

CITY OF ALAMEDA ORDINANCE NO. _____

New Series

AMENDING THE ALAMEDA MUNICIPAL CODE BY AMENDING
SECTION 1-7 (ADMINISTRATIVE CITATIONS) OF CHAPTER I
(GENERAL) CONCERNING CODE ENFORCEMENT AND
ADMINISTRATIVE CITATIONS

WHEREAS, this Ordinance is adopted pursuant to the City's police powers, afforded by the state constitution and state law to protect the health, safety, and welfare of the public.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALAMEDA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1: SECTION 1-7 (ADMINISTRATIVE CITATIONS) of Chapter I (GENERAL) of the Alameda Municipal Code, is hereby amended as follows (in redline; otherwise, no change):

1-7 - ADMINISTRATIVE CITATIONS.

1-7.1 – Applicability.

- a. This section establishes the procedures for imposition of administrative citations which 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, subject to the limitations of paragraph (b) of this subsection.
- b. The administrative citations process set forth in this section applies to all ~~continuing~~ violations of this Code except that:
 1. For continuing violations pertaining to building, plumbing, electrical or other similar structural or zoning concerns, administrative citations may not be issued until the responsible party has been given notice and an opportunity to comply;
 2. Administrative citations may not be issued for violations of Chapter VIII (DESIGNATED PARKING) of the Alameda Municipal Code.

1-7.2 – Enforcement Official—Defined.

Enforcement Official shall mean any officer, employee or other personnel authorized or charged with the enforcement of the provisions of the Alameda Municipal Code which are subject to the administrative citations authorized by this section.

~~1-7.3.1 – Notice of Violation.~~

- ~~a. Prior to issuance of an administrative citation, except as provided for below, the Enforcement Official shall issue a Notice of Violation to a person responsible for any~~

~~municipal code violation, including a continuing violation which pertains to building, plumbing, electrical or other structural or zoning issues.~~

~~b. The Notice of Violation shall specify the action required to correct or otherwise remedy the violation(s) within a reasonable period of time.~~

~~c. A reasonable time period within which to correct or remedy the violation(s) shall be not less than twenty-four (24) hours and not more than thirty (30) calendar days, unless the Enforcement Official determines that good cause exists for some other time period. The Enforcement Official shall specify for each violation this reasonable time period. In doing so, the Enforcement Official may consider the cost of abatement or correction, the time required to obtain permits for correction, the time needed to obtain estimates, drawings and contracts for correction, time required for physical relocation of personal property, the time required to review submittals in determining the reasonable warning period to be assigned for each violation, and/or his/her experience. Subsections a. and b. above are inapplicable and the Enforcement Official may take immediate enforcement action, including issuance of an administrative citation, under the following circumstances:~~

~~1. The violation poses an immediate danger to the public's health, safety, or welfare; and~~

~~2. The violation exists because of, facilitates in some manner, or is otherwise related to the illegal cultivation of cannabis, subject to subsection (C) of California Government Code Section 53069.4 (as amended).~~

1-7.3.2 – Administrative Citation.

a. *Issuance of Administrative Citation.* Whenever an Enforcement Official determines that a violation of this Code has occurred, the Enforcement Official shall have the authority to issue an administrative citation to any person responsible for the violation.

b. *Administrative Citation; Contents.* 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 violation;

5. A description of the fine payment process, including a description of the time within which and the place where the fine shall be paid;

6. An order prohibiting the continuation or repeated occurrence of the violation described in the administrative citation;

7. The time limits for payment of the fine and abatement of the Code violations;

7g. 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

89. The name and signature of the citing Enforcement Official, and the date of issuance of the citation.

1-7.4 – Amount of Fines.

a. *Amount.* Unless otherwise specified by a resolution of the City Council, the default amount of the fines for violations imposed pursuant to this section shall be set forth below:

1. For a first violation, a fine of Two Hundred and Fifty Dollars (\$250) shall be imposed for each count;
2. For a second violation within three (3) years of the imposition of the first administrative fine, a fine of Five Hundred Dollars (\$500) shall be imposed for each count;
3. For a third and any subsequent violation within three (3) years of the prior imposition of an administrative fine, a fine of One Thousand Dollars (\$1,000) shall be imposed for each count.

