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ORDINANCE NO. 852

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SONORA

Title 1 – General Provisions

Deleting Chapter 1.08, General Penalty; and adding, Chapter 1.08, General Penalties and Code Enforcement; and adding, Chapter 1.20, Administrative Citations, and adding, Chapter 1.24, Appeals; and amending, Section 1.04.010, Definitions; and deleting, Title 11, Administrative Procedures.

The City Council of the City of Sonora does hereby ordain as follows:

Chapters:

1.01 Code Adoption
1.04 General Provisions
~~**1.08 General Penalty**~~
1.08 General Penalty and Code Enforcement
1.12 Bench Mark and Datum Plane
1.16 General Municipal Election
1.20 Administrative Citations
1.24 Appeals

SECTION ONE: Delete Chapter 1.08, General Penalty, as follows:

~~**Chapter 1.08**~~

~~**GENERAL PENALTY**~~

~~**Sections:**~~

~~**1.08.010 Violations – Penalty.**~~

~~**1.08.010 Violations – Penalty.**~~

~~A. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of the ordinances of the city of Sonora is guilty of a misdemeanor, unless the violation is made an infraction by ordinance.~~

~~B. Except in cases where a different punishment is prescribed by any ordinance of the city, any person convicted of a misdemeanor for violation of an ordinance of the city is punishable by a fine of not more than five hundred dollars, or by imprisonment not to exceed six months, or by both such fine and imprisonment.~~

~~C. Every violation determined to be an infraction is punishable by:~~

~~1. A fine not exceeding one hundred dollars for a first violation;~~

~~2. A fine not exceeding two hundred dollars for a second violation of the same ordinance within one year; and,~~

~~3. A fine not exceeding five hundred dollars for each additional violation of the same ordinance within one year.~~

~~D. The ordinance codified in this chapter shall not apply to a violation of any ordinance adopted pursuant to the Vehicle Code of California.~~

~~E. 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 the ordinances of the city is committed, accordingly.~~

~~(Ord. 751-A § 1, 2002; Ord. 496 § 1, 1976)~~

SECTION TWO: Add Chapter 1.08, General Penalty and Code Enforcement, as follows:

Chapter 1.08

GENERAL PENALTIES AND CODE ENFORCEMENT

Sections:

1.08.010 General Penalty.
1.08.020 Each day a separate offense.
1.08.030 Criminal penalties – Infraction and misdemeanor.
1.08.040 Violation of permit.
1.08.050 Prosecutorial discretion.
1.08.060 Citation procedure.
1.08.070 Public nuisance abatement.
1.08.080 Costs of abatement – Confirmation.
1.08.090 Costs – Assessments and liens.
1.08.100 Treble costs.
1.08.110 Assessment for summary abatement.
1.08.120 Time for contest of assessment.
1.08.130 Filing copy of report with County Auditor/Controller.

1.08.010 General Penalty.

It is unlawful for a person to violate a provision, or to fail to comply with a requirement, of the Sonora Municipal Code. The City may enforce any such violation of the provisions of this Sonora Municipal Code by any one (1) or more of the following methods, at the City's discretion:

1. Administrative citation and penalties, to the extent authorized by this code.
2. Denial, forfeiture, or revocation of any permit granted by the City.
3. Criminal penalties pursuant to this chapter.

4. Any other remedy available to the City, including civil injunction or abatement of public nuisance.

1.08.020 Each day a separate offense.

Each day during any portion of which a violation is committed, continued, or permitted is a new and separated offense. This section applies whether a provision of this code is prosecuted by criminal, administrative, civil, or other procedures.

1.08.030 Criminal penalties – Infraction and misdemeanor.

A. Infraction. A person who violates a provision of this code, or who fails to comply with a requirement of this code, is guilty of an infraction, unless the violation is specifically identified in this code as a misdemeanor. An infraction is punishable by:
   1. A fine not exceeding One Hundred Dollars ($100.00) for a first (1st) violation.
   2. A fine not exceeding Two Hundred Dollars ($200.00) for a second (2nd) violation of the same code provision within a twelve (12) month period.
   3. A fine not exceeding Five Hundred Dollars ($500.00) for each additional violation of the same code provision within a twelve (12) month period.
   4. An offense, which would otherwise be an infraction, is a misdemeanor if a person has been convicted of two (2) or more violations of the same code provision within a twelve (12) month period. For the purpose of this subsection, a bail forfeiture is considered a conviction of the offense charged.
   5. An infraction is not punishable by imprisonment. A person charged with an infraction is not entitled to a jury trial nor to a public defense unless arrested and not released.

B. Violation of Local Building and Safety Codes. Violations of the building and safety codes set forth in the Sonora Municipal Code are punishable by the following:
   1. A fine not exceeding One Hundred Thirty Dollars ($130.00) Dollars for a first (1st) violation.
   2. A fine not exceeding Seven Hundred Dollars ($700.00) for a second (2nd) violation of the same code provision within a twelve (12) month period.
   3. A fine not exceeding One Thousand Three Hundred Dollars ($1,300.00) for each additional violation of the same code provision within a twelve (12) month period.
   4. A fine not exceeding Two Thousand Five Hundred Dollars ($2,500.00) for each additional violation of the same code provision within two years of the first violation if the property is a commercial property that has an existing building at the time of the violation and the violation is due to failure by the owner to remove visible refuse or failure to prohibit unauthorized use of the property.
   5. The City Council shall establish a process for granting a hardship waiver by resolution to reduce the amount of the fine upon a showing by the responsible party that the responsible party has made a bona fide effort to comply after the first violation and that payment of the full amount of the fine would impose an undue financial burden on the responsible party.

