

## **Title 11**

### **ADMINISTRATIVE PROCEDURES\***

#### **Chapters:**

- 11.02     Administrative Procedures for the  
Enforcement, Imposition, Collection  
and Administrative Review of Penalties  
or Fines for Code Violations**

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\***Editor's note**—Ord. No. 782, adopted Nov. 17, 2008, amended the Code by the addition of Title 4; however, said title has been redesignated as Title 11, §§ 11.02.010—11.02.150, at the editor's discretion, for purposes of maintaining Code format and for purposes of allowing future expansion of the Code.

ADMINISTRATIVE PROCEDURES

Chapter 11.02

ADMINISTRATIVE PROCEDURES FOR THE  
ENFORCEMENT, IMPOSITION, COLLECTION AND  
ADMINISTRATIVE REVIEW OF PENALTIES OR FINES  
FOR CODE VIOLATIONS

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- 11.02.010 Purpose.
- 11.02.020 Application.
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- 11.02.150 Imposition of liens or special assessments.

11.02.010 Purpose.

The city council finds that the goals of enforcing provisions of the municipal code are to preserve the quality and value of public and private property and to eliminate conditions which threaten the life, health, safety and general welfare of the public.

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The council finds that there is a need for an additional method of enforcement for violations of the Municipal Code for conditions such as, but not limited to:

- Overgrown, and/or accumulations of vegetation.
  - Accumulations of trash, junk, debris, brush, lumber, furniture, tools, etcetera.
  - Discarded appliances.
  - Abandoned and/or broken equipment.
  - Graffiti.
  - Autos, campers, trailers used for human habitation.
  - Violation of city zoning ordinances.
  - Unauthorized and unpermitted signage.
  - Substandard housing.
  - Unauthorized, unsafe and/or improper occupancy of buildings or property.
  - Construction and/or installations without a building permit.
  - Deteriorated, dangerous and unsafe buildings.
  - Unlawful or unauthorized dumping.
  - Occupancy of substandard structures.
  - Encroachments within a public right-of-way.
  - Hazardous and/or unsanitary environmental conditions.
  - Failure to comply with the city's transient occupancy tax ordinance.
  - Failure to comply with the city's business license ordinance.
- (Ord. 782, 11-17-2008)

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### **11.02.020 Application.**

The provisions of this title are supplementary and complimentary to all of the provisions of the Sonora Municipal Code, including the city's zoning ordinance and the laws of the State of California. Nothing in this title shall be read, interpreted or construed in any manner that would limit or abrogate any existing right or power of the city with respect to enforcement of its municipal code.

- A. "Enforcement officer." for the purposes of this title, "code enforcement officer" shall mean any city employee or agent of the city delegated the authority by the city administrator to enforce any provision of the Sonora Municipal Code.

(Ord. 782, 11-17-2008)

### **11.02.030 Authority of enforcement officer.**

An enforcement officer shall have the authority to gain compliance with this code, including the power to issue a notice of violation ("NOV") as described below, the power to inspect public and private property, the power to record a notice of violation against any property related to the violation, and the power to carry out the provisions of an abatement order. An enforcement officer may also issue an abatement order or impose any penalty permitted under this code or any other applicable law as described below.

(Ord. 782, 11-17-2008)

### **11.02.040 Notice of violation (NOV).**

- 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 documents issued or approved by or on behalf of the city or city's redevelopment agency, or a failure to comply with any other laws the violation of which constitutes a nui-

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sance condition, and such officer elects to pursue administrative enforcement pursuant to this chapter, he or she may issue the responsible party a NOV. The information set forth in the NOV may include an order requiring the responsible party to appear at a hearing and show cause why a penalty should not be imposed or why such nuisance should not be abated by the city at the responsible party's expense. The NOV shall be served on the responsible party in the manner described in subsection B of this section. The enforcement officer shall include the following information in the NOV:

1. The date and location of the violation, including the address or other description of the location where the violation occurred or is occurring and a brief description of the conditions observed that constitute a violation;
  2. The name(s) of the responsible party(ies), if known;
  3. The code section(s) being violated and a description of the section(s);
  4. Actions required to correct, abate or mitigate the violation and a period of time during which the action(s) shall be commenced and completed;
  5. An order prohibiting the continuation or repeated occurrence of a nuisance condition or violation of this code described in the NOV;
  6. A statement that the person upon whom the NOV is served may appeal the determination. The NOV will instruct the person being served as to the proper procedure and timeframe for submitting an appeal;
  7. The signature of the citing enforcement officer and the city contact information (address, telephone number) for additional information.
- B. The NOV shall be served upon the responsible party or owner personally or by registered mail, and if by mail, it shall be sent to the last known address listed on the most

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recent tax assessor's records. In the case of personal service, service shall be deemed complete at the time of such delivery. Where service is by registered mail, a copy of the NOV shall be conspicuously posted at any affected property when reasonably practicable for a period of not less than three calendar days prior to the first date that commencement of corrective action or abatement is to be undertaken. The failure or refusal to receive a NOV sent via registered mail shall not affect the validity of any enforcement proceedings under this title.