~~b. *Repeat Violations.* The schedule of fines shall specify any increased fines for repeat violations of the same Code provision by the same person within twelve (12) months from the date of an initial administrative citation.~~

~~eb. *Late Charges.* The City Council may adopt, by resolution, The schedule of fines shall specify the amount of any late payment charges imposed for the payment of the fine after its due date.~~

1-7.5 – Payment of Fine Compliance with Administrative Citation.

a. The party issued any administrative citation shall comply with the citation by abating the Code violations described in the citation and by paying the required fines within the time allotted by the citation. ~~Due Date.~~ The fine shall be paid to the City within thirty (30) days from the date of the administrative citation.

b. Any administrative citation fine paid pursuant to subsection 1-7.6(a) shall be refunded in accordance with subsection 1-7.10(c) if it is determined, after a hearing, that the person charged in the administrative citation was not responsible for the violation or that there was no violation as charged in the administrative citation.

c. *Payment; Not Excuse for Future Violations.* Payment of a fine under this section shall not excuse or discharge any continuation or repeated occurrence of the Code violation that is the subject of the administrative citation.

d. *Late Charges.* Any person who fails to pay to the City any fine imposed pursuant to the provisions of this section on or before the date that fine is due shall also be liable for the payment of any applicable late payment charges set forth ~~in the schedule of fines by City Council Resolution.~~

1-7.6 – Hearing Request.

- a. *Request for Hearing; Advance Deposit.* Any recipient of an administrative citation may contest the determination that there was a violation of the Code or that he or she is the party responsible for any violation by completing a request for hearing form from the department specified in the citation and returning it to that department within thirty (30) days from the date of issuance of the administrative citation, together with an advance deposit of the fine or a notice that a request for an advance deposit hardship waiver has been filed pursuant to subsection 1-7.7.
- b. *Notification of Hearing.* The person requesting the hearing shall be notified of the time, date and place of the hearing in writing at least ~~ten~~five (~~5~~10) days prior to the date of the hearing.
- c. *Copies of Any Additional Reports Filed by Enforcement Official.* Any additional reports which may be filed by the Enforcement Official for consideration at the hearing shall be served upon the person requesting the hearing at least ~~five~~three (~~5~~3) days prior to the date of the hearing, unless excused by the Hearing Officer upon demonstrating good cause.
- d. The recipient of an administrative citation may at the time that he/she contests the citation waive the right to a hearing and elect instead to have the administrative review be based exclusively on written materials submitted to the Hearing Officer. The recipient must submit all written materials within ten days after he or she makes this election.

1-7.7 – Advance Deposit Hardship Waiver.

- a. *Application.* Any person who intends to request a hearing to contest that there was a violation of the Code or that he or she is the party responsible for any violation, and who is financially unable to make the advance deposit of the fine as required by subsection 1-7.6(a), may request a waiver, which shall be filed with the Finance Department within ten (10) days of the date of the administrative citation.
- b. *Requirements of Application.* The Finance Director may waive the requirement of an advance deposit set forth in subsection 1-7.6 and issue the advance deposit hardship waiver only if the cited party submits to the Finance Director a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the Director the person's actual financial inability to deposit with the City the full amount of the fine in advance of the hearing.
- c. *Stay of Deposit; Determination of Waiver.* The requirement of depositing the full amount of the fine as described in subsection 1-7.6(a) shall be stayed unless or until the Finance Director makes a determination not to issue the advance deposit hardship waiver. The Finance Director may waive the requirement of an advance deposit set forth in subsection 1-7.6(a) and issue an advance deposit hardship waiver only if the cited party submits a sworn affidavit or declaration under penalty of perjury, together with supporting documents or materials demonstrating to the satisfaction of

the Finance Director the person's actual financial inability to deposit with the City the full amount of the fine in advance of the hearing.

- d. If the Director determines not to issue the advance deposit hardship waiver, the person shall remit the deposit to the City within ten (10) days of the date of that decision or thirty (30) days from the date of the administrative citation, whichever is later. The decision of the Finance Director shall be in writing and state the reasons for his or her determination to issue or not issue the advance deposit hardship waiver. The determination of the Finance Director is final ~~and shall be mailed to the person applying for the hardship waiver by first class, certified mail, return receipt requested, postage prepaid.~~

1-7.8 – Hearing Officer—Appointment.