C. Misdemeanor. A person who violates a provision of this code, or who fails to comply with a requirement of this code, is guilty of a misdemeanor if the violation is specifically identified

in this code as a misdemeanor. A misdemeanor is punishable by a fine not exceeding One Thousand ($1,000.00) Dollars, or imprisonment not exceeding six (6) months, or both.

1.08.040 Violation of permit.
A person who is issued or granted a permit (including a land use entitlement or variance) by the City shall comply with each and every provision and condition of the permit. A person who violates or fails to comply with any provision or condition of the permit is in violation of this section, and is subject to punishment in accordance with this chapter, including proceedings for revocation of the permit or any other remedies available to the City by law.

1.08.050 Prosecutorial discretion.
A violation may be prosecuted by the City Attorney or the District Attorney. In any case where a violation is made a misdemeanor, the prosecuting attorney has the discretion to charge the violation as an infraction.

1.08.060 Citation procedure.

A. If a person is arrested for any violation of this code and is not immediately taken before a magistrate, the citation procedures in Section 853.6 of the Penal Code shall apply.

B. It shall be unlawful, and a misdemeanor, for a person who is criminally cited for an infraction or a misdemeanor under this code to refuse to sign a written promise to appear.

1.08.070 Public nuisance abatement.
Any condition caused or permitted to exist in violation of a provision of this code is a public nuisance. The condition may be abated in accordance with the procedures set forth in Sonora Municipal Code Chapter 14.01, Chapter 15.08, or Chapter 15.14, or other specific abatement procedures in this code if the condition constitutes a violation of one (1) or more of those codes.

1.08.080 Costs of abatement – Confirmation.

A. Costs. When proceedings under the Sonora Municipal Code result in the correction of a code violation or in a final judgment that a violation exists subsequent to the date specified in any notice issued pursuant to the provisions of Sonora Municipal Code, all costs of such proceedings and abatement incurred by the City may be assessed against the responsible party, as the person responsible for the code violation; or the property owner against whom the cost of abatement is being charged or against whose property an abatement lien or special assessment may be impose for the cost of abatement. Such costs may include, but not limited to, those actual costs incurred in inspecting or inspecting the property, publication, mailing and posting of notices, physical abatement through demolition, repair or replacement of buildings or removal of graffiti or other inscribed material, law enforcement costs directly related to nuisance abatement, and all other costs incurred by the city in initiating administrative proceedings and legal actions to enforce abatement activities, including reasonable attorney's fees. It is the purpose of this section to allow the City to assess its costs for correcting any violation against the property, subject to any limitations imposed under state law.

B. Attorneys' Fees. Pursuant to section 38773.5(b) of the Government Code, attorneys' fees may be recovered by the prevailing party. However, in no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

C. Accounting of Abatement Costs. The Director of Finance shall keep an account of the administrative and other costs of abatement, and shall submit to the City Council for confirmation an itemized written report showing such costs and their proposed assessment to the respective properties. The report shall be filed with the City Clerk not later than ten (10) days in advance of the confirmation hearing required below.

D. Clerk to Schedule Public Hearing to Confirm Report of Costs. Upon receipt of the report of costs, the City Clerk shall schedule a public hearing to receive protests and confirm the report.

E. Notice of Public Hearing to Confirm Report of Costs. Notice of the time, date and place of the hearing proposed assessment, together with reference to the report on file with the Clerk, shall be given to the 1) responsible party, as the person responsible for the code violation; and 2) the owner or owners of the real property on whose property an abatement lien or special assessment may be imposed, as shown on the last equalized assessment roll available on the date of mailing of the notice.

F. Time for Giving Notice. A notice of public hearing to confirm a report of costs shall be served not later than ten (10) days in advance of the hearing.

G. Service of Notice.
   1. Owner. Notice to the owner or owners of each property proposed to be assessed, shall be served in accordance with Section 1.20.080.
   2. Responsible Party. Notice to responsible party proposed to be assessed, shall be served in accordance with Section 1.20.080.
   3. Public Hearing. Notice of the time, date and place of the public hearing by the City Council shall be published once (1) in a newspaper of general circulation published within the City. Such publication shall be made no later than ten (10) days in advance of the hearing.
   4. Service Effective. Service shall be complete and effective as of the date of mailing or publication, as may be appropriate, as herein provided. The failure of any person to receive such notice shall not affect the validity of any proceedings taken pursuant to this section.

H. Proof of Service. Proof of service by mail shall be effected in the manner set forth in Sonora Municipal Code Section 1.20.080. Proof of service by publication shall be certified by written declaration under penalty of perjury executed by the person authorized to do so by the newspaper of general circulation declaring the date the notice was published by a newspaper of general circulation within the City, and a copy of the published notice shall be affixed to such declaration.

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I. Protests. Protest or objection to all or part of the report of costs may be in writing or may be given orally at the hearing for confirmation of the report of costs. Written protests or objections to all or part of the report of costs shall specify the hearing date, hour and description of the subject property.

J. Public Hearing by City Council – Confirmation of Costs. Upon the day and hour fixed in the notice the City Council shall conduct a public hearing to consider and pass upon the report of costs, together with any such protests or objections thereto. The City Council may make such revision, correction or modification of the report or the charge as it may deem just; and in the event the City Council is satisfied with correctness of the charge, the report (as submitted or as revised, corrected or modified) shall be confirmed or rejected by motion or resolution. The City Council may continue the hearing and delegate to the City Administrator, or his designee, the responsibility of hearing individual protests and objections, and submitting a recommendation with respect thereto; provided, that the City Council provides an opportunity for individual consideration of each protest or objection upon receipt of the recommendation by the City Administrator or his designee. The decision of the City Council on the report of costs and on all objections or protests shall be final and conclusive.