- C. Proof of service shall be certified by a written declaration under penalty of perjury executed by the person effecting service, declaring the date, time and manner of service, and the date and place of posting, if applicable. The declaration shall be affixed to a copy of the NOV and retained by the enforcement officer.
- D. The failure of a NOV to satisfy all of the requirements of this provision shall not affect the validity of any other enforcement proceedings under this code.

(Ord. 782, 11-17-2008)

### **11.02.050 Time allowed for abatement.**

If an abatement order is issued, the time allowed for abatement shall be a "reasonable time" based upon the circumstances of the particular violation, taking into consideration the means required to abate the violation, the period of time that the violation has existed, and the potential threat to public health and safety created by the violation. If the violation pertains to building, plumbing, electrical, mechanical or other similar structural or zoning issues and does not pose an imminent or immediate threat of harm to persons or property, or to public health, welfare or safety, the responsible party shall be provided not less than fifteen days in which to abate or otherwise remedy the violation. The determina-

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tion of timely compliance, abatement, mitigation or elimination of the violation shall be made by the enforcement officer or other authorized city official.

(Ord. 782, 11-17-2008)

### **11.02.060 Imposition of fines and/or penalties.**

Any nuisance condition or violation of any provision of this Code, including 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 city's redevelopment agency, or a failure to comply with any county, state or federal law may subject the responsible party to a penalty imposed pursuant to the city's general police powers, and/or Government Code Sections 36901 and 53069.4.

- A. The amount of any penalty that may be imposed for a violation that would otherwise be an infraction shall not exceed the amounts set forth in Government Code Section 36900(b), as amended from time to time. The amount of any penalty that may be imposed for all other violations (i.e., violations that would otherwise be misdemeanors) shall not exceed one thousand dollars per day. In determining the amount of a penalty, the following factors should be taken into consideration:
1. Duration of the violation;
  2. Frequency, reoccurrence, or number of violations of the same person;
  3. Seriousness of the violation and/or its impact on the community and/or the degree of culpability of the responsible party;
  4. Justification, if any, for the existence, or continuance, of the violation;
  5. Whether the violation is susceptible to restoration or other mitigation;

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6. Good faith efforts to mitigate the violation or to come into compliance, pursuant to the terms of the NOV or abatement order;
  7. Sensitivity of any affected resource;
  8. Any profits or other economic benefit realized by the responsible party resulting, directly or indirectly, from the violation;
  9. Any schedule of administrative penalties adopted by the City of Sonora;
  10. Such other factors as justice may require.
- B. Each and every day during any portion of which a nuisance condition exists or continues may be deemed a separate and distinct violation for purposes of setting the amount of penalty to be imposed. Any penalty imposed will accrue on a daily basis from the date the penalty becomes effective until the violation is corrected.
- C. Any penalty amount is a debt owed to the city. In addition to all other means of enforcement, a penalty may be enforced as a personal obligation of the responsible party. If the violation is in connection with real property, a penalty may also be enforced by imposition of a lien or special assessment upon the real property, as described in Section 4.013 of this title. Any lien or special assessment imposed upon real property shall remain in effect until the penalty is paid in full.
- D. The city council, in its discretion, may suspend the imposition of any applicable penalty for a period of time not to exceed sixty days during which the responsible party has demonstrated a willingness to comply with the order, or has applied for permits required to achieve compliance and such permit applications are actively pending before, or have already been issued by the city, state, or other appropriate governmental agency, or under any other circumstances that would justify a suspension of the penalty.
- (Ord. 782, 11-17-2008)



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### **11.02.070 Payment and collection of administrative penalty.**

- A. If a penalty is imposed and the responsible party fails to appeal the penalty as specified in Section 4.06 of this title, the responsible party shall pay the amount of the penalty within thirty days of service of the NOV or order imposing same, unless an extension of time is requested by the party against whom the penalty is imposed and the request is granted by the city administrator. Any penalty imposed shall be payable to the city.
- B. If the amount of any penalty imposed for a violation relating to an affected property has not been satisfied in full within sixty days of the date due and has not been successfully challenged by appeal or in court, the penalty amount may become a special assessment or lien against the affected property, as provided in Section 4.013 of this title. If the city elects to make 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 4.012 of this title.
- C. Notwithstanding subsection B of this section, 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. 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 nuisance condition, or performing restoration where required, nor prevent further proceedings under this chapter or any other authority to achieve the correction, removal or abatement of the nuisance, or any required restoration.

