

ORDINANCE NO. 1498

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARCATA AMENDING THE ADMINISTRATION CITATION PROCEDURE OF THE MUNICIPAL CODE

The City Council of the City of Arcata does ordain as follows:

Section 1. Chapter 3, Penalty Provisions, of Title 1, General Provisions, is hereby renamed to “Enforcement and Penalty Provisions,” and Article 1 entitled “Penalty Provisions” is hereby created in Chapter 3 to consist of existing Sections 1200 through 1210 without any changes to said Sections, excepting changes to Section 1200, as shown by the following strike through for deleted text and bold double underscore for additions:

Title 1 - General Provisions
Chapter 3 – **Enforcement and** Penalty Provisions
Article 1 - Penalty Provisions

SEC. 1200. Penalty – General.

No person whether principal, agent, employee or otherwise, shall violate any provision, or fail to comply with any of the mandatory requirements of this Code. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Code, shall be guilty of an infraction unless such offense is specifically designated as a misdemeanor in this Code. Any person convicted of a misdemeanor under any of the provisions of this Code, unless provision is otherwise herein made, shall be punished by a fine of not more than ~~five hundred one thousand~~ dollars (\$5001,000.00), or by imprisonment in the City or County Jail for a period not exceeding six months, or by both such fine and imprisonment. Every violation determined to be an infraction is punishable by (1) a fine not exceeding one-hundred dollars (\$100.00) for a first violation; (2) a fine not exceeding two-hundred dollars (\$200.00) for a second violation of the same ordinance within one year; (3) a fine not exceeding five-hundred dollars (\$500.00) for each additional violation of the same ordinance within one year. **Notwithstanding any other provision of law, a violation of local building and safety codes determined to be an infraction is punishable by (1) a fine not exceeding one hundred dollars (\$100) for a first violation; (2) a fine not exceeding five hundred dollars (\$500) for a second violation of the same ordinance within one year; (3) a fine not exceeding one thousand dollars (\$1,000) for each additional violation of the same ordinance within one year of the first violation.** Each such person shall be guilty of separate offense for each and every day during any portion of which any violation of any provision of this Code is committed, continued, or permitted by such person and shall be punishable accordingly.

Section 2. Section 1210, “Administrative fines or penalties for violations of Code,” of Title 2, General Provisions, Chapter 3, Enforcement and Penalty Provisions, is hereby repealed.

Section 3. Article 2 entitled “Administrative Enforcement” is hereby created in Chapter 3, Enforcement and Penalty Provisions, of Title 2, General Provisions, and shall consist of the following new Sections 1210 – 1225 hereby adopted:

Title 1 - General Provisions
Chapter 3 – Enforcement and Penalty Provisions
Article 2 – Administrative Citations

SEC. 1210. Purpose and applicability.

Unless otherwise provided by law, the violation of any provision of this Code is subject to an administrative citation, fine and penalty pursuant to Government Code Section 53069.4. The remedies provided by this Chapter are in addition to all other legal remedies, criminal or civil, which may be pursued by the City to address any violation of this Code. Use of this Article shall be at the sole discretion of the City.

SEC. 1211. Enforcement Officer defined.

For purposes of this Article, "Enforcement Officer" shall mean any City employee or agent of the City having the authority to enforce any provision of this code. Enforcement Officers shall have authority to issue administrative citations pursuant to this Article.

SEC. 1212. Administrative citation.

A. Whenever an Enforcement Officer charged with the enforcement of any provision of this Code determines that a violation of that provision has occurred, the Enforcement Officer may issue an administrative citation to any person 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. The section of this Code violated and a description of the violation;
4. The amount of the fine for the Code violation;
5. A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;
6. An order prohibiting the continuation or repeated occurrence of the Code violation described in the administrative citation;
7. An order to correct the Code violation described in the administrative citation if said violation is correctable as described in subsection D below;
8. A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request for hearing form to contest the administrative citation may be obtained and an advance deposit waiver; and
9. The name and signature of the citing Enforcement Officer.

