each violation up to a maximum penalty of One Hundred Fifty Dollars (\$150.00) for a first violation, Three Hundred Dollars (\$300.00) for a second violation of the same ordinance within one year, and Six Hundred Dollars (\$600.00) for each additional violation within one year, and the first day that any such penalty will be imposed.
 - (7) The manner of payment of the administrative penalty.
- (c) Service of the penalty shall be made upon the responsible party or the owner, personally or by First Class U.S. Mail, with Certificate of Mailing, and if by such mail to the owner it shall be sent to the last known address listed on the most recent tax assessor's records. In the case of personal service, service shall be deemed complete at the time of such delivery. In the case of service by First Class U.S. Mail, service shall be deemed complete at the time of deposit into the United States mail. Where service is by First Class U.S. Mail upon the owner, a copy of the penalty shall be conspicuously posted at the affected property for a period of not less than three (3) calendar days prior to the first date that commencement of corrective action or abatement is to be undertaken. The failure of any person to receive a copy of the penalty that was sent via First Class U.S. Mail shall not affect the validity of any enforcement proceedings under this Chapter.
- (d) The payment of a penalty by or on behalf of any responsible party shall not relieve such party from the responsibility of correcting, removing or abating the violation, nor prevent further proceedings under this Chapter or any other lawful authority to achieve the enforced correction, removal or abatement of the violation.
- (e) A responsible party may appeal the imposition of any penalty or the amount of such penalty by filing a request for hearing form in accordance with the provisions of Section 4-12-425 of this Chapter.
- (f) Each and every day during any portion of which any violation is committed, continued, or permitted shall be deemed a separate and distinct violation. A penalty may continue to accrue on a daily basis until the violation is corrected, up to a maximum amount of Five Thousand Dollars (\$5,000.00).
- (g) Any penalty is a debt owed to the City. In addition to all other means of enforcement, any penalty may be enforced as a personal obligation of the responsible party. If the violation is in connection with real property, any penalty may be enforced by imposition of a

lien or special assessment upon the real property. Any lien or special assessment imposed upon the real property shall remain in effect until the penalty is paid in full.

1-12-420 PAYMENT AND COLLECTION OF ADMINISTRATIVE PENALTY.

(a) If a penalty is imposed and the responsible party fails to timely and properly appeal such imposition, the responsible party against whom a penalty is imposed shall pay any such penalty within thirty (30) days of the imposition thereof. Any penalty imposed shall be payable to the City, or to a collection agency if the penalty has been assigned to a collection agency pursuant to subsection (c), below.

(b) If the amount of any penalty imposed for a violation relating to real property has not been satisfied in full within sixty (60) days of the date due and has not been successfully challenged in court, the penalty amount may become a special assessment and lien against the affected property, as provided in Section 1-12-600 of this Chapter. If the City elects to make the amount of any penalty a special assessment or lien against the affected property, a statement of the amount due, and any additional costs or expenses that might be recoverable as part of the enforcement action, shall be prepared and submitted to the City Council for confirmation in accordance with the procedures described in Section 1-12-600.

(c) Notwithstanding subsection (b), the amount of any unpaid penalty may be collected by commencement of a civil action to collect such penalty, or in any other manner provided by law for the collection of debts, including assignment of the debt to a collection agency. Subject to the requirements of this Chapter and other applicable law, amounts assigned for collection are subject to collection agency rules, regulations and policies. The City shall be entitled to recover any and all costs associated with collection of any such penalty.

(d) The payment of a penalty by or on behalf of any responsible party shall not relieve such party from the responsibility of correcting, removing or abating the violation, nor prevent further proceedings under this Chapter or any other lawful authority to achieve the enforced correction, removal or abatement of the violation.

1-12-425 HEARINGS.

(a) Any person appealing a notice of violation or penalty must obtain a “request for hearing” form from the City Clerk’s Office and return it fully completed within fifteen (15) days from the date of service of the notice of violation or penalty. At the time of returning the request for hearing form to the City Clerk’s Office, the person or entity requesting the appeals hearing shall pay an appeals processing fee established by the City Council. Failure to submit a completed appeals form or to pay the appeals processing fee constitutes a waiver of the right to appeal the notice of violation or penalty and a failure to exhaust administrative remedies. Imposition of a penalty shall be stayed during the pendency of an appeal therefrom which is properly and timely filed. The failure to file a timely and proper appeal shall constitute a failure to exhaust administrative remedies and preclude judicial review.

(b) The hearing on appeal shall be set for a date not less than fifteen (15) days nor more than sixty (60) days from the date the request for hearing form is filed, unless the Enforcement Officer determines that the matter is urgent or that good cause exists for an

extension of time, in which case the date for such hearing may be shortened, or extended, as warranted by the circumstances.

(c) Any other hearing set pursuant to a request for hearing shall be set for a date not less than fifteen (15) days nor more than sixty (60) days from the date the request for hearing was received by the City Clerk.

(d) A hearing under authority of this section shall be conducted according to the procedures set forth in this subsection. The failure of any interested party to appear at the hearing shall constitute a waiver of the right to such hearing and a failure by such party to exhaust their administrative remedies.

(1) When a request for hearing is filed, the City Clerk shall set the time and place for hearing pursuant to subsection (b) or (c), and shall serve a notice of hearing by regular mail to the appellant at the address provided in the request for hearing form. The time for such hearing shall be no sooner than ten (10) days from the date of said notice of hearing.

(2) At the place and time set forth in the notice of hearing, the Administrative Hearing Body shall conduct a hearing on the issues subject to the appeal, the alleged violations and/or the imposition and amount of any penalty. The Administrative Hearing Body shall provide for any interested person or persons to appear and object to the determination that is the subject of the appeal, including, but not limited to, whether a violation has occurred and/or that the violation continues to exist, or any matter pertaining to any penalty. The Administrative Hearing Body may consider any written or oral testimony and evidence regarding the issue presented by the alleged appellant, the owner, any officer, employee, or agent of the City, and any other interested party.

(3) After receiving all of the evidence presented, the public portion of the hearing shall be closed. The Administrative Hearing Body may then deliberate and consider what action, if any, should be taken, or may adjourn the hearing and take the matter under consideration.

(4) Within thirty (30) days following the conclusion of the hearing, the Administrative Hearing Body shall issue written findings and make a determination regarding the issue on appeal.

(i) The Administrative Hearing Body shall issue written findings and make a determination regarding the existence of the violation and/or the failure of the responsible party to take required corrective action within the specified time period, or the validity of any penalty imposed. If the Administrative Hearing Body finds by a preponderance of the evidence that a violation occurred, or that a violation was not corrected within the time period specified in the notice of violation or with the issuance of the penalty, the Administrative Hearing Body shall issue its decision including any Administrative Order in accordance with Section 1-12-430, below. If the Administrative Hearing Body finds that no violation occurred, that the violation was corrected within the specified time period, or that the appellant is not the responsible party, the Administrative Hearing Body shall issue a decision with written findings of those facts.