(Ord. 782, 11-17-2008)

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### **11.02.080 Appeal of NOV or other enforcement action.**

- A. A person or entity named as the responsible party in a NOV, abatement order or other enforcement action may appeal the determination that there is/are violation(s) as alleged in the NOV, that the person or entity who was served with the NOV or abatement order is the responsible party, that a penalty or the amount of a penalty is warranted, or any other terms of an abatement order.
- B. Any person appealing a NOV, abatement order or penalty must serve an appeal, in writing, upon the city clerk within fifteen calendar days from the date of the service of the NOV or notice of the abatement order or penalty.
- C. At the time of serving the request for hearing on the City Clerk, the person or entity requesting the appeals hearing shall pay an appeals processing fee of two hundred dollars. No appeal shall proceed without payment of the fee at the time the appeal is filed provided that the city administrator may waive or defer the appeal fee upon written request and good cause shown. Good cause may include severe economic hardship, significant attempts to comply with the notice and order, or other factors indicating good faith attempts to comply.
- D. Failure to timely submit the appeal or to pay the appeals processing fee of two hundred dollars constitutes a waiver of the right to appeal, a failure to exhaust administrative remedies and shall preclude judicial review.

(Ord. 782, 11-17-2008)

### **11.02.090 Enforcement stayed during appeal.**

Enforcement of a NOV, abatement order or penalty shall be stayed during the pendency of an appeal which is properly and timely filed.

(Ord. 782, 11-17-2008)

### **11.02.100 Appeals hearings.**

- A. An appeals hearing based on a request for hearing shall be set for a date not less than ten days nor more than sixty days from

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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 item, in which case the hearing date may be shortened or extended, as warranted by the circumstances.

- B. A hearing under authority of this section shall be conducted according to the procedures set forth herein. The failure of the responsible party or other 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 his/her administrative remedies.
  - 1. When a request for hearing is filed, the city clerk shall set the time and place for hearing and shall serve a notice of hearing either personally or by U.S. mail, first class postage prepaid, to the appellant at the address provided in the request for hearing form. The time for such hearing shall be no sooner than ten days from the date of service of the notice of hearing.
  - 2. At the place and time set forth in the notice of hearing, the city council shall conduct a hearing on the alleged violations. Any responsible party or other interested person(s) may appear and offer evidence. Evidence presented by the enforcement officer or other official of the city tending to show that a violation occurred and that the person named on the NOV is the responsible party shall establish a prima facie case that a violation, as charged, actually existed and that the person named in the NOV is the responsible party for the violation. The burden of proof shall then be on the responsible party to refute such evidence. The standard to be applied for meeting such burden shall be a preponderance of evidence.
  - 3. The city council will consider written or oral testimony or other evidence regarding the violation presented by the responsible party, the owner, the occupant, any officer, employee, or agent of the city, and any other interested

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party. Evidence offered during a hearing must be credible and relevant in the opinion of the city council, but formal rules governing the presentation and consideration of evidence will not apply.

4. The mayor shall conduct the hearing, order the presentation of evidence, and make any rulings necessary to address procedural issues presented during the course of the hearing, with the assistance of the city attorney.
5. After receiving evidence, the matter shall be submitted. The city council may then deliberate and consider what action, if any, should be taken, or may adjourn the hearing and take the matter under consideration.

(Ord. 782, 11-17-2008)

### **11.02.110 Decision of the city council and administrative order.**

- A. Within fifteen calendar days following the conclusion of the hearing, the city council shall make a decision regarding the issues presented during the course of the hearing. The decision shall be based on a preponderance of the evidence. After making its decision, the city council may issue an administrative order. If the city council finds that no violation occurred, that the violation was corrected within the specified time period, or that the person cited is not the responsible party, the administrative order shall reflect the finding(s).
- B. The responsible party and any interested party requesting a copy of an administrative order shall be served with a copy of said order in the same manner as used for service of a notice of hearing as described in Section 4.02 of this title. Proof of service of the administrative order shall be certified by a written declaration under penalty of perjury executed by the person effective service declaring the date, time and manner that service was made.
- C. An administrative order shall become effective and enforceable immediately after announcement or service of such order

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unless the order includes a later effective date. It shall include a statement of the right to have the order judicially reviewed in the manner and in the time frames specified in Section 4.010 of this title.