K. Personal Obligation. If, after the hearing at which each responsible party or property owner shall have the opportunity to address the issue, the City Council orders the charge to be a personal obligation the individuals involved, then it shall direct the Finance Department to collect the amount of the charge on behalf of the City of Sonora by use of all appropriate legal remedies. If unable to collect this obligation, the City may refer the case to the city attorney to file a court action to recover the costs.

L. Special Assessment. If, after the hearing at which each property owner shall have the opportunity to address the issue, the City Council orders that the charge be assessed against the property, it shall confirm the assessment, cause the same to be recorded on the assessment roll, and thereafter said assessment shall constitute a special assessment against the property.

M. Nuisance Abatement Lien. If, after the hearing wat which each property owner shall have the opportunity to address the issue, the City Council orders that the charge be assessed against the property as an abatement lien authorized by Government Code section 38773.1, as an alternative to the special assessment procedure described above, it shall confirm the lien amount, cause the same to be recorded in the county recorder's office in the county in which the parcel of land is located and from the date of recording shall have the force, effect, and priority of a judgment lien.

N. Service of Confirmed Report of Costs. Promptly following confirmation of the report by the City Council, the City Clerk shall serve upon the responsible party or owner or owners, a copy of the confirmed report of costs. The confirmed report of assessment shall include the following items: 1) the amount of the confirmed costs, 2) demand that the same be paid in full to the City within thirty (30) days from the date of service, and 3) a statement that failure to receive payment within the time allotted shall result in the costs becoming a personal

obligation of the owner, a special assessment against the subject property, or a nuisance abatement lien against the subject property. Service of the confirmed report of costs shall be affected in the same manner as service of the notice of hearing as set forth in this section.

1.08.090 Costs – Assessments and liens.

A. Cost Recovery If Not Paid within Thirty (30) Days. If the costs as confirmed have not been received by the City within thirty (30) days of the date notice thereof is effective, and the City Council has ordered that such costs be assessed against a property, the costs shall be assessed against the parcel of land, as a special assessment or an abatement lien, as authorized by Section 38773.1 of the Government Code. Collection of the special assessment shall be in the same manner as ordinary County taxes, and shall be subject to the same penalties and the same procedures and sale in case of delinquency as provided for such taxes. All laws applicable to the levy, collection, and enforcement of County taxes are applicable to the special assessment. An abatement lien may be foreclosed by an action brought by the City for a money judgment.

B. Transfer to Bona Fide Purchaser. If, subsequent to the service of the notice and order, and prior to notice being given to the tax collector for collection as set forth in subsection (A) of this section, the property subject to the notice and order is sold, or title otherwise transferred to a bona fide purchaser for value, said costs shall be the responsibility of the owner of record as of the date said notice and order was placed in the United States postal system or posted on the property, whichever is later.

C. Remedies Cumulative. In addition to assessing the unpaid costs as provided in subsection (A) of this section, the Director of Finance or his or her designated representative may pursue any remedy provided by law for collection of the unpaid costs.

1.08.100 Treble costs.
Pursuant to Section 25845.5 of the Government Code, upon entry of a second (2nd) or subsequent civil or criminal judgment within a two (2) year period finding that an owner is responsible for a condition that may be abated pursuant to Section 25845 of the Government Code, a court may order the owner to pay treble the costs of abatement.

1.08.110 Assessment for summary abatement.
Where the charge to be made is the result of summary abatement pursuant to Sonora Municipal Section 15.14.140 or Section 14.01.380 the City Council may determine whether or not the action to abate was proper, and may confirm the report of cost or not as it may deem proper. Such determination shall be final and conclusive.

1.08.120 Time for contest of assessment.
The validity of any assessment made under the provisions of this chapter shall not be contested in any action or proceeding unless the same is commenced within thirty (30) days after the assessment is ordered to be placed upon the assessment roll as provided herein.

1.08.130 Filing copy of report with County Auditor/Controller.
A certified copy of the assessment shall be filed with the County Auditor/Controller on or before August 1st. The descriptions of the parcels reported shall be those used for the same parcels on the map books of the Tuolumne County Assessor for the current year.

SECTION THREE: Add Chapter 1.20, Administrative Citations, as follows:

Chapter 1.20

ADMINISTRATIVE CITATIONS

Sections:

1.20.010 Administrative citations and penalties.
1.20.020 Violations of building and zoning issues.
1.20.030 Administrative citation – Content and Service.
1.20.040 Amount of fines.
1.20.050 Payment of the fine.
1.20.060 Late payment charges.
1.20.070 Recovery of administrative citation fines and costs.
1.20.080 Service of Notices.
1.20.090 Notice of Violation.
1.20.100 Notices of Violation – Recordation and Service.
1.20.110 Notice of Compliance.
1.20.120 Recorded Notice of Violation; Cancellation.

1.20.010 Administrative citations and penalties.
A person who violates a provision of the Sonora Municipal Code or who fails to comply with a mandatory requirement of this code is subject to an administrative citation and penalty. Whenever an enforcement officer charged with the enforcement of a provision of this code determines that a violation of that provision has occurred, the enforcement officer has the authority to issue an administrative citation to the person responsible for the violation.

This chapter provides for administrative citations, which are in addition to all other legal remedies, criminal or civil, which the City may pursue to address a violation of this code. Use of this chapter is at the sole discretion of the City. This chapter is authorized under Sections 53069.4 and 36901 of the Government Code.