The Hearing Officer shall be selected and governed by regulations adopted pursuant to Section 1-8.01 of this Code~~The City Manager shall designate the Hearing Officer for the administrative citation hearing.~~

1-7.9 – Hearing Procedure.

- a. No hearing to contest an administrative citation before a Hearing Officer shall be held unless the fine has been deposited in advance in accordance with subsection 1-7.6(a) or an advance deposit hardship waiver has been issued in accordance with subsection 1-7.7.
- b. The hearing shall be set for a date that is not less than ~~fifteen~~five (45) days nor more than sixty (60) days from the date that the request for hearing is filed in accordance with the provisions of this section, unless the Hearing Officer determines that the matter is urgent or that good cause exists for an extension of time~~Either party may request one (1) continuance of the hearing, but in no event may the hearing begin later than ninety (90) days after receipt of their request for hearing, except as set forth below. The party contesting the administrative citation may attend the hearing in person or, in lieu of attending, may submit written argument and documentation under penalty of perjury at least five (5) days prior to the date scheduled for the hearing. Notwithstanding the foregoing, the hearing officer may continue the hearing beyond the ninety (90) day period for a reasonable amount of time in the interests of justice.~~
- c. At the hearing, the party contesting the administrative citation shall be given the opportunity to present oral and documentary evidence concerning the administrative citation. The hearing shall be informal, the rules of evidence shall not apply, and all evidence shall be admissible which is of the kind that reasonably prudent persons rely upon in making decisions. The hearing officer shall have the ability to control the proceeding, including the ability to limit testimony and the admissibility of evidence that is unduly repetitious or make other rulings or place other limitations on the hearing that s/he deems to be in the interests of judicial economy or justice.
- d. The administrative citation and any additional report submitted by the Enforcement Official shall constitute prima facie evidence of the respective facts contained in those documents.

- e. The Hearing Officer may continue the hearing and request additional information from the Enforcement Official or the recipient of the administrative citation prior to issuing a written decision.
- f. The Hearing Officer shall have the power to issue orders to keep order and decorum during an Administrative Hearing. No person shall fail to comply with any such order.
- g. At any time prior to, during or after the hearing, the City Attorney's office may exercise its prosecutorial discretion to reach a plea agreement or compromise with the responsible party or to dismiss any citation.

1-7.10 - Hearing Officer's Decision.

- a. After considering all of the evidence submitted at the hearing, the Hearing Officer shall issue a written decision to uphold or reverse the administrative citation and shall state the reasons for that decision. The decision of the Hearing Officer is final.
- b. If the Hearing Officer determines that the administrative citation should be upheld, then the fine amount on deposit with the City shall be retained by the City. If the fine has not been deposited pursuant to an advance deposit hardship waiver, the Hearing Officer shall set forth in the decision a payment schedule for the fine.
- c. If the Hearing Officer reverses the administrative citation, the fine deposited with the City shall be promptly refunded, together with interest at the average rate earned on the funds of the City for the period of time that the fine amount was held by the City.
- d. The recipient of the administrative citation shall be served with a copy of the Hearing Officer's written decision.

1-7.11 – Late Payment Charges.

Any person who fails to pay the City any fine imposed pursuant to the provisions of this section on or before the date that fine is due shall also be liable for the payment of any applicable late charges set forth in the schedule of fines.

1-7.12 – Recovery of Administrative Costs.

- a. The City may collect any past due administrative citation fine or late payment charge by use of all available legal means. The City may also recover its collection costs, including, but not limited to, reasonable attorney's fees and court costs.
- b. Administrative fines and other penalties sustained by the Hearing Officer are a debt owed to the City and in addition to all other means of enforcement, if the violation concerns the condition of real property, may be enforced by means of a lien against real property on which the violation occurred. Failure to pay administrative fine within the time allowed under this Chapter shall constitute a violation of the Alameda Municipal Code.