(6) The appellant shall be served with a copy of the decision of the Administrative Hearing Body, including an Administrative Order if one is issued, in the manner and method set forth in Section 1-12-410 (b), above.

1-12-430 DECISION OF THE ADMINISTRATIVE HEARING BODY AND ADMINISTRATIVE ORDER.

(a) The Administrative Hearing Body considering any appeal of the imposition of a penalty pursuant to Section 1-12-425 may confirm, vacate, or modify but not increase, any such penalty imposed, and order the payment thereof. The decision shall state that review of the decision may be had by filing an appeal pursuant to Section 1-12-450, and shall specify the time limits for such filing.

(b) The Administrative Hearing Body considering any appeal of a notice of violation, if it determines that a violation exists, may issue an Administrative Order imposing the remedies provided in this subsection. The decision shall state that review of the decision may be had by filing an appeal pursuant to Section 1-12-450, and shall specify the time limits for such filing. The remedies for a violation found as a result of such a hearing shall be as follows:

(1) Requiring the responsible party to correct or eliminate the violation or nuisance condition, including a proposed schedule for correction or elimination.

(2) Authorizing the City to enforce the Administrative Order and abate or cause the abatement of the violation where the responsible party has refused or has otherwise neglected to take appropriate steps to correct or eliminate the violation. The Administrative Order shall specify that if the City undertakes to abate or eliminate the violation it shall be entitled to recovery of all costs and expenses incurred in performing such work, and shall also be entitled to recover its administrative costs. Administrative costs shall include costs incurred by the City in connection with the proceeding, including attorney's fees, costs of investigation, staffing costs incurred in preparation for the hearing and for the hearing itself, and the cost of any re-inspection and other costs necessary to enforce the Administrative Order. Such costs, if unpaid, may be recovered by the City through a lien on the affected property or through a special assessment as provided in Section 1-12-600 of this Chapter.

(3) Any other order or remedy that is in the interests of justice.

1-12-440 PAYMENT OF PENALTY.

(a) Any penalty imposed by the Administrative Hearing Body shall be paid to the City within thirty (30) days from the date of the decision, unless an extension of time is requested by the violator and granted by the Administrative Hearing Body.

(b) Any appeals processing fee that is paid pursuant to Section 1-12-425(a), above, shall be refunded to the payee if it is determined by the Administrative Hearing Body that the person assessed the penalty was not responsible for the violation or that there was no violation as charged in said notice.

(c) Payment of any penalty that is upheld or otherwise imposed by the Hearing Body shall not excuse or permit any continuation or repeated occurrence of the violation that is the subject of the penalty.

(d) Any penalty imposed by the Administrative Hearing Body shall accrue from the date specified in the penalty and shall continue to accrue on a daily basis until the violation is corrected. The determination of compliance or elimination of the violation shall be made by the

Enforcement Officer, unless such determination was made by the Administrative Hearing Body as a result of the hearing. The Administrative Hearing Body, in its discretion, may suspend the imposition of any penalty for a period of time not to exceed sixty (60) days during which the responsible party applies for permits required to achieve compliance, and such permit applications are actively pending before, or have already been issued by, the City, the State, or other appropriate governmental agency.

(e) Any penalty assessed by the Administrative Hearing Body is a debt owed to the City. In addition to all other means of enforcement and/or collection, any such penalty may be enforced as a personal obligation of the responsible party. If the violation is in connection with real property, such penalty may be enforced by imposition of a lien or special assessment upon the real property. Any lien or special assessment imposed upon the real property shall remain in effect until the penalty is paid in full.

1-12-450 REVIEW OF ADMINISTRATIVE HEARING BODY DECISION.

(a) Any person or entity aggrieved by a decision of the Administrative Hearing Body may seek review of said decision by filing a request for City Manager review in the manner for requesting a hearing pursuant to Section 1-12-425. Failure to submit a completed appeals form or to pay the appeals processing fee constitutes a waiver of the right to appeal the decision of the Administrative Hearing Body and a failure to exhaust administrative remedies. The request for City Manager review must be filed with the City Clerk's office within fifteen (15) days from the date of issuance of Administrative Hearing Body Decision. Upon timely receipt of a request for City Manager review, the City Manager may consider any written or oral testimony and evidence presented. The City Manager will issue a final written decision within thirty (30) days from the receipt of request for City Manager review.

(b) Any person or entity aggrieved by the City Manager Review decision issued pursuant to subsection (a) of this section relating to a decision of a Hearing Body made pursuant to subsection (a) of Section 1-12-430 may obtain judicial review of said decision pursuant to Government Code Section 53069.4 by filing an appeal to the Superior Court for the County of Alameda, subject to the time limits described in Section 1-12-800, below.

(c) Any person or entity aggrieved by the City Manager Review decision issued pursuant to subsection (a) of this section relating to a decision of a Hearing Body made pursuant to subsection (b) of Section 1-12-430 may obtain review of said decision in the Superior Court for the County of Alameda by filing with said court a Petition for Writ of Mandate, subject to the time limits described in Section 1-12-800, below.

ARTICLE 5. SUMMARY ABATEMENT

1-12-500 SUMMARY ABATEMENT PROCEDURE.

Notwithstanding any other provision of this Code, whenever, in the reasonable judgment of the Enforcement Officer, the existence or continuance of any violation of this Code; or any public nuisance, or any other condition which poses an imminent or immediate danger of significant harm to persons or property, or so endangers the public health, welfare or safety, an Enforcement Officer may act immediately and without prior notice or hearing to abate such condition. The expense or cost resulting from such summary abatement shall be enforceable as a personal obligation of the responsible party. The expense or cost of summary abatement may be imposed as a lien or a special assessment on real property, as described in Section 1-12-600.

ARTICLE 6. LIENS

1-12-600 COST ACCOUNTS AND IMPOSITION OF LIENS OR SPECIAL ASSESSMENTS.

(a) If a judicial order or Administrative Order authorizes the City to abate a public nuisance, the city official responsible for such abatement shall keep an accounting of the cost of abatement along with any other recoverable costs. The accounting shall be submitted to the Finance Director for inclusion in the annual report prepared by the Finance Director for the City Council. At least ten (10) days prior to the submission of the report to the City Council, a copy of the report and notice shall be mailed to the responsible party and/or to the owner of the property where the nuisance existed, if the nuisance concerns real property, at the address shown for such owner on the last tax roll.

(b) At the time and place fixed for receiving and considering the report required by subsection (a), the City Council shall hear any objections by the responsible party or property owner against whom such cost are being charged or against whose property an abatement lien or special assessment may be imposed for such costs. After considering the report and any objections thereto, the City Council may make such modifications to the report as it deems appropriate, after which the report shall be confirmed by resolution or order.

(c) Any penalty imposed for violations of this Code, including any other codes or statutes that have been incorporated into this Code, any administrative costs or other expenses of enforcement, and the cost or expenses associated with the abatement of a public nuisance that are levied in accordance with this Chapter, whether imposed or levied judicially or administratively, may be enforced by the recordation of a lien against the property of the owner of the real property where the nuisance condition existed. Any such lien shall be recorded in the Office of the County Recorder for Alameda County, and from the date of recording shall have the force, effect, and priority of a judgment lien. A lien authorized by this section shall specify the amount of the lien, that the lien is being imposed on behalf of the City of San Leandro, the date of the abatement order, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.