1.20.020 Violations of building and zoning issues.
If a violation pertains to building, plumbing, electrical, or other structural or zoning issues the City shall provide a reasonable period of time, as determined in the enforcement officer's discretion, for a person responsible for a continuing violation to correct or otherwise remedy the violation before the imposition of an administrative citation or penalty under this chapter.

Before issuing an administrative citation for building, plumbing, electrical, or other structural or zoning issues, the enforcement officer shall first issue a notice of violation in accordance with Section 1.20.090 and Section 1.20.100 to the responsible person.

The City may forgo the issuance of a notice of violation, or require immediate correction, in the event a building, plumbing, electrical, or other structural or zoning issue creates an immediate danger or threat to the public health or safety.

If the enforcement officer determines that all violations have been corrected within the time specified in the notice, no further action shall be taken.

1.20.030 Administrative citation – Content and Service.

A. Contents of Citation. Each administrative citation shall contain the following information:
   1. The date of the violation, or date the violation was observed;
   2. The address or a definite description of the location where the violation occurred;
   3. The section of the violated code 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 citation;
   7. 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 may be obtained to contest the citation; and
   8. The name and signature of the citing enforcement officer.

B. In the case of a continuing violation involving building, plumbing, electrical, or other similar structural or zoning issues identified under Sonora Municipal Code Section 1.20.020, the administrative citation shall also have attached a copy of the notice that had been sent to the responsible party.

C. Service of Administrative Citation. The administrative citation shall either be delivered personally or sent by first class certified mail, return receipt requested, to the person responsible for the violation.

1.20.040 Amount of fines.

A. Maximum Amount of Fine. The maximum amount of the fine for each code violation imposed under this chapter shall be established in a schedule of fines adopted by resolution of the City Council. The schedule of fines shall specify:
   1. Any increased fines for repeat violations of the same code provision by the same person within a twelve (12) month period; and
   2. Any late payment charges imposed for the payment of a fine after its due date.

B. Additional Amounts. Administrative costs, interest, late payment charges, costs of compliance re-inspections, and collection costs are in addition to the fines.

C. Factors in Establishing Fine.

1. Enforcement Officer. When preparing the administrative citation, the enforcement officer shall set the fine at the maximum fine established by the City Council.
2. Hearing Officer or City Council. Upon request before or at the hearing held under Sonora Municipal Code Section 1.24.120, the Hearing Officer or City Council may reduce the amount of the fine based on the following factors:
    a. The duration of the violation.
    b. The frequency, recurrence and number of violations, related or unrelated, by the same responsible party.
    c. The seriousness of the violation.
    d. The good faith efforts of the responsible party to come into compliance.
    e. The impact of the violation on the community.
    f. Such other factors as justice requires.

1.20.050 Payment of the fine.

A. Due Date. The fine shall be paid to the City within thirty (30) days from the date of the administrative citation. The City may suspend the imposition of fines for any period of time during which the responsible party has filed for necessary permits, such permits are required to achieve compliance, and the permit applications are actively pending before the appropriate governmental agency.

B. Refund. The City shall refund a fine paid if the Hearing Officer or City Council determines, after a hearing held under Sonora Municipal Code Section 1.24.120, that the person charged in the citation was not responsible for the violation or that there was no violation as charged.

C. Further Violations Not Excused. Payment of a fine under this chapter shall not excuse or discharge any continuation or repeated occurrence of the code violation.

1.20.060 Late payment charges.

A person who fails to pay to the City any fine imposed under this chapter on or before the due date is liable for payment of any applicable late payment charges set forth in the schedule of fines.

1.20.070 Recovery of administrative citation fines and costs.

A. A person who fails to pay any fine or other charge owed to the City under this chapter is liable in any action brought by the City for all costs incurred in securing payment of the delinquent amount, including, but not limited to, administrative costs and attorneys' fees. Such collection costs are in addition to any fines, interest, and late charges.

B. In addition to the administrative citation fine, the City may collect its administrative costs, interest, late payment charges, costs of compliance re-inspections, and collection costs.

C. The City may collect any past due administrative citation fine(s) and other costs and charges by any available legal means.

1.20.080 Service of Notices.

A. Method of Service. Any administrative citation and all notices required to be given under this Code for enforcement purposes, shall be served on the responsible party either by personal service or by first class certified mail, return receipt requested. If no address for such party is known, then notice shall be given by publication in a paper of general circulation within the City. The notice published in a newspaper of general circulation shall conform to the requirements set forth in Sonora Municipal Code Section 1.16.100(G)(3).

B. Real Property. When real property is involved in the violation, the original notice, the administrative citation and all notices required to be given by this Code shall be served on the responsible party and, if different, to the property owner at the address as shown on the last equalized County assessment roll. Additionally, the notice shall be served on the responsible party by first class certified mail, return receipt requested, sent to the address contained in records of the City of Sonora Finance Department for utility billings, if such address is different than that listed on the last equalized County assessment roll. If personal service or service by first class certified mail, return receipt requested, on the property owner is unsuccessful, a copy of each notice and the citation shall be conspicuously posted at the property which is the subject of the violation. The City may, in its sole discretion, also serve notice on a tenant, a mortgagor or any other person having an interest in the property.

C. Failure to Receive Notice. The failure of a person to receive a required notice shall not affect the validity of any proceedings taken under this chapter.

1.20.090 Notice of Violation.

A. The Council finds that there is a need to give notice of pending enforcement actions to responsible persons whose actions constitute a code violation, to property owners, and to persons who may subsequently acquire the property as a means by which to ensure the violations will be corrected. This may be accomplished through the issuance of a notice of violation.

