

ORDINANCE NO. 2012-2

AMENDING CHAPTER 1.01, "CODE ADOPTION," CHAPTER 1.04,  
"GENERAL PENALTY," AND CHAPTER 1.10, "ADMINISTRATIVE CITATIONS,"  
AND OTHER PROVISIONS OF THE SAN MATEO MUNICIPAL CODE  
RELATING TO CODE ENFORCEMENT, AND ADDING  
CHAPTER 1.14, "ADMINISTRATIVE COMPLIANCE ORDERS,"  
TO THE SAN MATEO MUNICIPAL CODE

WHEREAS, the City Attorney's Office and the Code Enforcement Division of the Community Development Department conducted a general overview of the San Mateo Municipal Code with the goal to update and simplify the code sections used to enforce the City's municipal codes to make enforcement more effective; and

WHEREAS, if adopted, this Ordinance requires an amendment to the City's fee schedule to reflect the fees to be imposed to address code violations; and

WHEREAS, a Resolution to amend the City's fee schedule will be considered upon adoption of this Ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN MATEO  
ORDAINS THAT:

**Section 1.** Chapter 1.01, "Code Adoption," of the San Mateo Municipal Code is amended to read as set forth in Exhibit A attached hereto.

**Section 2.** Chapter 1.04, "General Penalty," of the San Mateo Municipal Code is amended to read as set forth in Exhibit B attached hereto.

**Section 3.** Chapter 1.10, "Administrative Citations," of the San Mateo Municipal Code is hereby amended to read as set forth in Exhibit C attached hereto.

**Section 4.** Chapter 1.14, "Administrative Compliance Orders," is hereby added to the San Mateo Municipal Code to read as set forth in Exhibit D attached hereto.

**Section 5.** Section 2.80.070, "Penalties," of the San Mateo Municipal Code is amended to read:

**2.80.070 PENALTIES.** Any person who violates the provisions of this Chapter is guilty of a public offense.

**Section 6.** Section 5.69.090, "Adding to Merchandise," of the San Mateo Municipal Code is amended to read:

**5.69.090 ADDING TO MERCHANDISE .** It is unlawful for any person conducting a regulated sale under this chapter under any permit granted pursuant to Section 5.69.030, to add, during the continuance of any such regulated sale, any goods, wares, or merchandise described and inventoried in his original application, and no goods, wares, or merchandise shall be sold at or during such sale, excepting the goods, wares, or merchandise described in the inventory accompanying the application and each and every addition of goods, wares, or

merchandise for the purpose of sale, to the stock of goods, wares, or merchandise described in said inventory, and each sale of such goods, wares, or merchandise as were not described in such inventory, constitutes a separate offense hereunder.

**Section 7.** Section 5.69.100, “False Advertising,” of the San Mateo Municipal Code is amended to read:

**5.69.100 FALSE ADVERTISING.** The permit issued under Section 5.69.030 to any person who holds, conducts, or carries on any sale of goods, wares, or merchandise, contrary to the provisions of this chapter, or whose advertising, statement, representation, or assertion is false or untrue in any respect, or which by the exercise of reasonable care should be known to be false or untrue, deceptive, or misleading, or which violates any of the provisions of this chapter, shall be forthwith suspended by the tax collector on his determining that this section has been violated, and such person is guilty of a public offense. In the event the order for such suspension is reversed on appeal the time during which any sale is suspended pursuant to such suspension, shall not be counted in calculating the number of days during which the permit for such sale shall be effective.

**Section 8.** Section 5.75.500 “Failure to Pay Fare,” of the San Mateo Municipal Code is amended to read:

**5.75.500 FAILURE TO PAY FARE.** No person shall, with intent to defraud the owner or driver of any public vehicle, engage carriage therein. Refusal to pay the lawful charge for such carriage, or absconding without payment or offer to pay shall be evidence of such intent to defraud.

**Section 9.** Section 7.17.170, “Penalty for Violations,” Subsection (a), of the San Mateo Municipal Code is amended to read:

**7.17.170 PENALTY FOR VIOLATIONS.**

(a) Any person violating any provision of this chapter shall be guilty of a public offense.

[Subsection (b) of Section 7.17.170 remains unchanged.]

**Section 10.** Section 7.18.050, “Violations,” of the San Mateo Municipal Code is amended to read:

**7.18.050 VIOLATIONS.** The violation of any of the provisions of this chapter is declared to be a public nuisance, and may be abated pursuant to the provisions of Section 731 of the California Code of Civil Procedure. This remedy is in addition to any other remedy provided by law, including the penalty provisions applicable for violation of the terms and provisions of this code.