(d) Before recordation of a lien authorized by this section, a notice of lien shall be served on the responsible party and/or owner of record of the parcel of land on which the nuisance existed, based on the last equalized assessment roll or the supplemental roll, whichever is more current. The notice of lien shall be served in the same manner as a summons in a civil action. If the owner of record cannot be found, after a diligent search, the notice of lien may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in a newspaper of general circulation published in Alameda County, California.

(e) Any fee imposed on the City by the County Recorder for costs of processing and recording the lien and the cost of providing notice to the property owner in the manner described herein may be recovered from the property owner in any foreclosure action to enforce the lien after recordation.

(f) As an alternative to the lien procedure described in subsection (c), above, any penalty imposed for violations of this Code, including any other codes or statutes that have been incorporated into this Code, any administrative costs or other expenses of enforcement, and the

cost or expenses associated with the abatement of a public nuisance that are levied in accordance with this Chapter, whether imposed or levied judicially or administratively, may become a special assessment and lien against the real property where the nuisance condition existed. Any special assessment imposed on real property pursuant to this section may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as is provided for ordinary municipal taxes. Notice of any special assessment that is levied on real property pursuant to this section shall be given to the property owner by certified mail, and shall contain the information set forth in Government Code §38773.5(c). All laws applicable to the levy, collection, and enforcement of municipal taxes, including those described in Government Code §38773.5(c), shall be applicable to such special assessment.

ARTICLE 7. SUPPLEMENTARY ENFORCEMENT 1-12-700 SUPPLEMENTARY ENFORCEMENT AUTHORITY.

Nothing in this Chapter shall prevent the City from initiating any other legal or equitable proceeding to obtain compliance or to discourage non-compliance with the provisions of this Code. The enforcement procedures described in this Chapter are intended to be alternative methods of obtaining compliance and/or discouraging non-compliance with the provisions of this Code and are expressly intended to be in addition to any other remedies provided by law or this Code. It is the intent of the City Council that the immunities prescribed in Penal Code §836.5 shall be applicable to the Enforcement Officer, and any other public officers or employees, acting in the course and scope of employment pursuant to this Chapter.

ARTICLE 8. JUDICIAL REVIEW 1-12-800 LIMITATION OF TIME FOR JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS.

(a) An appeal filed pursuant to Section 1-12-450(a), seeking judicial review pursuant to Government Code §53069.4 of an administrative penalty imposed by the decision of a Hearing Body, shall be filed within the time limits prescribed therein.

(b) Except as otherwise provided herein; the provisions of California Code of Civil Procedure (C.C.P.) §1094.6 or successor statute are hereby adopted and any petition for review of an administrative decision of the City of San Leandro, or of any of its boards, commissions, departments, agencies, or persons authorized to render such a decision, including review pursuant to Section 1-12-450, shall be filed within the time limits prescribed therein. Notwithstanding such time limits, where a shorter time limitation is provided by any other law, such shorter time limit shall apply.

(c) Except as provided in subsection (a), the limitation provided in subsection (b) shall apply to any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in the person conducting the hearing.

(d) The limitation provided in subsection (b) shall apply to all administrative proceedings specified in subsection (c) now pending or hereafter begun. Written notice of this

limitation shall be given to the parties to such proceedings by the decision-maker in substantially the following form:

“The time within which judicial review of this decision must be sought is governed by C.C.P. Section 1094.6. Judicial review must be sought not later than the 90th day following the date on which this decision becomes final, except that where a shorter time is provided by any State or Federal law, such shorter time limit shall apply.”

(e) This section shall not be deemed to revive any cause of action or grounds for relief through a special proceeding which is barred by law or equity.

(f) All costs of preparing a record which may be recovered by a local agency pursuant to C.C.P. §1094.6(c) or successor statute, shall be paid by the petitioner prior to delivery of the record to petitioner.

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ATTACHMENT 4 – REDLINE STRIKE OUT VERSION OF PROPOSED REVISIONS TO CHAPTER 1-12 CITATION—VIOLATIONS

ARTICLE 1. CODE ENFORCEMENT 1-12-100 TITLE.

This Ordinance shall be known as the “Code Enforcement Ordinance,” and is hereinafter referred to within this Chapter 1-12 as “this Chapter.”

1-12-105 PURPOSE.

The purpose of this Chapter is to provide the City of San Leandro (“City”) with criminal, civil, and administrative remedies, which shall be in addition to all other legal remedies that may be pursued by the City, to prevent, discourage, abate, or otherwise address any violation of this Code, as that term is defined below.

1-12-110 DEFINITIONS.

(a) **AFFECTED PROPERTY.** “Affected property” shall mean the lands, or portions thereof, within the City, and/or improvements on such lands, on, in, or concerning which a violation has occurred.

(b) **THIS CODE OR THE CODE.** “This Code” or “the Code” shall mean the San Leandro Municipal Code and shall include the City’s Zoning Code, the Administrative Code, all incorporated Uniform Codes, and any applicable state laws and regulations.

(c) **DAY OR DAYS.** “Day” or “days” shall mean calendar days.

(d) **ENFORCEMENT OFFICER.** “Enforcement Officer” means the City Manager or any person who is authorized or directed by the City Manager to enforce any provision of this Code. In addition to any other powers conferred upon him or her by this Code or by other state, county or federal law, any such designated Enforcement Officer shall have the authority to arrest a person without a warrant, issue a notice to appear, as described in Penal Code Section 948, or issue a notice of violation or administrative penalty, as described in Sections 1-12-400, ~~and~~ 1-12-410 and 1-12-415 below, if such Enforcement Officer has cause to believe that a violation of this Code was, or is being, committed.

(e) **HEARING BODY.** “Hearing Body” shall mean the City Manager, or any person or persons appointed by the City Manager to conduct a hearing authorized by this Chapter.

(f) **OWNER.** “Owner” shall mean the owner or owners of record of the affected property.

(g) **PENALTY.** “Penalty” shall mean an administrative penalty imposed by an Enforcement Officer, pursuant to Section 1-12-415~~9~~ of this Code.

(h) **RESPONSIBLE PARTY.** “Responsible party” shall mean any natural persons, firm, association, club, organization, corporation, partnership, business trust, trustee, or entity, and the parents or legal guardian of any person under eighteen (18) years of age, whose acts or omissions have caused or contributed to a violation of this Code, and shall include any owners, tenants, or holders of other estates or rights in, the affected property.

1-12-115 VIOLATION A PUBLIC NUISANCE, ALTERNATIVE REMEDIES PROVIDED.

A violation of this Code, including any continuing violation as set forth in Section 1-12-140, below, is hereby declared to be a public nuisance. In addition to the remedies for nuisance abatement provided in this Chapter, the City expressly reserves the right to utilize other enforcement remedies found within specific chapters of the Code, remedies available under any applicable state or federal statute or pursuant to any other lawful power the City may possess.