- D. An administrative order may include any combination of the following remedies:
1. Imposition of a penalty, subject to Government Code Sections 36900(b) and 53069.4.
  2. Issuance of a "cease and desist" order requiring the responsible party, or any agent, representative, employee, or contractor of the responsible party, to immediately stop any act, conduct, or condition, that is a violation of this code. A cease and desist order issued pursuant to this section shall be effective upon issuance and shall be served on the responsible party in the manner specified in Section 4.02 of this title.
  3. Require the responsible party to correct or eliminate any violation, including a proposed schedule for correction or elimination of said violation within a reasonable time. If a violation pertains to building, plumbing, electrical, or any other structural or zoning issues and the violation does not create an immediate threat to health or safety, the responsible party shall be provided at least fifteen calendar days to correct, abate, or otherwise remedy the violation.
  4. Require the responsible party, or authorize the city, to restore a site or location that has been damaged or disturbed as a result of a violation of this code to a pre-violation condition. Any order authorizing the city to undertake restoration efforts shall include provisions for the city to recover all restoration costs and expenses, including administrative expenses, from the responsible party.
  5. Require the responsible party, or authorize the city, to mitigate any damage or disturbance to protected or envi-

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ronmentally sensitive areas as a result of any violation, including without limitation, off-site replacement of damaged or destroyed natural resources where on-site restoration or mitigation is not feasible, as determined by the city. Any order authorizing the city to undertake mitigation efforts shall include provisions for the city to recover all costs of abatement, including mitigation costs and expenses, from the responsible party.

6. Impose conditions that restrict or regulate the development of, use of, or activity on real property where a nexus exists between the violation(s) and the development, use or activity. Conditions may be imposed until the violations are fully abated. Restrictions and regulations on current or future development, use or activity may include site restoration and/or the suspension or revocation of any entitlements issued by the city.
7. Authorize the city to abate or cause the abatement of a nuisance condition where the responsible party has refused or has otherwise neglected to take steps to correct or eliminate said conditions. The administrative order shall specify that if the city undertakes to abate or eliminate any nuisance condition the city shall be entitled to recover all costs of abatement incurred in performing such work and other costs necessary to enforce the order. Such costs may be recovered by the city as a personal obligation and/or through a lien or a special assessment on the affected property as provided in section 4.013 of this title.
8. Sustain, modify, or overrule an abatement order issued by an enforcement officer.
9. Any other order or remedy that serves the interests of justice.
- E. The city may seek to enforce any administrative order by confirmation from a court of competent jurisdiction. Any administrative order that is judicially confirmed may be

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enforced through normal enforcement measures including, without limitation, criminal contempt proceedings, upon a subsequent violation of such order.

(Ord. 782, 11-17-2008)

### **11.02.120 Judicial review.**

- A. Any responsible party who is aggrieved by a decision of the city council, or of a board, commission, department, agency, or person authorized to render such a decision on behalf of the city pursuant to this chapter, and who has exhausted the administrative remedies provided in this code, or any other applicable law, shall have the right to seek judicial review of such decision by filing a petition for writ of mandate in accordance with Code of Civil Procedure Section 1094.5. A petition for Writ of Mandate must be filed within ninety days after the administrative decision becomes final (as determined in Code of Civil Procedure Section 1094.6). Notwithstanding these time limits, where a shorter time limitation is provided by any other law, including that set forth in Government Code Section 53069.4 (see subsection E of this section), such shorter time limit shall apply.
- B. Written notice of the time limitation in which a party may seek judicial review of an administrative decision shall be given to all responsible parties in the matter by the city in substantially the following form:
- "Judicial review of this decision may be sought by following the procedure outlined in Code of Civil Procedure. Section 1094.5. Judicial review must be sought not later than the 90<sup>th</sup> 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."
- C. This section shall not be deemed to revive any cause of action or grounds for relief through a special proceeding that is barred by law or equity.