**Section 11.** Section 7.38.490, “Criminal Penalties,” of the San Mateo Municipal Code is amended to read:

**7.38.490 CRIMINAL PENALTIES.** Any person who intentionally or negligently makes any false statements, representations, or certifications in any application, record, report, plan or other document filed or required to be maintained pursuant to this Chapter, or waste discharge permit, or who falsifies, tampers with, or knowingly renders inaccurate any

monitoring device or method required under this Chapter, or who willfully or negligently introduces any substance into the sanitary sewer system which causes personal injury or property damage or environmental harm shall, upon conviction, be guilty of a public offense. Any penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.

**Section 12.** Section 7.39.300, “Criminal Penalties,” of the San Mateo Municipal Code is amended to read:

**7.39.300 CRIMINAL PENALTIES.** A person who intentionally or negligently makes any false statements, representations, or certifications in any application, record, report, plan or other document filed or required to be maintained pursuant to this Chapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this Chapter, or who willfully or negligently introduces any substance into the storm drain system which causes personal injury or property damage shall be guilty of a public offense. Any penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.

**Section 13.** Section 7.46.100, “Violations and Penalties,” of the San Mateo Municipal Code is amended to read:

**7.46.100 VIOLATIONS AND PENALTIES.** Any violation of this chapter shall constitute a public offense, unless the circumstances that create the violation are subject to prosecution under state or federal law. Any violation of this chapter shall also be deemed a public nuisance and may be enforced by any remedy available to the City for abatement of public nuisances.

**Section 14.** The first sentence of Section 10.04.030, “Disorderly Conduct,” of the San Mateo Municipal Code is amended to read:

**10.04.030 DISORDERLY CONDUCT.** Every person is guilty of disorderly conduct:  
[Subsections (a) through (h) of Section 10.04.030 remain unchanged.]

**Section 15.** The first paragraph of Section 10.04.040, “Public Property -- Damage,” of the San Mateo Municipal Code is amended to read:

**10.04.040 PUBLIC PROPERTY--DAMAGE.** Irrespective of any other provisions of this code, no person shall willfully or negligently break, injure or damage any real, personal or mixed property belonging to, or owned by, the city.

[The second paragraph of Section 10.04.040 remains unchanged.]

**Section 16.** Section 10.04.100, “Urination or Defecation in Public,” of the San Mateo Municipal Code is amended to read:

**10.04.100 URINATION OR DEFECATION IN PUBLIC.** It is unlawful for any person to urinate or defecate on public property or in any public place.

**Section 17.** Section 10.12.050, “Violation,” of the San Mateo Municipal Code is amended to read:

**10.12.050 VIOLATION.** No person shall violate the provisions of this Chapter.

**Section 18.** Section 11.12.050, “Excessive Acceleration of Motor Vehicles,” of the San Mateo Municipal Code is amended to read:

**11.12.050 EXCESSIVE ACCELERATION OF MOTOR VEHICLES.** It is unlawful for any person operating a motor vehicle within the city to so accelerate the same as to cause audible noise by tire friction on pavement or to cause the tires of said vehicle to leave skid marks upon the pavement, except when such acceleration is reasonably necessary to avoid a collision. Any person violating this section shall be guilty of a public offense.

**Section 19.** Section 11.12.060, “Off-Road Use of Motor Vehicles” of the San Mateo Municipal Code is amended to read:

**11.12.060 OFF-ROAD USE OF MOTOR VEHICLES.** (a) It shall be unlawful for any person to operate any motor vehicle off of the paved roadways (or parking lots designated for public use) within the City of San Mateo without the consent of the owner of the property. (b) A tenant of the property or an employee of the owner or tenant, who is in the course and scope of employment, is conclusively presumed to have the owner's permission to operate motor vehicles on the property unless the owner is the complaining witness for prosecuting a violation of this section. (c) This section shall not apply to public employees in the course and scope of their duties.

**Section 20.** Section 11.44.200, “Police Report - Penalties,” paragraph two, of the San Mateo Municipal Code is amended to read:

**11.44.200 POLICE REPORT -- PENALTIES.** It shall be the duty of police officers of the city, acting in accordance with instructions issued by Chief of Police, to report:

(1) The number of each parking meter which indicates that the vehicle occupying the parking space adjacent to such parking meter is, or has been, parking in violation of any of the provisions of this chapter;

(2) The state license number of such vehicle;

(3) The time during which such vehicle is parking in violation of any of the provisions of this chapter;

(4) Any other facts, a knowledge of which is necessary to a thorough understanding of the circumstances attending such violation.

Each such police officer shall also attach to such vehicle a notice to the owner or operator thereof that such vehicle has been parked in violation of a provision of this chapter.