All such remedies shall be alternative to or in conjunction with, and not exclusive of, one another. The election of remedies provided by this Chapter shall be at the sole discretion of the City and its officials.

The City Manager may direct that any required hearing be conducted before a Hearing Body. ~~The City Manager~~ An Enforcement Officer, or a Hearing Body designated by the City Manager, may order the abatement of any public nuisance, as defined in this Code or in any state or federal statute, following notice and an opportunity for a hearing. However, no notice or hearing is required to abate a nuisance pursuant to the summary abatement authority set forth in Section 1-12-500, below.

1-12-120 VIOLATION OF LICENSE, PERMIT, AGREEMENT OR APPROVAL.

It shall be a violation of this Code to violate any term or condition of any license, permit, agreement, or approval granted or issued pursuant by the City, ~~including any granted or issued by the City's Redevelopment Agency pursuant to its authority under the California Community Redevelopment Law.~~ Any person, whether as principal, agent, employee or otherwise, violating or contributing to the violation of any such term or condition shall be subject to the sanctions provided in this Chapter or any other law.

1-12-130 CAUSING, PERMITTING, ETC., A VIOLATION.

Causing, permitting, aiding, abetting, contributing to, or concealing a violation of any provision of this Code shall constitute a violation of such provision.

1-12-140 SEPARATE AND CONTINUING VIOLATIONS.

A separate offense shall be deemed committed each day a violation of this Code occurs or continues. Any condition of real property that constitutes a violation of this Code, where the same, substantially similar, or related violations have been the subject of two (2) or more enforcement actions within any twelve (12) month period, is deemed to be a continuing violation. For the purposes of this section, "enforcement action" shall mean any notice of violation, including a warning or courtesy notice, hearing, citation, complaint or petition, or any administrative or judicial order under authority of this Chapter or pursuant to any other legal authority. Any subsequent enforcement action with respect to such continuing violation may include issuance of a written order prohibiting future violations of this Code, establishing fines for subsequent violations, and authorizing the City, or an agent or contractor of the City, to enter onto the affected property and abate the condition that is the subject of said enforcement action, and allowing recovery by the City of the costs of future enforcement actions. ~~The amount of any penalty imposed for subsequent violations shall substantially conform to the recommended amount for repeated violations, as described in Section 1-12-410(g) of this Chapter.~~

1-12-150 AUTHORITY TO INSPECT.

An Enforcement Officer may exercise all lawful authority to enter upon any real property or premises to ascertain whether the provisions of this Code are being obeyed and to make any examinations and surveys as may be necessary in the performance of his or her code enforcement duties. Inspections may include and/or involve the taking of photographs, samples, or other physical evidence and conferring with persons present.

ARTICLE 2. VIOLATIONS

1-12-200 CRIMINAL ENFORCEMENT OF CODE VIOLATIONS.

(a) A violation of this Code may be prosecuted as a criminal offense. Unless expressly described as an infraction, a violation of any provision of this Code, or failing to comply with any mandatory requirement hereof, shall constitute a misdemeanor. Notwithstanding the preceding sentence or any other section of this Code, a violation of this Code may, in the discretion of the enforcing authority, be charged and prosecuted as an infraction.

(b) Any person convicted of a misdemeanor under the provisions of this Code, unless provision is otherwise herein made, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment in the County jail for a period of not more than six (6) months or by both fine and imprisonment.

(c) Any person convicted of an infraction under this Code shall be punished by a fine of not more than One Hundred Dollars (\$100.00) for a first violation, or a fine of not more than Two Hundred Dollars (\$200.00) for a second violation of the same Code section within one year. A third (or more) violation of the same code section by the same person within a twelve (12) month period may be charged and prosecuted as a misdemeanor.

(d) Upon entry of a second or subsequent conviction against the same responsible party within a two (2) year period for a condition of real property constituting a public nuisance under this Chapter, the court may require the responsible party to pay to the City treble the cost of the abatement. Any costs awarded to the City may be enforced in the manner described in Section 1-12-600, below.

1-12-210 CRIMINAL CITATION PROCEDURE.

(a) If an Enforcement Officer arrests a person for a violation of this Code and elects to charge the violation as a misdemeanor or infraction, such Officer shall prepare in duplicate a written notice to appear, pursuant to Penal Code §948, containing the name and address of such person, the offense(s) charged, and the time and place where and when such person shall appear in court. The arresting Enforcement Officer shall deliver one copy of the notice to appear to the violator and the violator, in order to secure release, must give his written promise to so appear in court by signing the duplicate notice which shall be retained by the Officer. The time specified in the notice to appear must be at least thirty (30) days after the date of the arrest.

(b) In any matter where the City Attorney is charged with prosecuting the violation, the arresting Enforcement Officer shall, as soon as practicable, send a duplicate notice to appear to the City Attorney, who will process the citation with the Superior Court of Alameda County (hereinafter, "the court"). In all other cases, the matter shall be referred directly to the District Attorney's office for prosecution. Thereupon the clerk of the court shall fix the amount of bail according to the City's approved bail schedule. The defendant may, prior to the date upon which

he promised to appear in court, deposit with the court the amount of bail thus set. Thereafter, at the time when the case is called for arraignment before a Magistrate, if the defendant does not appear in person or by counsel, the Magistrate may declare bail forfeited, and may, in his/her discretion, order that no further proceedings be had in such case.

(c) The City Council shall establish, by resolution, a recommended bail schedule which may be amended from time to time. The amount of recommended bail imposed for violations that are prosecuted as criminal offenses pursuant to this Chapter shall be set forth in the bail schedule. The bail schedule shall include a recommended amount for any increased bail amount for repeated violations of the same provisions by the same person within a twelve (12) month period from the date of the issuance of a notice to appear.

(d) Any person willfully violating his/her written promise to appear in court is guilty of a misdemeanor regardless of the disposition of the charge upon which he/she was originally arrested.

1-12-220 VIOLATIONS OF RULES AND REGULATIONS OF SUBORDINATE BOARDS OR COMMISSIONS.

Except as expressly provided in this Code, any conduct or activity that violates any rule or regulation adopted by any subordinate board or commission established pursuant to a resolution adopted by the City Council, shall be prosecuted as an infraction, if the Enforcement Officer elects to pursue criminal enforcement of such violation.

ARTICLE 3. CIVIL ACTION

1-12-300 CIVIL ACTION — COLLECTION OF COSTS BY THE CITY.

The provisions of this Code may be enforced by a civil court action, prosecuted by the City Attorney in the name of the City.

(a) Whenever the City Attorney is authorized or directed to commence or sustain any civil action or proceeding, either at law or in equity, to enforce any provision of this Code, or any rule, regulation or order promulgated or issued pursuant to this Code, or any condition of an approval, permit or license granted pursuant to this Code, or to enforce any provision of any contract or agreement, or to enjoin or restrain any violation thereof, or to otherwise abate a public nuisance or collect any sums of money on behalf of the City, then the City shall be entitled to collect all costs and expenses of the same, including, without limitation, reasonable attorney's fees and the reasonable investigation costs, which shall be set by the court and made a part of and judgment in any such action or proceeding.