B. Before issuing an administrative citation for building, plumbing, electrical, or other structural or zoning issues, the enforcement officer shall first issue a notice of violation.

C. Whenever a Enforcement Officer determines that a violation of this Code or applicable state Codes exists, the Enforcement Officer may issue a notice of violation to a responsible party, and to the owner of the property. The notice of violation shall contain the following:

1. The name of the record owner of the property;
2. The street address of the property;
3. The Code sections violated;
4. A description of the property's condition which violates the applicable Code;
5. A list of all corrections required to bring the property into compliance;
6. A specific date to correct the violations identified in the notice of violation;

7. An explanation of the potential consequences should the property remain in violation after the expiration of the compliance deadline. These consequences shall include, but are not limited to, criminal prosecution, civil injunction, administrative abatement, civil penalties, and recordation of notice of violation.

1.20.100 Notices of Violation – Recordation and Service.

A. Once a Enforcement Officer has issued a notice of violation to a responsible party and the property owner and the property remains in violation after the compliance date established in the notice of violation, the Enforcement Officer may record the notice of violation with the Tuolumne County Recorder's Office. The Enforcement Officer shall provide the responsible party and the property owner a notice of intent to record prior to the recordation of the notice of violation. The notice of intent to record shall state that a notice of violation will be recorded unless a written request to appeal the action is received pursuant to the procedures set forth in this Title. The notice of intent to record shall be served according to the procedures set forth in Section 1.20.080 of this code.

B. An appeal of the Enforcement Officer's notice of intent to record the notice of violation shall follow the procedures set forth in Chapter 1.24 of this code.

C. If no written request to appeal is received within the time frame specified in the notice of intent to record, the Enforcement Officer may cause the notice of violation to be recorded, as long as the violation remains on the premises.

D. The recorded notice of violation shall include the following:
   1. The name of the property owner;
   2. The assessor's parcel number of the premises in violation;
   3. The street address of the premises in violation;
   4. The parcel's legal description; and
   5. A copy of the latest notice of violation.

E. Any costs associated with recording and removal may be assessed against the property as set forth in this Title.

F. A copy of the recorded notice of violation shall be mailed to the responsible party, to the property owner, and any other persons who have requested copies of the notice. Service shall be made pursuant to the provisions of Section 1.20.080 of this code.

1.20.110 Notice of Compliance.

A. The responsible party or property owner may file, once the violations listed in the notice of violation have been corrected, a written request for a notice of compliance with the Enforcement Officer.

B. The Enforcement Officer or their designee shall reinspect the property within ten (10) days from receipt of the request to determine whether the violations listed in the notice of

violation have been corrected and whether all necessary permits have been issued and final inspections have been performed, if any are needed.

C. The Enforcement Officer shall provide a notice of compliance to the responsible party and property owner. Upon determining that:
   1. All violations listed in the recorded notice of violation have been corrected;
   2. All necessary permits have been issued and finalized; and
   3. All administrative civil penalties have been paid.

D. In addition to citations, administrative costs may be assessed. Administrative costs may include costs incurred in the investigation, inspection, reinspection, title search, appeal hearing, and any other processing costs with the violations identified in the notice of violation.

E. If the Enforcement Officer denies a request to issue a notice of compliance, the Enforcement Officer shall serve the requesting party, the responsible party and the property owner with a written explanation within five (5) days from the inspection setting forth the reasons for the denial. A written explanation shall be served pursuant to the provisions set forth in Section 1.20.080 of this Code.

F. The Enforcement Officer's decision denying a request to issue a notice of compliance constitutes a final decision in the matter and is not appealable.

1.20.120 - Recorded Notice of Violation; Cancellation.
The Enforcement Officer shall record or cause to be recorded the notice of compliance with the County Recorder's Office. The recordation of the notice of compliance shall have the effect of canceling the recorded notice of violation.

SECTION FOUR: Add Chapter 1.24, Appeals, as follows:

Chapter 1.24

APPEALS & JUDICIAL REVIEW

Sections:

1.24.010 Application.
1.24.020 Reviewing Authority.
1.24.030 Conflict with other chapters of the Sonora Municipal Code.
1.24.040 Appointment of Administrative Hearing Officer.
1.24.050 Disqualification of Hearing Officer.
1.24.060 Impartiality of Hearing Officer.
1.24.070 Powers of Hearing Officer.
1.24.080 Filing a request for appeal.
1.24.090 City's rejection of request for appeal.
1.24.100 Setting hearing date, time, and place.
1.24.110 Notice of hearing.

1.24.120 Procedures for conducting appeal hearings.
1.24.130 Continuing jurisdiction.
1.24.140 Failure to appear at appeal hearing.
1.24.150 Appeal decision.
1.24.160 Appeal of the decision of the Hearing Officer.
1.24.170 Decisions Made by City Council.
1.24.180 Failure to comply with appeal decision.
1.24.190 Deferral or waiver of appeal fees.
1.24.200 Record of hearings.
1.24.210 Judicial review.
1.24.220 Judicial review – 90-day limit.
1.24.230 Record preparation – Costs.

1.24.010 Application.
This chapter is intended as the sole means to appeal, or seek judicial review of, the issuance of any administrative citation pursuant to Sonora Municipal Code Chapter 1.20, any notice and order pursuant to Sonora Municipal Code Title 15, and from any final decision or ruling resulting from a department-level review or appeal, including decisions of the City Administrator and his or her designee(s), except as otherwise expressly provided by law or the Sonora Municipal Code.