**Section 21.** Section 11.56.170, “Violations – Licensing - Fines,” of the San Mateo Municipal Code is amended to read:

**11.56.170 VIOLATIONS -- LICENSING -- FINES.** Any person violating the licensing, registering or reporting provisions of this chapter shall be guilty of a public offense. Violations of the provisions of this chapter regulating the use and operation of bicycles upon

the streets and public ways of the city shall be the offense prescribed by the California Motor Vehicle Code and punishable as provided therein.

**Section 22.** Section 23.33.030, General Provisions,” Subsection (c), “Compliance,” of the San Mateo Municipal Code is amended to read:

**23.33.030 GENERAL PROVISIONS.**

(c) **COMPLIANCE.** No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the term of this ordinance and other applicable regulations. Violation of the requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a public offense. Nothing herein shall prevent the City from taking such lawful action as is necessary to prevent or remedy any violation.

[All other Subsections, (a) through (b) and (d) through (g), of Section 23.33.030 remain unchanged.]

**Section 23.** Section 27.68.040, “Penalties and Remedies,” Subsection (a), of the San Mateo Municipal Code is amended to read:

**27.68.040 PENALTIES AND REMEDIES.** (a) It shall be unlawful for an owner of the site or owners of development rights on a site to violate any provisions of this chapter.

[Subsections (b) through (c) of Section 27.68.040 remain unchanged.]

**Section 24. SEVERABILITY.** In the event any section, clause or provision of this Chapter shall be determined invalid or unconstitutional, such section, clause or provision shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

**Section 25. CEQA.** In accordance with California Environmental Act (CEQA) Guidelines section 15061(b)(3), adoption of this Ordinance is not a project subject to CEQA in that it can be seen with certainty that it will not have a significant effect upon the environment.

**Section 26. PUBLICATION.** This Ordinance shall be published in summary in the Examiner Peninsula Edition, posted in the City Clerk’s Office, and posted on the City’s website, all in accord with Section 2.15 of the Charter and shall be effective 30 days after the date of adoption.

The foregoing ordinance was passed and adopted by the City Council of the City of San Mateo, State of California on the 5th day of March, 2012, by the following vote:

AYES: Council Members GROTTI, LIM, FRESCHET, and MATTHEWS

NOES: ROSS

ABSENT: NONE

(SEAL) /s/ PATRICE M. OLDS

## EXHIBIT A

### 1.01 Code Adoption

#### Sections:

- 1.01.010 Title.
- 1.01.020 Prohibited acts include causing and permitting.
- 1.01.030 Definitions.
- 1.01.040 Grammatical interpretation.
- 1.01.050 Civil code provisions.
- 1.01.060 Reference to officers, employees, boards, commissions and ordinances.
- 1.01.070 Constitutionality.

**1.01.010 TITLE.** This code shall be known as the “San Mateo Municipal Code,” may be cited as such, and will be referred to in this code as “this code,” or “code.”.

**1.01.020 PROHIBITED ACTS INCLUDE CAUSING AND PERMITTING.** Whenever in this code any act or omission is made unlawful, it includes causing, allowing, permitting, aiding, abetting, suffering or concealing the fact of such act or omission.

**1.01.030 DEFINITIONS.** The following words, terms and phrases whenever used in this code shall be construed as defined in this section unless from the context a different meaning is intended, or unless a different meaning is specifically defined, and more particularly directed to the use of such words, terms or phrases:

- (1) “City” means the City of San Mateo, or the area within the territorial limits of the City of San Mateo, and such territory outside said city over which the city has or may have jurisdiction or control by virtue of any constitutional or charter provisions, or any law;
- (2) “City council or council” means the city council of the City of San Mateo;
- (3) “Code” means the San Mateo Municipal Code;
- (4) “May” is permissive;
- (5) “Must” is mandatory;
- (6) “Oath” means oath or affirmation;
- (7) “Person” means natural persons of either sex, joint ventures, partnerships, firms, associations, corporations, business trusts, whether acting by themselves, or by servants, agents or employees. The provisions hereof shall be applicable as well to the servants, agents, managers, lessees, officers and employees of such persons;
- (8) “Shall” is mandatory;
- (9) “State” means the state of California;
- (10) “Street” means the land dedicated or condemned for, or established by use as, a public thoroughfare, including all streets, boulevards, highways, avenues, lanes, alleys, courts, places, squares, curbs, or other public ways of this city, or other public property so designated

in any law of this state;

(11) "Written" includes handwritten, printed, typewritten, mimeographed, multigraphed or reproduced by photography.