(b) Upon entry of a second or subsequent civil judgment against the same property owner within a two (2) year period for a condition of real property constituting a public nuisance under this Chapter, the court issuing judgment may order the owner to pay treble the cost of the abatement.

(c) Any costs awarded to the City under this section may be enforced and collected upon in the manner described in Section 1-12-600, below.

ARTICLE 4. ADMINISTRATIVE ENFORCEMENT

1-12-400 ADMINISTRATIVE ENFORCEMENT OF CODE VIOLATIONS.

Any Enforcement Officer shall have the authority to gain compliance with all provisions of this Code. These powers include the power to issue a notice of violation and administrative penalties, as described below in Sections 1-12-410 and 1-12-415, the power to inspect public and private property, and to seek and employ whatever remedies are available under this Code.

1-12-410 NOTICE OF VIOLATION.

(a) Subject to subsection (e), below, whenever an Enforcement Officer finds that a provision of this Code has been violated, including but not limited to a failure to comply with a condition imposed by any agreement, entitlement, permit, license or environmental document issued or approved by or on behalf of the City ~~or the City's Redevelopment Agency~~, or failure to comply with any County, State or Federal laws the violation of which constitutes a public nuisance, and such officer determines to pursue administrative enforcement of the violation pursuant to this Chapter, he or she shall issue the responsible party a written notice of the violation ~~either imposing a penalty or ordering~~ providing that the City will abate the violation and providing the responsible party with an opportunity to appeal the notice of violation to appear at a hearing and show cause at a hearing as to why such condition should not be abated by the City at the responsible party's expense ("notice of violation"). Failure to appeal pursuant to Section 1-12-425 of this Chapter constitutes a waiver of the right to appeal the notice of violation and a failure to exhaust administrative remedies. Such notice of violation shall be served on the Responsible party in the manner described in subsection (b), below. The Enforcement Officer shall include in the notice of violation the following information:

- (1) The date and location of the violation, including the address or other definite description of the location where the violation occurred, or is occurring;
- (2) The sections of the Code being violated and a description of each such violation;
- (3) Actions required to correct or abate the violation, and the period of time during which such required actions shall be commenced and completed, such period of time to be determined in the manner set forth in subsection (d), below.

(4) ~~One of the following statements:~~

~~——(i)——The amount of the penalty to be imposed for each violation up to a maximum penalty of One Hundred Fifty Dollars (\$150.00) for a first violation, Three Hundred Dollars (\$300.00) for a second violation of the same ordinance within one year, and Six Hundred Dollars (\$600.00) for each additional violation within one year, and the first day that any such penalty will be imposed.~~

~~——(ii)——A statement that the failure to correct and abate the violation, will result in the Enforcement Officer ordering the violation or violations abated, and ordering that the responsible party bear the costs of such abatement including all administrative costs incurred by the City. An order setting a time and place for hearing at which the responsible party is ordered to appear and show cause why the violations and conditions specified in the notice of violation should not be abated by the City at the responsible party's expense.~~

- (5) An order prohibiting the continuation or repeated occurrence of a violation of this Code described in the notice of violation.

~~———— (6) ——— If the notice of violation imposes a penalty, a statement that:~~

~~———— (i) ——— The responsible party may appeal the imposition or amount of a penalty by filing with the City Clerk on the form provided for that purpose a request for hearing within fifteen (15) calendar days of the date the notice of violation is served.~~

~~———— (ii) ——— If the responsible party fails to so appeal the notice of violation, no further administrative remedy will be provided and the failure to appeal shall preclude judicial review of the Enforcement Officer's determination.~~

~~———— (iii) Upon the imposition of a penalty becoming final after an appeal before a duly appointed Hearing Body, the responsible party may seek judicial review of the penalty imposed pursuant to Government Code §53069.4.~~

~~(67) If the notice of violation orders the responsible party to appear for a hearing, a~~
statement that the responsible party may appeal the notice of violation by filing with the City Clerk, on the form provided for that purpose, a request for hearing within fifteen (15) calendar days of the date the notice of violation is served that includes the following information:

(i) If the responsible party appeals the notice of violation, the responsible party may appear before the Hearing Body and show cause why the violations and conditions specified in the notice of violation should not be abated by the City at the responsible party's expense.

(ii) Upon f-statement that upon the failure to appear for the hearing, or the failure to correct and abate a condition which is subsequently determined to constitute a violation, the Hearing Body may order the violation or violations abated, and may order that the responsible party shall bear the costs of such abatement including all administrative costs incurred by the City.

(iii) Failure to appeal the notice of violation constitutes a waiver of the right to appeal the notice of violation and a failure to exhaust administrative remedies.

~~(78)~~ The signature of the citing Enforcement Officer.

(b) Service of notice of violation shall be made upon the responsible party or the owner, personally or by First Class U.S. Mail, with Certificate of Mailing, and if by such mail to the owner it shall be sent to the last known address listed on the most recent tax assessor's records. In the case of personal service, service shall be deemed complete at the time of such delivery. In the case of service by First Class U.S. Mail, service shall be deemed complete at the time of deposit into the United States mail. Where service is by First Class U.S. Mail upon the owner, a copy of the notice of violation shall be conspicuously posted at the affected property for a period of not less than three (3) calendar days prior to the first date that commencement of corrective action or abatement is to be undertaken. The failure of any person to receive a notice of violation that was sent via First Class U.S. Mail shall not affect the validity of any enforcement proceedings under this Chapter.

(c) Proof of service of the notice of violation shall be certified by a written declaration under penalty of perjury executed by the person effecting service, declaring the date, time, and manner that service was made, and the date and place of posting, if applicable. The

declaration, along with the Certificate of Mailing, shall be affixed to a copy of the notice of violation and retained by the Enforcement Officer.

(d) The time allowed for abatement of a violation shall be a “reasonable time” in the judgment of the Enforcement Officer, based upon the circumstances of the particular violation, taking into consideration the means required to abate the violation, the period of time that the nuisance has existed, and the potential threat to public health and safety created by the violation. If the violation pertains to building, electrical, or other similar structural or zoning issues where the violation does not create an immediate threat to health or safety, the responsible party shall be provided not less than ten (10) calendar days in which to correct, abate, or otherwise remedy the violation before a penalty is imposed.

(e) The failure of a notice of violation to satisfy all of the requirements of this provision shall not affect the validity of any other enforcement proceedings under this Code.