C. Any order to correct issued as part of an administrative citation may be enforced as set forth in specific provisions applicable to that violation.

D. In cases involving a continuing violation pertaining to building, plumbing, electrical, or other similar structural or zoning issues that do not create an immediate danger to health or safety, a reasonable time not to exceed six months shall be provided to remedy or correct the violation prior to imposition of fines or penalties. In determining what is a reasonable time, the City may consider the estimate of local professionals including licensed contractors. In the case of such violations, the time within which the violation must be corrected in order to avoid a fine shall also be specified on the administrative citation. The City Manager may extend the time period to remedy or correct a violation up to six months for good cause, including such factors as complexity of corrective action and third party delays not caused or contributed to by any person responsible for the violation. Upon application to the City Manager and after a duly noticed public meeting, the City Council may further extend the time

period to remedy or correct a violation provided that the responsible party has made diligent progress in correcting the violation.

E. Whenever an administrative citation has been issued for the undertaking of any activity without a permit, license, or franchise required by this Code and the amount of the administrative fine imposed for that violation is delinquent, no permit, license, or franchise for that activity shall be issued unless and until the delinquent administrative fine and any applicable penalties and interest are first paid. A permit may be issued to correct outstanding violation(s) of this Code provided the person who received the citation has entered into a settlement and payment agreement to the satisfaction of the City Manager after first considering the circumstances, severity and extent of the violation.

SEC. 1213. Notice of Violation In Lieu Of Administrative Citation

A. *Notice of violation, generally.* Except as provided in subsection B of this Section, if the violation consists of building, electrical, mechanical, plumbing or zoning regulation violations which does not create an immediate danger to health or safety, the Enforcement Officer may defer issuance of an administrative citation until the person responsible for a violation has first been given a notice of the violation and an opportunity to correct the violation. When issued, the notice of violation shall contain all of the following:

1. The date and location that the violation was observed;
2. The section of this Code violated and a description of the violation;
3. The actions required to correct the violation;
4. A reasonable and definite time period for the correction of the violation; and
5. Notice that if the violation is not corrected by the date specified, an administrative citation may be issued and fines may be imposed.

B. *Exceptions.* The Enforcement Officer is not required to issue a notice of violation prior to issuance of an administrative citation if any of the following circumstances exist, as determined by the Enforcement Officer:

1. The person responsible for the violation was issued an administrative or infraction citation for violation of the same provision of this Code within the immediately preceding 12 months;
2. The violation constitutes an immediate threat to the health or safety of any person or the public generally;
3. One or more other violations exist on the property, any one of which is not subject to a notice of violation; or
4. The person responsible for the violation owes the City unpaid administrative fees, fines or penalties that are delinquent.

C. *Correction of Violation.* If the Enforcement Officer determines that all violations listed in the notice of violation have been corrected within the specified time, an administrative citation may not be issued. If the Enforcement Officer determines that some or all of the violations listed in the notice of violation were not corrected within the required time, an administrative citation may be issued for each uncorrected violation or the Enforcement Officer may invoke any other remedy provided by law.

SEC. 1214. Amount of fines.

The amount of the administrative fines imposed under this Article shall be established by resolution of the City Council and shall be consistent with Section 1200 and applicable state law. The schedule of fines shall specify increased fines for repeat violations of the same Code provision by the same person within 12 months from the date of an administrative citation. Such person shall be guilty of a

separate offense for each and every day, or portion thereof, during which any violation of any provision of this subchapter is committed, continued, or permitted by such person. The schedule of fines shall additionally specify the late payment and interest charges imposed on a payments made after its due date.

SEC. 1215. Payment of the fine.

Fines shall be paid to the City within 30 days from the date of the administrative citation. Payment of a fine under this Article shall not excuse or discharge any continuation or repeated occurrence of the Code violation that is the subject of the administrative citation. Fines not paid when due shall be deemed delinquent, and subject to a late payment penalty and interest charge.

SEC. 1216. Hearing request.