**1.01.040 GRAMMATICAL INTERPRETATION.** Unless otherwise specified in this code, the following grammatical interpretations shall prevail:

(1) Genders. Any gender includes the other gender;

(2) Singular and Plural. The singular number includes the plural; the plural includes the singular;

(3) Tenses. Unless otherwise provided in this code, words, phrases, or sentences used in the present tense include the past and future tenses; words, phrases or sentences used in the past tense include the present and future tenses; words, phrases or sentences used in the future tense include the present and past tenses.

**1.01.050 CIVIL CODE PROVISIONS.** The provisions of Sections 13 and 1645 of the civil code of the state are adopted in the interpretation of words and phrases, unless otherwise provided herein.

**1.01.060 REFERENCE TO OFFICERS, EMPLOYEES, BOARDS, COMMISSIONS AND ORDINANCES.** Reference in this code to any officer, employee, board, commission, or ordinance, unless otherwise indicated, means the officer, employee, board, commission, or ordinance, as the case may be, of the city.

**1.01.070 CONSTITUTIONALITY.** If any section, subsection, sentence, clause, phrase or word of this code is held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this code. The council declares that it would have adopted and passed this code and each part, chapter, article, division, section, subsection, sentence, clause, phrase and word hereof, irrespective of the fact that any one or more of other parts, chapters, articles, divisions, sections, subsections, sentences, clauses, phrases or words hereof be declared invalid or unconstitutional.

## EXHIBIT B

### 1.04 General Penalty

#### Sections:

- 1.04.010 Violations – Penalties.
- 1.04.020 Costs of assessment.
- 1.04.030 Each day constitutes separate offense.
- 1.04.040 Nuisance.
- 1.04.050 Enforcement – Citation Authority.
- 1.04.060 Injunctive relief.

**1.04.010 VIOLATIONS – PENALTIES.** Except as may otherwise be provided in Chapter 8.02,

(a) The violation of any provision of this code, or other ordinance of the city, or failure to comply with any mandatory requirements thereof, may be prosecuted as an infraction and punishable by fine or as a misdemeanor and punishable by fine and/or imprisonment.

- 1) A violation shall be deemed an infraction if a citation is issued specifying that the violation is an infraction, the city attorney files a complaint in the superior court specifying that the offense is an infraction, or the city attorney makes a motion to reduce a misdemeanor to an infraction prior to trial on the matter.
- 2) A violation shall be deemed a misdemeanor if a citation is issued specifying that the violation is a misdemeanor or the city attorney files a complaint in the superior court specifying that the offense is a misdemeanor.

(b) Failure to comply with any condition of a permit or entitlement granted by the city, or failure to secure a required permit, may be punishable as an infraction or misdemeanor per this section.

(c) Penalties for infraction. The penalty for an infraction shall be a fine not exceeding \$100 for a first conviction; a fine not exceeding \$200 for a second conviction within 1 year; a fine not exceeding \$500 for each additional conviction within 1 year.

(d) Penalties for misdemeanor. The penalty for a misdemeanor, as authorized per state law, shall be a fine not to exceed \$1,000 and imprisonment for terms not exceeding six months, or both.

**1.04.020 COSTS OF ASSESSMENT.** Upon entry of a second or subsequent civil or criminal judgment within a two-year period finding that an owner of property is responsible for a condition that may be abated pursuant to Chapter 7.16 or 7.20, the Court entering the second or subsequent judgment may order that owner to pay treble the costs of the abatement.

**1.04.030 EACH DAY CONSTITUTES SEPARATE OFFENSE.** Unless provision is otherwise herein made, each such person is guilty of a separate offense for each and every day during any portion of which any violation of any provision of this code is continued, or permitted, by such person, and shall be punished as herein provided. (Prior code § 1.05(b)).



**1.04.040 NUISANCE.** In addition to the penalties herein provided, any condition caused, or permitted to exist, in violation of any of the provisions of this code, is a public nuisance, and may be by this city, summarily abated as such and each day that such condition continues shall be regarded as a new and separate offense.