~~(f) A responsible party may appeal the imposition of any penalty or the amount of such penalty by filing a request for hearing form in accordance with the provisions of Section 1-12-420 of this Chapter. Enforcement of a notice of violation shall be stayed during the pendency of an appeal therefrom which is properly and timely filed. The failure to file a timely and proper appeal shall constitute a failure to exhaust administrative remedies and preclude judicial review.~~

~~(g) The amount of the penalty which may be imposed for each violation shall be set by a resolution duly adopted by the City Council creating a schedule of penalties, which schedule may be amended from time to time. The schedule of penalties shall include a recommended amount for any increased penalty for repeated violations of the same provisions by the same person within a twelve (12) month period from the date of the issuance of the first notice of violation.~~

~~(h) Each and every day during any portion of which any violation is committed, continued, or permitted shall be deemed a separate and distinct violation for purposes of setting the amount of a penalty to be imposed. A penalty may continue to accrue on a daily basis until the violation is corrected, up to a maximum amount of Five Thousand Dollars (\$5,000.00).~~

~~(i) Any penalty is a debt owed to the City. In addition to all other means of enforcement, any penalty specified in the notice of violation may be enforced as a personal obligation of the responsible party. If the violation is in connection with real property, any penalty may be enforced by imposition of a lien or special assessment upon the real property. Any lien or special assessment imposed upon the real property shall remain in effect until the penalty is paid in full.~~

1-12-415 ISSUANCE OF ADMINISTRATIVE PENALTIES.

(a) Whenever an Enforcement Officer finds that a provision of this Code has been violated, including but not limited to a failure to comply with a condition imposed by any agreement, entitlement, permit, license or environmental document issued or approved by or on behalf of the City or failure to comply with any County, State or Federal laws the violation of which constitutes a public nuisance, such Enforcement Officer is authorized to issue administrative penalties. Administrative penalties may be issued for the enforcement of any section or provision of this Code. Such penalties may be issued to the responsible party.

(b) Administrative penalties shall be issued on forms approved by the City Attorney. Each penalty shall indicate, at a minimum, the following information:

(1) The name of the person or entity to whom the penalty is issued.

(2) The address or location where the violation is observed.

(3) The section of this Code that is being violated.

(4) The date by which an appeal of the penalty must be sought before the penalty becomes final.

(5) The procedure for seeking an appeal of the penalty.

(6) The amount of the administrative penalty to be imposed for each violation up to a maximum penalty of One Hundred Fifty Dollars (\$150.00) for a first violation, Three Hundred Dollars (\$300.00) for a second violation of the same ordinance within one year, and Six Hundred Dollars (\$600.00) for each additional violation within one year, and the first day that any such penalty will be imposed.

(7) The manner of payment of the administrative penalty.

(c) Service of the penalty shall be made upon the responsible party or the owner, personally or by First Class U.S. Mail, with Certificate of Mailing, and if by such mail to the owner it shall be sent to the last known address listed on the most recent tax assessor's records. In the case of personal service, service shall be deemed complete at the time of such delivery. In the case of service by First Class U.S. Mail, service shall be deemed complete at the time of deposit into the United States mail. Where service is by First Class U.S. Mail upon the owner, a copy of the penalty shall be conspicuously posted at the affected property for a period of not less than three (3) calendar days prior to the first date that commencement of corrective action or abatement is to be undertaken. The failure of any person to receive a copy of the penalty that was sent via First Class U.S. Mail shall not affect the validity of any enforcement proceedings under this Chapter.

(d) The payment of a penalty by or on behalf of any responsible party shall not relieve such party from the responsibility of correcting, removing or abating the violation, nor prevent further proceedings under this Chapter or any other lawful authority to achieve the enforced correction, removal or abatement of the violation.

(e) A responsible party may appeal the imposition of any penalty or the amount of such penalty by filing a request for hearing form in accordance with the provisions of Section 4-12-425 of this Chapter.

(f) Each and every day during any portion of which any violation is committed, continued, or permitted shall be deemed a separate and distinct violation. A penalty may continue to accrue on a daily basis until the violation is corrected, up to a maximum amount of Five Thousand Dollars (\$5,000.00).

(g) Any penalty is a debt owed to the City. In addition to all other means of enforcement, any penalty may be enforced as a personal obligation of the responsible party. If

the violation is in connection with real property, any penalty may be enforced by imposition of a lien or special assessment upon the real property. Any lien or special assessment imposed upon the real property shall remain in effect until the penalty is paid in full.

1-12-~~415~~-420 PAYMENT AND COLLECTION OF ADMINISTRATIVE PENALTY.

(a) If a penalty is imposed and the responsible party fails to timely and properly appeal such imposition, the responsible party against whom a penalty is imposed shall pay any such penalty within thirty (30) days of the imposition thereof. Any penalty imposed shall be payable to the City, or to a collection agency if the penalty has been assigned to a collection agency pursuant to subsection (c), below.

(b) If the amount of any penalty imposed for a violation relating to real property has not been satisfied in full within sixty (60) days of the date due and has not been successfully challenged in court, the penalty amount may become a special assessment and lien against the affected property, as provided in Section 1-12-600 of this Chapter. If the City elects to make the amount of any penalty a special assessment or lien against the affected property, a statement of the amount due, and any additional costs or expenses that might be recoverable as part of the enforcement action, shall be prepared and submitted to the City Council for confirmation in accordance with the procedures described in Section 1-12-600.

(c) Notwithstanding subsection (b), the amount of any unpaid penalty may be collected by commencement of a civil action to collect such penalty, or in any other manner provided by law for the collection of debts, including assignment of the debt to a collection agency. Subject to the requirements of this Chapter and other applicable law, amounts assigned for collection are subject to collection agency rules, regulations and policies. The City shall be entitled to recover any and all costs associated with collection of any such penalty.

(d) The payment of a penalty by or on behalf of any responsible party shall not relieve such party from the responsibility of correcting, removing or abating the violation, nor prevent further proceedings under this Chapter or any other lawful authority to achieve the enforced correction, removal or abatement of the violation.

1-12-~~420~~-425 HEARINGS.

(a) Any person appealing a notice of violation or penalty must obtain a “request for hearing” form from the City Clerk’s Office and return it fully completed within fifteen (15) days from the date of service of the notice of violation or penalty. At the time of returning the request for hearing form to the City Clerk’s Office, the person or entity requesting the appeals hearing shall pay an appeals processing fee established by the City Council. Failure to submit a completed appeals form or to pay the appeals processing fee constitutes a waiver of the right to appeal the notice of violation or penalty and a failure to exhaust administrative remedies. Imposition of a penalty shall be stayed during the pendency of an appeal therefrom which is properly and timely filed. The failure to file a timely and proper appeal shall constitute a failure to exhaust administrative remedies and preclude judicial review.

(b) The hearing on appeal shall be set for a date not less than fifteen (15) days nor more than sixty (60) days from the date the request for hearing form is filed, unless, ~~in the case~~

~~of appeals of notices of violation,~~ the Enforcement Officer determines that the matter is urgent or that good cause exists for an extension of time, in which case the date for such hearing may be shortened, or extended, as warranted by the circumstances.

~~—— (c) — A hearing set pursuant to an order in the notice of violation shall be set for a date not less than fifteen (15) days nor more than sixty (60) days from the date the notice of violation is served, unless the Enforcement Officer determines that the matter is urgent or that good cause exists for an extension of time, in which case the date for such hearing may be shortened, or extended, as warranted by the circumstances.~~

(cd) Any other hearing set pursuant to a request for hearing shall be set for a date not less than fifteen (15) days nor more than sixty (60) days from the date the request for hearing was received by the City Clerk.