1.24.020 Reviewing Authority.
A Hearing Officer, designated and appointed by the City Administrator as set forth in this chapter, shall be the initial hearing body for all appeals in accordance with this code. The City Council shall hear all appeals of a hearing officer's decision pursuant to Section 1.24.160.

1.24.030 Conflict with other chapters of the Sonora Municipal Code.
To the extent this chapter conflicts with any quasi-judicial appeal procedure for administrative citations and notices of violation already set out in the Sonora Municipal Code, the procedures in this chapter shall control.

1.24.040 Appointment of Administrative Hearing Officer.
The City Administrator, or his or her designee, shall designate and appoint a qualified person or persons who are capable of acting on behalf of the City as Hearing Officer(s). Hearing Officer(s) shall not be City employees with supervisory powers over anyone in the City Department which issued a citation or decision, which is the subject of the appeal. If no City staff member is capable of conducting the hearing, the City Administrator may retain Hearing Officer(s) to preside at administrative hearings and may be compensated by the City. The City Administrator shall develop policies and procedures relating to the appointment and compensation of Hearing Officers.

1.24.050 Disqualification of Hearing Officer.
Any person designated to serve as a Hearing Officer is subject to disqualification for bias, prejudice, interest, or for any other reason for which a judge may be disqualified in a court of law. Rules and procedures for the disqualification of a Hearing Officer shall be promulgated by the City Administrator.

1.24.060 Impartiality of Hearing Officer.

A. The employment, performance evaluation, compensation, and benefits of the Hearing Officer shall not be directly or indirectly conditioned upon the amount of administrative citation penalties upheld by the Hearing Officer.

B. The Hearing Officer shall not transmit communications or otherwise use any electronic devices during the course of a hearing, except in the case of exigent circumstances.

C. The Hearing Officer with any financial interest in the subject matter or who would otherwise be finally impacted by the resolution of the appeal, shall recuse themselves from the particular appeal.

1.24.070 Powers of Hearing Officer.

A. The Hearing Officer may continue a hearing based on good cause shown by one of the parties to the hearing or if the Hearing Officer independently determines that due process has not been adequately afforded.

B. The Hearing Officer, upon receipt of a written request which is submitted no later than five (5) days before the hearing, shall subpoena witnesses, documents and other evidence where the attendance of the witness or the admission of evidence is deemed necessary to decide the issues at the hearing. All costs related to the subpoena, including witness and mileage fees shall be borne by the party requesting the subpoena. The City Administrator shall develop policies and procedures relating to the issuance of subpoenas in administrative hearings, including the form of the subpoena and related costs.

C. The Hearing Officer has continuing jurisdiction over the subject matter of an administrative hearing for the purposes of granting a continuance, ensuring compliance with an Administrative Order, modifying an Administrative Order, or where extraordinary circumstances exist, granting a new hearing.

D. The Hearing Officer has the authority to require a Responsible Person to post a Code Enforcement Performance Bond to ensure compliance with an Administrative Order.

1.24.080 Filing a request for appeal.

A. The appellant shall file with the City Administrator, or their designee, a request for appeal within the time limits provided by law, by ordinance for the filing of such an appeal, or, if none are otherwise specified, within fifteen (15) days after the City's service of the final departmental decision being appealed.

B. The request for appeal shall specify the name, mailing address and telephone number of the appellant and such other information required by law or by ordinance to be provided with the

appeal. The appellant shall also attach a written statement specifying in detail the grounds for the appeal and attach a copy of the decision or order being appealed.

C. The request for appeal shall be accompanied by a fee in the amount established by resolution of the City Council, unless payment of the fee is deferred or waived in accordance with Sonora Municipal Code Section 1.24.190.

1.24.090 City's rejection of request for appeal.
The City Administrator, or their designee, shall reject for filing any request for appeal that does not substantially comply with the requirements of Sonora Municipal Code Section 1.24.080, including, but not limited to, the payment of any required fee. The City Administrator, or their designee, shall serve either by personal service or by first class certified mail, return receipt requested, a notice rejecting the appeal request to the appellant at the address specified in the request for appeal. The notice rejecting appeal request shall specify the reason(s) for the rejection of the appeal. The appellant shall be afforded the opportunity to correct the identified defect(s) within ten (10) business days following the date the City mailed the notice rejecting the appeal request. The corrected request for appeal must be received by the City Administrator or their designee on or before the tenth (10^{th}) business day, or the appeal deadline is deemed expired. In such an event, the underlying departmental decision will be considered final, the alleged violations deemed admitted, and any accrued fines immediately due and payable.

1.24.100 Setting hearing date, time, and place.
After the City Administrator or their, designee, accepts a request for appeal that meets the requirements of this chapter, he or she shall set the date, time, and place for the hearing to take place no later than thirty (30) days after such acceptance.

1.24.110 Notice of hearing.
Notice indicating the time, place and date of the administrative appeal hearing shall be served by the City Administrator or designee upon the appellant either personally or by delivering a copy by first class certified mail, return receipt requested, or such other delivery method that is reasonably calculated to provide actual notice to the appellant, not less than fifteen (15) days prior to the hearing date. The notice, which shall be called the notice of hearing, shall include a list of alleged code violations and any procedures applicable to the hearing, including notice of when written testimony must be submitted to the Hearing Officer or City Council

1.24.120 Procedures for conducting appeal hearings.
The Hearing Officer or City Council is authorized to take testimony. Hearings need not be conducted according to the technical rules relating to evidence and witnesses. However, each party shall have the right to present testimony and, documentary, and physical evidence on his/her/its behalf and shall have the right to examine any witnesses and rebut any evidence presented against him, her or it. The City shall have the burden of proving the existence of the violation by a preponderance of evidence. The Hearing Officer or City Council may promulgate by resolution additional rules and procedures for the conduct of appeal hearings.