**1.04.050 ENFORCEMENT – CITATION AUTHORITY.**

(a) Persons employed in the following positions, or their designees, may enforce the provisions of the San Mateo Municipal Code and regulations adopted pursuant thereto by the issuance of Administrative Citations under Chapter 1.10 of this Code.

| Position                                     | Code Title, Chapter, or Section   |
|--|---|
| Community Development Director               | Chapter 5.06, Chapter 5.64, Title 7, Title 8, Title 10, Section 11.40.110, Sections 17.08.010-.020, Sections 17.08.160-.170, Section 17.08.180(a), Section 17.20.010, 17.29.040, Title 23, Title 25, Title 27 |
| Neighborhood Improvement and Housing Manager |   |
| Sr. Code Enforcement Officer                 |   |
| Code Enforcement Officer                     |   |
| Building Official                            | Title 7, Title 10, Title 23   |
| Deputy Building Official                     | Title 25, Title 27  |
| Building Inspector                           |   |
| Fire Chief                                   | Title 7, Title 10, Title 23   |
| Battalion Chief                              | Title 25, Title 27  |
| Fire Marshal                                 |   |
| Deputy Fire Marshal                          |   |
| Fire Inspector                               |   |
| Fire Prevention Inspector                    |   |
| Director of Public Works                     | Chapter 7.38, Chapter 7.39, Chapter 17.08, Chapter 25.04, Chapter 25.08   |
| Deputy Director of Public Works              |   |
| Construction Inspector                       |   |
| Senior Engineer                              |   |
| Environmental Programs Manager               |   |
| Source Control Inspector                     |   |
| Public Works Supervisor                      |   |
| Waste/RecyclingPrgm.Coordinator              |   |
| Harbor Patrol Officer                        | Sections 13.05.010-13.05.030  |
| Park Ranger                                  | Chapter 13.20   |
| Senior Park Ranger                           | Section 13.25.015   |

Director of Parks and Recreation

Parks and Landscape Maintenance  
Manager  
Tree Maintenance Specialist

Chapter 13.35, Chapter 13.52

Community Service Officers  
Parking Enforcement Representative

Title 11

(b) Nothing in this chapter shall diminish or otherwise modify the authority of persons who are empowered to enforce the San Mateo Municipal Code because of their status as peace officers or because of other authorizing status.

**1.04.060 INJUNCTIVE RELIEF.** In addition to any other remedy provided by this Code, any provision of this Code may be enforced by injunction issued by the Superior Court upon a suit brought by the City of San Mateo.

## EXHIBIT C

### 1.10 Administrative Citations

#### Sections:

- 1.10.010 Purpose/Applicability.
- 1.10.020 Enforcement Officer – Defined.
- 1.10.025 Nuisance Abatement Fee – Defined.
- 1.10.030 Administrative Citation.
- 1.10.040 Use of Administrative Citations; separate violations.
- 1.10.050 Procedures for Administrative Citations.
- 1.10.060 Appeal of Administrative Citation.
- 1.10.070 Fees Assessed.
- 1.10.080 Right to Judicial Review.

#### **1.10.010 PURPOSE/APPLICABILITY.**

- (a) This chapter shall be cited as the “Administrative Citation Ordinance.”
- (b) The city council finds there is a need for an additional method of enforcement for violations of this Code. The city council finds an appropriate method of enforcement is an Administrative Citation.
- (c) The procedures established in this chapter shall be in addition to criminal, civil or any other legally established procedures that may be pursued to address violations of this Code.
- (d) The Administrative Citation process as set forth in this Chapter shall apply to all violations and provisions of this Code.
- (e) Use of this Chapter shall be at the sole discretion of the City.

**1.10.020 ENFORCEMENT OFFICER – DEFINED.** For purposes of this Chapter, “enforcement officer” shall mean any City employee or agent of the City with the authority to enforce any provision of this code as provided in Section 1.04.050.

**1.10.025 NUISANCE ABATEMENT FEE – DEFINED.** A fee to cover the City’s administrative and other reasonable costs of abating violations of the San Mateo Municipal Code pursuant to this chapter.

#### **1.10.030 ADMINISTRATIVE CITATION.**

- (a) Whenever an enforcement officer who has authority to enforce a violation of this code determines that a violation has occurred, the enforcement officer may issue an Administrative Citation to any person or entity responsible for the violation.
- (b) Each Administrative Citation shall contain the following information:
  - (1) The date of the violation;
  - (2) The address or a definite description of the location where the violation occurred;
  - (3) A citation to the section of this Code violated and a description of the violation;
  - (4) The amount of the Nuisance Abatement Fee for the code violation;

(5) A description of the Nuisance Abatement Fee payment process, including a description of the time within which and the place to which the fee shall be paid;

(6) An order of abatement prohibiting the continuation or repeated occurrence of the code violation described in the Administrative Citation;

(7) A description of the Administrative Citation Appeal process, including the time within which the Administrative Citation may be contested; and

(8) The name and signature of the citing enforcement officer.

(c) Except in the case of a violation creating an immediate danger to health or safety, the enforcement officer shall issue a warning notice of violation to the responsible party for a continuing violation pertaining to building, plumbing, electrical or other similar structural or zoning issues, at least 72 hours prior to issuance of an Administrative Citation. The notice shall be posted at the property or personally served on the responsible party at the time of issuance.