(de) A hearing under authority of this section shall be conducted according to the procedures set forth in this subsection. The failure of any interested party to appear at the hearing shall constitute a waiver of the right to such hearing and a failure by such party to exhaust their administrative remedies.

(1) When a request for hearing is filed, the City Clerk shall set the time and place for hearing pursuant to subsection (be) or (cd), and shall serve a notice of hearing by regular mail to the appellant at the address provided in the request for hearing form. The time for such hearing shall be no sooner than ten (10) days from the date of said notice of hearing.

~~—— (2) — Where the time and place for a hearing has been set pursuant to an order in the notice of violation, the time and place for hearing shall be as provided therein, and no further notice of hearing shall be required.~~

(23) At the place and time set forth in the notice of hearing, ~~or notice of violation,~~ the Administrative Hearing Body shall conduct a hearing on the issues subject to the appeal, the alleged violations and/or the imposition and amount of any penalty. The Administrative Hearing Body shall provide for any interested person or persons to appear and object to the determination that is the subject of the appeal, including, but not limited to, whether a violation has occurred and/or that the violation continues to exist, or any matter pertaining to any penalty. The Administrative Hearing Body may consider any written or oral testimony and evidence regarding the issue presented by the alleged appellant, the owner, any officer, employee, or agent of the City, and any other interested party.

(34) After receiving all of the evidence presented, the public portion of the hearing shall be closed. The Administrative Hearing Body may then deliberate and consider what action, if any, should be taken, or may adjourn the hearing and take the matter under consideration.

(45) Within thirty (30) days following the conclusion of the hearing, the Administrative Hearing Body shall issue written findings and make a determination regarding the issue on appeal.

(i) ~~With respect to appeals of notices of violation,~~ The Administrative Hearing Body shall issue written findings and make a determination regarding the existence of the violation and/or the failure of the responsible party to take required corrective action within the specified

time period, or the validity of any penalty imposed. If the Administrative Hearing Body finds by a preponderance of the evidence that a violation occurred, or that a violation was not corrected within the time period specified in the notice of violation or with the issuance of the penalty, the Administrative Hearing Body shall issue its decision including any Administrative Order in accordance with Section 1-12-430, below. If the Administrative Hearing Body finds that no violation occurred, that the violation was corrected within the specified time period, or that the appellant is not the responsible party, the Administrative Hearing Body shall issue a decision with written findings of those facts.

(6) The appellant shall be served with a copy of the decision of the Administrative Hearing Body, including an Administrative Order if one is issued, in the manner and method set forth in Section 1-12-410 (b), above.

1-12-430 DECISION OF THE ADMINISTRATIVE HEARING BODY AND ADMINISTRATIVE ORDER.

(a) The Administrative Hearing Body considering any appeal of the imposition of a penalty pursuant to Section 1-12-4250 ~~which has imposed a penalty~~ may confirm, vacate, or modify but not increase, any such ~~decision or~~ penalty imposed, and order the payment thereof. The decision shall state that review of the decision may be had by filing an appeal pursuant to Section 1-12-450, and shall specify the time limits for such filing.

(b) The Administrative Hearing Body ~~conducting~~ considering any appeal of a notice of violation ~~a hearing set pursuant to an order in the notice of violation~~, if it determines that a violation exists, may issue an Administrative Order imposing the remedies provided in this subsection. The decision shall state that review of the decision may be had by filing an appeal pursuant to Section 1-12-450, and shall specify the time limits for such filing. Notice concerning judicial review of the decision shall be given as provided in Section 1-12-800(d). The remedies for a violation found as a result of such a hearing shall be as follows:

(1) Requiring the responsible party to correct or eliminate the violation or nuisance condition, including a proposed schedule for correction or elimination.

(2) Authorizing the City to enforce the Administrative Order and abate or cause the abatement of the violation where the responsible party has refused or has otherwise neglected to take appropriate steps to correct or eliminate the violation. The Administrative Order shall specify that if the City undertakes to abate or eliminate the violation it shall be entitled to recovery of all costs and expenses incurred in performing such work, and shall also be entitled to recover its administrative costs. Administrative costs shall include costs incurred by the City in connection with the proceeding, including attorney's fees, costs of investigation, staffing costs incurred in preparation for the hearing and for the hearing itself, and the cost of any re-inspection and other costs necessary to enforce the Administrative Order. Such costs, if unpaid, may be recovered by the City through a lien on the affected property or through a special assessment as provided in Section 1-12-600 of this Chapter.

(3) Any other order or remedy that is in the interests of justice.

1-12-440 PAYMENT OF PENALTY.

(a) Any penalty imposed by the Administrative Hearing Body shall be paid to the City within thirty (30) days from the date of the decision, unless an extension of time is requested by the violator and granted by the Administrative Hearing Body.

(b) Any appeals processing fee that is paid pursuant to Section 1-12-4250(a), above, shall be refunded to the payee if it is determined by the Administrative Hearing Body that the person ~~charged in the notice of violation~~assessed the penalty was not responsible for the violation or that there was no violation as charged in said notice.

(c) Payment of any penalty that is upheld or otherwise imposed by the Hearing Body shall not excuse or permit any continuation or repeated occurrence of the violation that is the subject of the ~~notice of violation~~penalty.

(d) Any penalty imposed by the Administrative Hearing Body shall accrue from the date specified in the ~~notice of violation~~penalty and shall continue to accrue on a daily basis until the violation is corrected. The determination of compliance or elimination of the violation shall be made by the Enforcement Officer, unless such determination was made by the Administrative Hearing Body as a result of the hearing. The Administrative Hearing Body, in its discretion, may suspend the imposition of any penalty for a period of time not to exceed sixty (60) days during which the responsible party applies for permits required to achieve compliance, and such permit applications are actively pending before, or have already been issued by, the City, the State, or other appropriate governmental agency.

(e) Any penalty assessed by the Administrative Hearing Body is a debt owed to the City. In addition to all other means of enforcement and/or collection, any such penalty may be enforced as a personal obligation of the responsible party. If the violation is in connection with real property, such penalty may be enforced by imposition of a lien or special assessment upon the real property. Any lien or special assessment imposed upon the real property shall remain in effect until the penalty is paid in full.

1-12-450 REVIEW OF ADMINISTRATIVE HEARING BODY DECISION.

(a) Any person or entity aggrieved by a decision of the Administrative Hearing Body may seek review of said decision by filing a request for City Manager review in the manner for requesting a hearing pursuant to Section 1-12-425. Failure to submit a completed appeals form or to pay the appeals processing fee constitutes a waiver of the right to appeal the decision of the Administrative Hearing Body and a failure to exhaust administrative remedies. The request for City Manager review must be filed with the City Clerk's office within fifteen (15) days from the date of issuance of Administrative Hearing Body Decision. Upon timely receipt of a request for City Manager review, the City Manager may consider any written or oral testimony and evidence presented. The City Manager will issue a final written decision within thirty (30) days from the receipt of request for City Manager review.