A. The recipient of an administrative citation may contest the alleged violations, or that he or she is the responsible party, by submitting a request for hearing to the City within 30 days from the date of the administrative citation. The request for hearing must be made on a City provided form, and shall include a deposit payment of the total amount of fine, or notice that an advance payment hardship waiver application has been filed pursuant to Section 1217.

B. The City shall set a date for hearing not less than 15 days or more than 60 days from the date the City receives a complete hearing request form. The City shall notify the person requesting the hearing of the time and place set for the hearing at least ten days prior to the date of the hearing.

C. Any additional written reports concerning the administrative citation submitted by the Enforcement Officer for the hearing officer's consideration shall also be served on the person requesting the hearing at least five days prior to the date of the hearing.

SEC. 1217. Advance payment hardship waiver.

A. Any person who intends to request a hearing under Section 1216 and who is financially unable to make the advance payment of the fine as required by this Article, may file an application for an advance payment hardship waiver. The request for a hardship waiver shall be filed with the City on the City's advance deposit hardship waiver application form within ten days of the date of the administrative citation. The application shall contain a sworn affidavit by the applicant together with any supporting documents or materials providing proof of such financial inability to deposit the full amount of the fine. The City Manager or designee shall review the application and determine if the application demonstrates actual financial inability to advance pay fine, and on such determination may waive the requirement of an advance deposit of the fine.

B. The advance payment deposit requirement shall be stayed unless or until the City makes a determination not to grant the advance payment hardship waiver.

C. If the City Manager determines not to issue an advance payment hardship waiver, the cited party shall remit payment to the City within ten days of the date of that decision or 30 days from the date of the administrative citation, whichever is later.

D. The City Manager shall issue a written determination of its reasons for granting or denying an advance payment hardship waiver. This written determination shall be final.

E. The written determination shall be served upon the applicant for the advance payment hardship waiver by first class mail.

SEC. 1218. Hearing officer.

The City Manager shall designate one or more persons qualified to act as hearing officer for administrative citation hearings.

SEC. 1219. Hearing procedures.

A. No hearing will be held unless the fine has been deposited in advance or an advance payment hardship waiver has been granted.

B. The administrative citation and any additional report submitted by the Enforcement Officer shall constitute *prima facie* evidence of the respective facts contained in those documents. Both the party contesting the administrative citation and the City shall be given opportunities to testify and present additional evidence concerning the alleged violations at the hearing. Such evidence may include witness testimony and/or documentary evidence. The legal rules of evidence shall not apply to the hearing, and the hearing officer may rely on any relevant evidence that is material to the alleged violations.

D. The failure of a recipient of an administrative citation to appear at the administrative citation hearing shall constitute a forfeiture of the fine, a failure to exhaust his or her administrative remedies and consent to any order issued as part of the administrative citation.

F. The hearing officer may continue the hearing and request additional information from the Enforcement Officer or the recipient of the administrative citation prior to issuing a written decision.

SEC. 1220. Hearing Officer's decision.

A. After considering all the relevant testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision to uphold, reduce or cancel the administrative citation and shall state in the decision the reasons therefore. The decision of the hearing officer shall be served by the City on the cited person within 10 days of receipt, and shall be final.

B. If the hearing officer determines that the administrative citation should be upheld, the fine amount on deposit with the City shall be retained by the City.

C. If the hearing officer determines that the administrative citation should be upheld and the fine has not been deposited pursuant to an advance payment hardship waiver, complete payment of the fine shall be made within 30 days of receipt of the hearing officer's decision, and if not then paid shall be considered delinquent.

D. If the hearing officer determines that the administrative citation should be canceled or reduced and the fine was deposited with the City, the City shall refund the fine amount deposited or paid in excess, within 30 days of the date of the hearing officer's decision.

SEC. 1221. Recovery of administrative citation fines and costs.