#### **1.10.040 USE OF ADMINISTRATIVE CITATIONS; SEPARATE VIOLATIONS.**

(a) Each and every day a violation of this Code exists constitutes a separate and distinct offense. Each section of the Code violated constitutes a separate violation for any day at issue.

(b) A Nuisance Abatement Fee for violation of this Code may be assessed by means of an Administrative Citation issued by the enforcement officer and shall be payable directly to the City.

(c) Nuisance Abatement Fees assessed by means of an Administrative Citation shall be collected in accordance with the procedures specified in this Chapter.

#### **1.10.050 PROCEDURES FOR ADMINISTRATIVE CITATIONS.**

(a) The Administrative Citation shall be issued on a form prescribed by the City Manager.

(b) The enforcement officer may obtain the signature of the responsible party on the Administrative Citation to establish personal service of the citation. If that person is not located, refuses or otherwise does not sign the Administrative Citation, the lack of signature shall in no way affect the validity of the citation and proceedings. In such cases, the enforcement officer shall make service of the citation as otherwise provided herein.

(c) If the enforcement officer is unable to locate the responsible party, or the responsible party refuses or otherwise does not sign the citation, the Administrative Citation shall be served on the responsible party as follows:

(1) The Administrative Citation shall be mailed to the responsible party by first class mail. If the responsible party is the property owner, it shall be sent to the mailing address maintained for the property by the County Tax Assessor. If the responsible party is the tenant or other possessor of property where the violation exists, it shall be sent to the property address, if possible. In all other cases, service shall be made at the address maintained for the responsible party by the city for Business Tax purposes, or at the responsible party's last known address.

(2) The failure of any responsible party to receive a properly addressed and mailed citation shall not affect the validity of any proceeding under this chapter.

(3) Service of the Administrative Citation in the manner described above shall be effective on the date of mailing.

#### **1.10.060 APPEAL OF ADMINISTRATIVE CITATION.**

(a) Persons receiving an Administrative Citation may appeal it within ten (10) working days

from the date the Administrative Citation is served. The Notice of Appeal must be in writing, and accompanied by the Nuisance Abatement Fee, and must specify the basis for the appeal. It must be received by the City within ten (10) working days. If the deadline falls on a weekend or city holiday, then the deadline shall be extended until the next regular business day.

(b) The Community Improvement Commission will hear and decide Administrative Citation Appeals.

(c) As soon as practicable after receiving the written Notice of Appeal, the City shall review it for sufficiency. If found to be complete and in conformance with this section, the City shall set the appeal hearing for the next available Community Improvement Commission meeting. Written notice of the time and place for the hearing may be served by personal service, or first class mail to the address provided by the responsible party on the Notice of Appeal.

(d) The failure of any person with an interest in the property to receive such properly addressed notice of the hearing shall not affect the validity of any proceedings under this chapter. Service by first class mail shall be effective on the date of mailing.

(e) Failure of any person to file an appeal in accordance with the provisions of this section shall constitute a waiver of that person's rights to contest the merits of the citation and the imposition of the Nuisance Abatement Fee.

(f) The Community Improvement Commission shall conduct an orderly fair hearing and accept evidence on which persons commonly would rely in the conduct of their business affairs as follows:

(1) A valid citation shall be prima facie evidence of the violation;

(2) The Community Improvement Commission shall accept testimony by declaration under penalty of perjury relating to the violation and the appropriate means of correcting the violation;

(3) The owner, agent, responsible party, or any other interested person may present testimony or evidence concerning the violation and the means and time frame for correction.

(g) The City shall establish all appropriate administrative regulations for conducting hearings and rendering decisions pursuant to this section.

(h) The Community Improvement Commission shall determine whether to affirm or dismiss the Administrative Citation. The Community Improvement Commission may reduce, waive or conditionally reduce the Nuisance Abatement Fee stated in the citations or any late fees assessed based on a showing of good cause. The Community Improvement Commission may impose conditions and deadlines for correction of violations and make such direction to enforcement officers to assure compliance.

(i) The Community Improvement Commission shall make findings based on the record of the hearing and make a written decision based on the findings. The City shall preserve all exhibits submitted by the parties for a 180-day period and shall serve the decision by first class mail on the contestant within ten (10) working days after the hearing. The decision of the Community Improvement Commission may be appealed to the City Council in writing within 10 working days of the day the Community Improvement Commission's decision is served. The appeal before the City Council will follow the same procedures and requirements as the Community Improvement Commission hearing.