(b) Any person or entity aggrieved by the City Manager Review decision issued pursuant to subsection (a) of this section relating to a decision of a Hearing Body made pursuant to subsection (a) of Section 1-12-430 may obtain judicial review of said decision pursuant to Government Code Section 53069.4 by filing an appeal to the Superior Court for the County of Alameda, subject to the time limits described in Section 1-12-800, below.

(c) Any person or entity aggrieved by the City Manager Review decision issued pursuant to subsection (a) of this section relating to a decision of a Hearing Body made pursuant to subsection (b) of Section 1-12-430 may obtain review of said decision in the Superior Court for the County of Alameda by filing with said court a Petition for Writ of Mandate, subject to the time limits described in Section 1-12-800, below.

ARTICLE 5. SUMMARY ABATEMENT

1-12-500 SUMMARY ABATEMENT PROCEDURE.

Notwithstanding any other provision of this Code, whenever, in the reasonable judgment of the Enforcement Officer, the existence or continuance of any violation of this Code; or any public nuisance, or any other condition which poses an imminent or immediate danger of significant harm to persons or property, or so endangers the public health, welfare or safety, an Enforcement Officer may act immediately and without prior notice or hearing to abate such condition. The expense or cost resulting from such summary abatement shall be enforceable as a personal obligation of the responsible party. The expense or cost of summary abatement may be imposed as a lien or a special assessment on real property, as described in Section 1-12-600.

ARTICLE 6. LIENS

1-12-600 COST ACCOUNTS AND IMPOSITION OF LIENS OR SPECIAL ASSESSMENTS.

(a) If a judicial order or Administrative Order authorizes the City to abate a public nuisance, the city official responsible for such abatement shall keep an accounting of the cost of abatement along with any other recoverable costs, ~~and shall render a written report to the City Council showing the cost of~~

~~removing and/or abating the nuisance.~~ The accounting shall be submitted to the Finance Director for inclusion in the annual report prepared by the Finance Director for the City Council.

At least ten (10) days prior to the submission of the report to the City Council, a copy of the report and notice shall be mailed to the responsible party and/or to the owner of the property where the nuisance existed, if the nuisance concerns real property, at the address shown for such owner on the last tax roll.

(b) At the time and place fixed for receiving and considering the report required by subsection (a), the City Council shall ~~hear a summary of the report and hear~~ any objections by the responsible party or property owner against whom such cost are being charged or against whose property an abatement lien or special assessment may be imposed for such costs. After considering the report and any objections thereto, the City Council may make such modifications to the report as it deems appropriate, after which the report shall be confirmed by resolution or order.

(c) Any penalty imposed for violations of this Code, including any other codes or statutes that have been incorporated into this Code, any administrative costs or other expenses of enforcement, and the cost or expenses associated with the abatement of a public nuisance that are levied in accordance with this Chapter, whether imposed or levied judicially or administratively, may be enforced by the recordation of a lien against the property of the owner of the real property where the nuisance condition existed. Any such lien shall be recorded in the Office of the County Recorder for Alameda County, and from the date of recording shall have the force, effect, and priority of a judgment lien. A lien authorized by this section shall specify the amount of the lien, that the lien is being imposed on behalf of the City of San Leandro, the date of the

abatement order, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.

(d) Before recordation of a lien authorized by this section, a notice of lien shall be served on the responsible party and/or owner of record of the parcel of land on which the nuisance existed, based on the last equalized assessment roll or the supplemental roll, whichever is more current. The notice of lien shall be served in the same manner as a summons in a civil action. If the owner of record cannot be found, after a diligent search, the notice of lien may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in a newspaper of general circulation published in Alameda County, California.

(e) Any fee imposed on the City by the County Recorder for costs of processing and recording the lien and the cost of providing notice to the property owner in the manner described herein may be recovered from the property owner in any foreclosure action to enforce the lien after recordation.

(f) As an alternative to the lien procedure described in subsection (c), above, any penalty imposed for violations of this Code, including any other codes or statutes that have been incorporated into this Code, any administrative costs or other expenses of enforcement, and the cost or expenses associated with the abatement of a public nuisance that are levied in accordance with this Chapter, whether imposed or levied judicially or administratively, may become a special assessment and lien against the real property where the nuisance condition existed. Any special assessment imposed on real property pursuant to this section may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as is provided for ordinary municipal taxes. Notice of any special assessment that is levied on real property pursuant to this section shall be given to the property owner by certified mail, and shall contain the information set forth in Government Code §38773.5(c). All laws applicable to the levy, collection, and enforcement of municipal taxes, including those described in Government Code §38773.5(c), shall be applicable to such special assessment.

ARTICLE 7. SUPPLEMENTARY ENFORCEMENT

1-12-700 SUPPLEMENTARY ENFORCEMENT AUTHORITY.

Nothing in this Chapter shall prevent the City from initiating any other legal or equitable proceeding to obtain compliance or to discourage non-compliance with the provisions of this Code. The enforcement procedures described in this Chapter are intended to be alternative methods of obtaining compliance and/or discouraging non-compliance with the provisions of this Code and are expressly intended to be in addition to any other remedies provided by law or this Code. It is the intent of the City Council that the immunities prescribed in Penal Code §836.5 shall be applicable to the Enforcement Officer, and any other public officers or employees, acting in the course and scope of employment pursuant to this Chapter.

ARTICLE 8. JUDICIAL REVIEW

1-12-800 LIMITATION OF TIME FOR JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS.

(a) An appeal filed pursuant to Section 1-12-450(a), seeking judicial review pursuant to Government Code §53069.4 of an administrative penalty imposed by the decision of a Hearing Body, shall be filed within the time limits prescribed therein.

(b) Except as otherwise provided herein; the provisions of California Code of Civil Procedure (C.C.P.) §1094.6 or successor statute are hereby adopted and any petition for review of an administrative decision of the City of San Leandro, or of any of its boards, commissions, departments, agencies, or persons authorized to render such a decision, including review pursuant to Section 1-12-450(b), shall be filed within the time limits prescribed therein. Notwithstanding such time limits, where a shorter time limitation is provided by any other law, such shorter time limit shall apply.

(c) Except as provided in subsection (a), the limitation provided in subsection (b) shall apply to any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in the person conducting the hearing.

(d) The limitation provided in subsection (b) shall apply to all administrative proceedings specified in subsection (c) now pending or hereafter begun. Written notice of this limitation shall be given to the parties to such proceedings by the decision-maker in substantially the following form:

“The time within which judicial review of this decision must be sought is governed by C.C.P. Section 1094.6. Judicial review must be sought not later than the 90th day following the date on which this decision becomes final, except that where a shorter time is provided by any State or Federal law, such shorter time limit shall apply.”

(e) This section shall not be deemed to revive any cause of action or grounds for relief through a special proceeding which is barred by law or equity.

(f) All costs of preparing a record which may be recovered by a local agency pursuant to C.C.P. §1094.6(c) or successor statute, shall be paid by the petitioner prior to delivery of the record to petitioner.

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