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- D. All costs of preparing a record that may be recovered by a local agency pursuant to Code of Civil Procedure, Section 1094.5(a) or successor statute shall be paid by the petitioner prior to delivery of the record to petitioner.
- E. Any responsible party against whom a penalty has been imposed and who has exhausted the administrative remedies provided in this code or other applicable law may obtain judicial review of said penalty pursuant to Government Code Section 53069.4 by filing an appeal to the Tuolumne County Superior Court, subject to the time limits described therein. Any such appeal shall be filed as a limited civil case. Written notice of the subject time limits shall be given to all responsible parties against whom a penalty is imposed in substantially the following form:

"The time within which judicial review of the Penalty imposed by this Order must be sought is governed by Government Code Section 53069.4. Judicial review must be sought not later than 20 days after service of the Order imposing or confirming such Penalty."

(Ord. 782, 11-17-2008)

### **11.02.130 Recovery of costs of abatement.**

The city may elect to recover its costs to abate nuisance conditions including, without limitation, the costs of any appeals hearing (including staff time necessary to prepare for and attend an appeals hearing), any reinspections required to determine or confirm that compliance has been achieved, production of all staff reports, environmental tests or measurements that are deemed necessary or appropriate by the enforcement officer, third party inspection(s) or consultant services as deemed necessary by the city and any attorney's fees incurred in pursuing enforcement. If the city elects, at the initiation of an administrative enforcement action or proceeding, to seek recovery of attorney's fees, pursuant to Government Code Section 38773.5(b), then the prevailing party



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shall be entitled to recover attorney's fees in an amount not to exceed the amount of attorney's fees incurred by the city in such action. Recovery by the city of the costs of enforcement shall be in addition to any penalty imposed on the responsible party.

(Ord. 782, 11-17-2008)

### **11.02.140 Cost accounts.**

- A. If any order authorizes the city to abate a nuisance condition, 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 ("the cost report") to the city council showing the cost of removing and/or abating the nuisance condition and describing the work performed. The cost report shall be agendaized as a "public hearing" item by the city clerk at a subsequent city council meeting following the required notice periods.
- B. At least ten days prior to the submission of the cost report to the city council, the city clerk shall cause a copy of the cost report to be mailed to the responsible party and/or to the owner of the property where the nuisance condition existed. If the nuisance concerns real property, a copy of the cost report shall be mailed to the owner(s) at the address shown for such owner(s) on the last tax roll. The city clerk shall also cause a notice of hearing to be mailed to the same person(s) or entity receiving a copy of the cost report. The notice of hearing shall set forth the date, time and location of the city council meeting at which the cost report shall be submitted to the city council.
- C. At the time and place fixed for receiving and considering the cost report, the city council shall hear a summary of the cost report and any objections by the responsible party or property owner against whom such costs are being charged or against whose property an abatement lien or special assessment may be imposed. After considering the cost report and any objections thereto, the city council may make such modifications to the cost report as it deems appropriate, after which the report shall be confirmed by order of the city council.

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- D. A copy of a city council order confirming costs against the responsible party shall be served on the responsible party within ten calendar days of such order in the manner described in Section 4.02 of this title. Any responsible party against whom costs of abatement and any other costs that are awarded by city council order shall have the right to seek judicial review of such order by filing a petition for Writ of Mandate in accordance with Code of Civil Procedure Section 1094.5. Such petition must be filed within sixty days of service of the order.

(Ord. 782, 11-17-2008)

### **11.02.150 Imposition of liens or special assessments.**

- A. 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 nuisance condition 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 Tuolumne County Recorder, and from the date of recording shall have the force, effect, and priority of a judgment lien. A lien authorized by this subsection shall specify the amount of the lien, that the lien is being imposed on behalf of the city, 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 record owner of the parcel.
- B. 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

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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 days and publication thereof in a newspaper of general circulation published in Tuolumne County.

- C. Any fee imposed on the city by the Tuolumne County Recorder for costs of processing and recording the lien, as well as the cost of providing notice to the owner in the manner described herein, may be recovered from the owner in any foreclosure action to enforce the lien following recordation.
- D. As an alternative to the lien procedure described above, any penalty imposed for violations of this code, including any other codes or statutes that have been incorporated into this code, and any costs of enforcement or administration, or expenses associated with the abatement of any nuisance levied in accordance with this title, whether imposed or levied judicially or administratively, may become a special assessment against the real property where the nuisance condition(s) 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 owner by certified mail, and shall contain the information set forth in Government Code Section 38773.5(c). All laws applicable to the levy, collection, and enforcement of municipal taxes, including those described in Government Code Section 38773.5(c), shall be applicable to such special assessment.

(Ord. 782, 11-17-2008)