1.24.130 Continuing jurisdiction.
A continuance may be granted at the discretion of the Hearing Officer or City Council. The Hearing Officer or City Council shall continue to have jurisdiction over the subject matter of an administrative appeal for the purposes of granting a continuance, ensuring compliance with a quasi-judicial administrative appeal decision, modifying an administrative appeal decision, or where extraordinary circumstances exist, granting a new hearing. The party requesting the continuance bears the burden of proof to demonstrate why a continuance should be granted, and the opposing party shall be given the opportunity to respond.

1.24.140 Failure to appear at appeal hearing.
Failure of the appellant to either abate the conditions specified in the department-level decision and/or citation(s) issued pursuant to Sonora Municipal Code Chapter 1.08, and timely pay any accrued fines, or to appear at the hearing after notice of hearing has been served, shall be deemed a waiver of the right to a hearing and an admission by such owner or responsible party of the existence of the violations of the Sonora Municipal Code as specified or referenced by the notice of hearing. In such an event, the underlying department decision and/or allegations in the notice of violation issued pursuant Chapter 1.08 and/or citation issued pursuant to Chapter 1.08 become final.

1.24.150 Appeal decision.

A. After considering all of the testimony and evidence submitted at the appeal hearing, the Hearing Officer or City Council shall issue a written appeal decision. The written appeal decision of the Hearing Officer or City Council shall be issued as soon as practical and preferably within ten (10) days of the close of the hearing.

B. The administrative appeal decision shall become final on the date the City Administrator and/ or his designee serves the appeal decision. The City Administrator, or their designee, shall serve one (1) copy on the appellant. The City Administrator, or their designee, shall file a copy of the appeal decision with the appropriate department director. The appeal decision shall be served either by personal service or by first class certified mail, return receipt requested.

1.24.160 Appeal of the decision of the Hearing Officer.
Any person aggrieved by a decision of a hearing officer made pursuant to this Chapter may obtain review of the administrative decision by filing an appeal with the City Council. The appeal shall follow the requirements and procedures set forth in this chapter.

1.24.170 Decisions Made by City Council.
The procedures set forth under this chapter shall not apply to decisions made by City Council. Decisions made by the City Council are final and shall not be subject to appeal, except as otherwise provided in this Code, state law, or by judicial proceedings in accordance with applicable law.

1.24.180 Failure to comply with appeal decision.

A. After the Hearing Officer or City Council issues an appeal decision, the Enforcement Officer or their designee shall monitor violations and determine compliance.

B. Upon the failure of a party to comply with the terms and deadlines set forth in the appeal decision, the Enforcement Officer, or his or her designee, may use all appropriate legal means to recover all civil penalties and administrative costs and to obtain compliance with the administrative appeal decision, which includes seeking an injunction.

1.24.190 Deferral or waiver of appeal fees.

A. The City Administrator, or his or her designee, may defer or waive the payment of a fee required for filing an appeal as specified in Sonora Municipal Code Section 1.24.080.

B. Any person who willfully provides the City Administrator, or their designee, with false statements of material facts in an application for a fee deferral is guilty of a misdemeanor which shall be enforced pursuant to the provisions of Sonora Municipal Code Chapter 1.08.

C. The decision of the City Administrator, or his or her designee, on the deferral or waiver of fees shall be final and conclusive, and there shall be no appeal from this decision.

1.24.200 Record of hearings.
The Hearing Officer or City Council shall cause all testimony to be tape-recorded and/or otherwise documented. A certified court reporter will not normally be provided. Any party may provide for a certified court reporter and obtain a transcript of the proceedings at his/her/its own expense. If such a court reporter is provided, any other party has the right to obtain a copy of the transcript of the proceedings from the court reporter at the requesting party's expense.

1.24.210 Judicial review.
Once an order becomes final as provided in this chapter, any person directly aggrieved by the appeal decision must first pay the full amount owed to the City plus any applicable penalties and interest. The aggrieved individual then may seek judicial review of the decision by filing a petition for review with the Superior Court of Tuolumne County.

Pursuant to the provisions of Section 1094.6 of the Code of Civil Procedure, the provisions of said section are made applicable to the decisions of all commissions, boards, officers and agents of the City of Sonora, except where a limitation of actions is otherwise provided by this code.

1.24.220 Judicial review – 90-day limit.
Judicial review of any decision that is subject to the provisions of this chapter and Section 1094.6 of the Code of Civil Procedure may be had only if the petition for judicial review is filed within ninety (90) days after the decision becomes final; provided that, pursuant to the provisions of Section 1094.6(d) of the Code of Civil Procedure, if the petitioner files a request for the record within ten (10) days after the date, the decision becomes final. The time within which a petition for judicial review may be filed shall be extended to not later than the thirtieth (30^{th}) day

following the date on which the record is either personally delivered or mailed by first class certified mail, return receipt requested, to the petitioner or his attorney of record, if he or she has one.

1.24.230 Record preparation – Costs.

A. As provided in said Section 1094.6 of the Code of Civil Procedure, any person who requests preparation of the administrative record shall be responsible for payment of the actual costs of transcribing or otherwise preparing the record. Actual costs shall include, but not be limited to: the salary and fringe benefit rates of pay by the City to personnel for time consumed in typing a transcript and reproducing, assembling and compiling the transcript and exhibits; the unit cost (including prorated rental) of equipment utilized in reproduction; the cost of materials and supplies; and the cost to the City of having a transcript typed when testimony has been recorded by a court reporter. Each board, commission, officer, employee or agent whose decision will be subject to the limitations established by this chapter may, from time to time, by resolution in the case of such boards and commissions and by written order in the case of such officers, employees and agents, determine and promulgate unit costs of preparing the record.