The City may collect delinquent fines, penalties and interest through any available legal method, including, but not limited to, collection, liens and judicial action, and the City's collection costs are recoverable together with the delinquent payment, penalty and interest. Delinquent fines, penalties and interest owed for conditions of real property, or structures thereon, owned by the person cited may be

made a lien against the real property upon which the violation occurred when such fines, penalties and interest are not fully paid within 60 days.

SEC. 1222. Lien Procedure

A. The Finance Director may initiate proceedings to establish and record a lien against the property for which a delinquent fine was imposed on the owner of property for a violation occurring or existing on that property by preparing and filing with the City Clerk a report stating for each property for which a lien is proposed the amount of the delinquent administrative fine, applicable penalties and interest, and an administrative fee established by resolution of the City Council to recover the administrative costs incurred in recording the lien and carrying out the lien procedures of this Article.

B. The City Clerk shall fix a time, date, and place for hearing by the City Council of the report and any protests or objections thereto.

C. The Finance Director shall cause written notice to be served on the owner of each affected property not less than ten days prior to the time set for the hearing. Such notice shall set forth the amount of the delinquent administrative fine and any penalties and interest which are due. Such notice shall be delivered by first class mail, postage prepaid, addressed to each owner of such property to be assessed as that owner's address appears on the last equalized assessment roll or supplemental roll of the County of Humboldt, whichever is more current. Service by mail as provided for herein shall be effective on the date of mailing, and the failure of any person to actually receive such notice shall not affect the validity of the notice.

D. At the conclusion of the hearing, the City Council may adopt a resolution confirming, discharging, or modifying the amount of the lien proposed for each affected property and order that the amount not discharged as to any property be reduced to a lien against that property. The City Council may thereupon order that the fee be specifically assessed against the property involved. If the City Council orders that the fee be specially assessed against the property, it shall confirm the assessment. Thereafter, said assessment may be collected at the same time and in the same manner as ordinary real property taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary real property taxes. All laws applicable to the levy, collection, and enforcement of real property taxes are applicable to the special assessment.

E. A lien may be foreclosed by an action brought by the City for a money judgment.

F. The city may recover from the property owner any costs incurred regarding the process and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.

G. The City Clerk shall record the lien in the office of the Humboldt County Recorder within 30 days following the adoption of a resolution by the City Council imposing a lien.

SEC. 1223. Satisfaction of lien.

Upon payment in full is received by the City for all outstanding administrative fines, penalties, interest, and administrative costs, the Finance Director shall record a notice of satisfaction of lien with the office of the Humboldt County office recorder and release the lien.

SEC. 1224. Right to judicial review.

A. Any person aggrieved by an administrative decision of a hearing officer on an administrative citation may obtain review of the administrative decision by filing a petition seeking review in accordance with Government Code Section 53069.4.

B. The City is prohibited from seeking review of an administrative decision of a hearing officer on an administrative citation pursuant to Government Code Section 53069.4.

SEC. 1225. Legislative Subpoenas. Pursuant to Government Code § 37104, the City Manager is authorized to subpoenas requiring attendance of witnesses or production of books or other documents for evidence or testimony in any administrative action or proceeding pending before the City.

Section 5: Severability. If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, the decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Chapter, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid under law.

Section 6: This ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines, because the ordinance implements an existing Code compliance program in a manner, and can be seen with certainty there is no possibility it may have a significant effect on the environment.

Section 7: This ordinance will take effect thirty (30) days after the date of its adoption.

DATE: January 3, 2018

ATTEST:

/s/ Bridget Dory
City Clerk, City of Arcata

APPROVED:

/s/ Sofia Pereira
Mayor, City of Arcata

CLERK'S CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of Ordinance No. 1498, passed and adopted at a regular meeting of the City Council of the City of Arcata, Humboldt County, California, held on the 3rd day of January, 2018, by the following vote:

AYES: **PEREIRA, WATSON, ORNELAS, PITINO, WINKLER**

NOES: **NONE**

ABSENT: **NONE**

ABSTENTIONS: **NONE**

/s/ Bridget Dory
City Clerk, City of Arcata