- c. Whenever the amount of any administrative fine imposed pursuant to this Chapter in connection with real property has not been satisfied in full within ninety (90) days, this obligation may constitute a lien against any real property involved where any violation was determined to concern the condition of that real property.
- d. Once recorded, the lien shall have the force and effect and priority of a judgment lien governed by provisions of Section 697.340 of the California Code of Civil Procedure and may be extended as provided in Sections 683.110 through 683.200 of the California Code for Civil Procedure.
- e. Interest shall accrue on the principal amount of the judgment remaining unsatisfied pursuant to law.
- f. Prior to recording any such lien, the Finance Director shall prepare and file with the City Clerk a report stating the amounts due and owing.
- g. The City Clerk shall fix a time, date and place for hearing such report and any protests or objections thereto by the City Council.
- h. The Finance Director shall cause written notice to be served on each property owner whose interest is disclosed by the current County equalized roll not less than ten (10) calendar days prior to the time set for the hearing.

1-7.13 – Right to Judicial Review.

Any recipient of an administrative citation who has appealed the administrative citation to the Hearing Officer may obtain review of the Hearing Officer's decision by filing a petition for review with the appropriate court of Alameda County in accordance with the timelines and provisions set forth in California Government Code Section 53069.4.

1-7.14 – Notices.

- a. The administrative citations and all notices required to be given under this section may be served personally, by posting at the address of the violation, or by depositing in the United States Mail, first class, ~~delivery confirmation~~, addressed to the person responsible, as such address is determined by the Enforcement Official.
- b. Administrative citations for violation of Alameda Municipal Code Section 4-25 may be served by attaching such citation to an offending motor vehicle.
- c. The failure of any recipient of an administrative citation to appear at the administrative hearing shall result in a forfeiture of the fine and a failure to exhaust his or her administrative remedies.

1-7.15 – Remedies ~~Cumulative~~ — Not Exclusive.

Any violation of any provision of this Section 1-7, including any failure to comply with an administrative citation or pay an administrative fine, is a misdemeanor, which shall be punishable by a fine not exceeding \$1,000.00 per violation, or by imprisonment in the County Jail for a period not exceeding 6 months, or by both such fine and imprisonment..

The filing of a criminal misdemeanor action does not preclude the City from using any other legal remedy available to gain compliance with the administrative citation.

The remedy provided for herein is cumulative, not exclusive, and may be used in addition to any other remedy provided by law.

1-7.16 – Transfer of ownership.

It shall be unlawful for the owner of any dwelling unit or structure who has received a citation to sell, transfer, mortgage, lease or otherwise dispose of it to another until the provisions of the citation have been complied with or until such owner shall first furnish the grantee, transferee, mortgagee or lessee, with a true copy of any citation and shall furnish to the code official a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such citation and fully accepting the responsibility without condition for making the corrections or repairs required by such citation or stating that the grantee, transferee, mortgagee or lessee intends to timely challenge the citation. The transfer of ownership in violation of this Section shall not abrogate the transfer.

Section 2: IMPLIED REPEAL

Any provision of the Alameda Municipal Code inconsistent with this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to effectuate this Ordinance.

Section 3: CEQA DETERMINATION

Adoption of the Ordinances amending the AMC is not a project under California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15378 and Public Resources Code section 21065 because it does not: (1) approve a project or result in a direct physical impact on the environment, or (2) contemplate known future projects, and as such, no known environmental impacts are known at this time. Instead, the proposed amendments would clarify procedural aspects related to the implementation of locally adopted building and other related codes.

As a separate and independent basis, adoption of the Ordinances amending the AMC is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Section 4: SEVERABILITY

If any provision of this Ordinance is held by a court of competent jurisdiction to be invalid, this invalidity shall not affect other provisions of this Ordinance that can be given effect without the invalid provision and therefore the provisions of this Ordinance are severable. The City Council declares that it would have enacted each section,

subsection, paragraph, subparagraph and sentence notwithstanding the invalidity of any other section, subsection, paragraph, subparagraph or sentence.

Section 5: EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

* * * * *

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the _____, 2020, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this _____, 2020.

Lara Weisiger, City Clerk
City of Alameda

Approved as to form:

Yibin Shen, City Attorney
City of Alameda