#### **1.10.070 FEES ASSESSED.**

(a) The City Council shall establish the amounts of the Nuisance Abatement Fees, including increased fees for repeat violations, to be assessed for Administrative Citations by City

Council resolution. Correction of any violation within (10) working days of the date the citation was served, as verified by the enforcement officer, will result in a reduction of the Nuisance Abatement Fee by 2/3rds for the first violation of a code.

(b) If the violator or property owner fails to correct the violation, subsequent Administrative Citations may be issued for the same violation(s).

(c) Payment of the Nuisance Abatement Fee shall not excuse the failure to correct the violation nor shall it bar further enforcement action by the city.

(d) All Nuisance Abatement Fees assessed shall be payable to the city at the address provided on the Administrative Citation.

(e) If payment of a Nuisance Abatement Fee is not received by the City within thirty (30) calendar days of service of the citation, then a late fee in the amount of 25% of the citation shall be assessed.

(f) The failure of any person to timely pay a Nuisance Abatement Fee assessed by Administrative Citation or any late fee added thereto, constitutes a debt to the city. To enforce that debt, the Director of Finance or designee may file a claim with the small claims court, or pursue any other legal remedy to collect such money, including by assessment as set forth in SMMC Chapter 7.42.

(g) In addition to the Nuisance Abatement Fee assessed by the Administrative Citation and any late fee thereto, for appeals which have gone before the Community Improvement Commission or City Council, either hearing body may assess administrative costs against the violator. The administrative costs may include any and all costs incurred by the City in connection with the matter before the hearing body including, but not limited to, costs of inspection, investigation, attorneys' fees, staffing costs incurred in preparation for the hearing and for the hearing itself and costs for all reinspections of the subject violation.

**1.10.080 RIGHT TO JUDICIAL REVIEW.** Any person aggrieved by an administrative decision of the City Council on an Administrative Citation may obtain review of the administrative decision by filing a petition for review with the Superior Court in San Mateo County in accordance with the timeliness and other provisions set forth in California Government Code Section 53069.4.

## **EXHIBIT D**

### **1.14 Administrative Compliance Orders**

#### **Sections:**

- 1.14.010 Purpose/Applicability.
- 1.14.020 Enforcement Officer -- Defined.
- 1.14.030 Administrative Compliance Order.
- 1.14.040 Procedures for Administrative Compliance Order.
- 1.14.050 Administrative Compliance Hearing.
- 1.14.060 Penalties and Fees Assessed.
- 1.14.070 Right to Judicial Review.

#### **1.14.010 PURPOSE/APPLICABILITY.**

- (a) This chapter shall be cited as the "Administrative Compliance Order Ordinance."
- (b) The city council finds there is a need for an additional method of enforcement for violations of this Code. The city council finds an appropriate method of enforcement is an Administrative Compliance Order.
- (c) The procedures established in this chapter shall be in addition to criminal, civil or any other legally established procedures that may be pursued to address violations of this Code.
- (d) The Administrative Compliance Order process as set forth in this Chapter shall apply to all violations and failures to comply with mandatory provisions established by this Code.
- (e) Use of this Chapter shall be at the sole discretion of the City.

**1.14.020 ENFORCEMENT OFFICER – DEFINED.** For purposes of this Chapter, "enforcement officer" shall mean any City employee or agent of the City with the authority to enforce any provision of this code as provided in Section 1.04.050.

#### **1.14.030 ADMINISTRATIVE COMPLIANCE ORDER.**

- (a) Issuance. An enforcement officer may issue a written compliance order, providing a reasonable time for correction of not less than ten (10) working days, to any person responsible for a Municipal Code violation.
- (b) Contents of administrative compliance order. A compliance order issued pursuant to this chapter shall contain the following information: the date and location of the violation; the section of this code violated and a description of the violation; the action required to correct the violation; the time period after which administrative penalties will begin to accrue if compliance with the order has not been achieved; and the amount of penalties that will begin to accrue.
- (c) Compliance and failure to comply. If the enforcement official determines that all violations have been corrected within the time specified in the compliance order or within any amended orders, the enforcement official shall so advise each party to whom the compliance order was addressed. If full compliance is not achieved within the time specified in the compliance order or within any amended orders, the enforcement official shall schedule a hearing before the Community Improvement Commission.
- (d) Administrative order by Community Improvement Commission. If the Community Improvement Commission determines that a violation occurred which was not corrected within the time period specified in the compliance order, the Community Improvement

Commission shall issue an administrative order which imposes any or all of the following: an order to correct code violations, including a schedule for correction, if appropriate; administrative penalties; and administrative costs of enforcement.

(e) Administrative penalties. The Community Improvement Commission may impose administrative penalties for each day during which a violation occurs after compliance was ordered. Administrative penalties assessed by the Community Improvement Commission shall be due by the date specified in the administrative order.

#### **1.14.040 PROCEDURES FOR ADMINISTRATIVE COMPLIANCE ORDER.**

(a) The enforcement officer may serve the Compliance Order personally upon the responsible party or the property owner to establish personal service of the order. Alternatively, the enforcement officer shall make service of the citation by first class mail. If the responsible party is the property owner, it shall be sent to the mailing address maintained for the property by the County Tax Assessor. If the responsible party is the tenant or other possessor of property where the violation exists, it shall be sent to the property address, if possible. In all other cases, service shall be made at the address maintained for the responsible party by the city for Business Tax purposes, or at the responsible party's last known address.

(b) The failure of any responsible party to receive a properly addressed and mailed citation shall not affect the validity of any proceeding under this chapter.

(c) Service of the Administrative Compliance Order in the manner described above shall be effective on the date of mailing.

(d) The City Manager may establish appropriate administrative regulations for implementing this ordinance.

#### **1.14.050 ADMINISTRATIVE COMPLIANCE HEARING.**

(a) The Community Improvement Commission shall hear and decide Administrative Compliance Orders.

(b) Written notice of the time and place for the hearing may be served by personal service, or first class mail to the address provided in the Compliance Order.

(c) The failure of any person with an interest in the property to receive such properly addressed notice of the hearing shall not affect the validity of any proceedings under this chapter. Service by first class mail shall be effective on the date of mailing.

(d) The Community Improvement Commission shall conduct an orderly fair hearing and accept evidence on which persons commonly would rely in the conduct of their business affairs as follows:

(1) A valid compliance order shall be prima facie evidence of the violation;

(2) The Community Improvement Commission may accept testimony by declaration or in person under penalty of perjury relating to the violation and the appropriate means of correcting the violation;

(3) The owner, agent, responsible party, or any other interested person may present testimony or evidence concerning the violation and the means and time frame for correction.

(e) The Community Improvement Commission may establish all appropriate administrative regulations for conducting hearings and rendering decisions pursuant to this section.

(f) The Community Improvement Commission shall determine whether to affirm or dismiss the Administrative Compliance Order and shall set the amount of administrative penalties and administrative costs. The Community Improvement Commission may impose conditions and deadlines for correction of violations and make such direction to enforcement officers to assure compliance.



(g) The Community Improvement Commission shall make findings based on the record of the hearing and make a written decision based on the findings and shall serve the decision by first class mail on the contestant within ten (10) working days after the hearing. The decision of the Community Improvement Commission may be appealed to the City Council in writing within 10 working days of the day the Community Improvement Commission's decision is served. The appeal before the City Council will follow the same procedures and requirements as the Community Improvement Commission hearing.

**1.14.060 PENALTIES AND FEES ASSESSED.**

- (a) If the violator or property owner fails to correct the violation by the date due on the Compliance Order, the Community Improvement Commission shall establish an administrative penalty, not to exceed \$1000 per day per violation, and a date the penalty and any administrative costs shall be due and payable. In addition to Administrative Penalties, the Community Improvement Commission may assess administrative costs against the violator. The administrative costs may include any and all costs incurred by the city in connection with the matter before the Community Improvement Commission, including, but not limited to, costs of inspection, investigation, attorneys' fees, staffing costs incurred in preparation for the hearing and for the hearing itself, and costs for all reinspections.
- (b) Jurisdiction. After the administrative order becomes final, the Community Improvement Commission shall maintain continuing jurisdiction until full compliance is achieved and shall have the power to modify the administrative order, after providing the person subject to the administrative order with notice and an opportunity to be heard. Notwithstanding this provision, the city attorney has independent jurisdiction to pursue alternate remedies for the same violations regardless of the pendency of the administrative proceedings pursuant to this Chapter.
- (c) Payment of the administrative penalty shall not excuse the failure to correct the violation nor shall it bar further enforcement action by the city.
- (d) All administrative penalties assessed shall be payable to the city at the address provided on the Administrative Compliance Order.
- (e) The failure of any person to timely pay an administrative penalty and/or administrative costs imposed by the Community Improvement Commission constitutes a debt to the city. To enforce that debt, the Director of Finance or designee may file a claim with the small claims court, or pursue any other legal remedy to collect such money. Administrative costs may be collected as an assessment as set forth in SMMC Chapter 7.42.

**1.14.070 RIGHT TO JUDICIAL REVIEW.** Any person aggrieved by an administrative decision of the City Council on an Administrative Compliance Order may obtain review of the administrative decision by filing a petition for review with the Superior Court in San Mateo County in accordance with the timeliness and other provisions set forth in California Government Code Section 53069.4.