B. Before commencing preparation of a transcript or other record, the officer or employee responsible for preparation shall estimate the actual total cost. Preparation of the record shall not be commenced until the person requesting preparation of the record has deposited the full amount of the cost estimate.

C. If the deposit exceeds the actual cost, the difference shall be refunded. If the actual cost exceeds the estimate, the difference shall be paid when the record is delivered.

D. The limitations of action period shall not be extended, pursuant to the provisions of Section 1094.6(d) of the Code of Civil Procedure or Sonora Municipal Code Section 1.24.220, beyond ninety (90) days after the decision becomes final, unless the petitioner deposits pursuant to the provisions of subsection (B) of this section the estimated actual total cost of preparing the transcript within ten (10) days after he has been furnished with the written estimate of such cost.

SECTION FIVE: Amend Section 1.04.010, Definitions, as follows:

1.04.010 Definitions.

The following words and phrases, whenever used in the ordinances of the City of Sonora, California, shall be construed as defined in this section, unless from the context and different meaning is intended or unless different meaning is specifically defined and more particularly directed to the use of such words or phrases:

~~1.~~ "City/town" means the city of Sonora, California, or the area within the territorial limits of the city of Sonora, California, and such territory outside of the city over which the city has jurisdiction or control by virtue of any constitutional or statutory provision.

~~2.~~ "Computation of time" means the time within which an act is to be done. It shall be computed by excluding the first day and including the last day. If the last day is Sunday or a legal holiday, that day shall be excluded.

~~3.~~ "Council" means the city council of the city of Sonora, California. "All its members" or "all councilmen" mean the total number of councilmen provided by the general laws of the state of California.

~~4.~~ "County" means the county of Tuolumne, California.

"Enforcement Officer" means and City employee or agent of the City with the authority to enforce a provision of this code.

~~5.~~ "Law" denotes applicable federal law, the constitution and statutes of the state of California, the ordinances of the city of Sonora, and, when appropriate, any and all rules and regulations which may be promulgated thereunder.

~~6.~~ "May" is permissive.

~~7.~~ "Month" means a calendar month.

~~8.~~ "Must" and "shall" are each mandatory.

~~9.~~ "Oath" shall be construed to include an affirmation or declaration in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

~~10.~~ "Ordinance" means a law of the city; provided, that a temporary or special law, administrative action, order or directive, may be in the form of a resolution.

~~11.~~ "Owner," applied to a building or land, includes any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety, of the whole or a part of such building or land.

~~12.~~ "Person" means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or the manager, lessee, agent, servant, officer, or employee of any of them.

~~13.~~ "Personal property" includes money, goods, chattels, things in action and evidences of debt.

~~14.~~ "Preceding" and "following" mean next before and next after, respectively.

~~15.~~ "Property" includes rear and personal property.

~~16.~~ "Real property" includes lands and tenements and hereditaments.

~~17.~~ "Sidewalk" means that portion of a street, between the curb line and the adjacent property line, intended for the use of pedestrians.

~~18.~~ "State" means the state of California.

~~19.~~ "Street" includes all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs, or other public ways in this city which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this state.

~~20.~~ "Tenant" and "occupant", applied to a building or land, include any person who occupies whole or a part of such buildings or land, whether alone or with others.

~~21.~~ "Title of Office". Use of the title of any officer, employee, department, board or commission means that officer, employee, department, board or commission of the city.

~~22.~~ "Written" includes printed, typewritten, mimeographed or multigraph.

~~23.~~ "Year" means a calendar year.

~~24.~~ All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in peculiar and appropriate meaning.

~~25.~~ When an act is required by an ordinance, the same being such that it may be done as well by an agent as by the principal, such requirement shall be construed as to include all such acts performed by an authorized agent.

SECTION SIX: Delete Title 11, Administrative Procedures, as follows:

~~Title 11~~
~~ADMINISTRATIVE PROCEDURES*~~

~~**Chapters:**~~

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

~~Chapter 11.02~~

~~ADMINISTRATIVE PROCEDURES FOR THE ENFORCEMENT, IMPOSITION, COLLECTION AND ADMINISTRATIVE REVIEW~~

OF PENALTIES OR FINES FOR CODE VIOLATIONS

Sections:

11.02.010 Purpose.
11.02.020 Application.
11.02.030 Authority of enforcement officer.
11.02.040 Notice of Violation (NOV).
11.02.050 Time allowed for abatement.
11.02.060 Imposition of fines and/or penalties.
11.02.070 Payment and collection of administrative penalty.
11.02.080 Appeal of NOV or other enforcement action.
11.02.090 Enforcement stayed during appeal.
11.02.100 Appeals hearings.
11.02.110 Decision of the city council and administrative order.
11.02.120 Judicial review.
11.02.130 Recovery of costs of abatement.
11.02.140 Cost accounts.
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.

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, et cetera.
- 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)

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 nuisance 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 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, ta king 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 determination 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 deter- mining 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;
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)

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)

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 hard- ship, 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 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 post- age 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 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 ad- dress 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 effecting service declaring the date, time and manner that service was made.

C. An administrative order shall become effective and enforce- able immediately after announcement or service of such order 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 environmentally sensitive areas as a result of any violation, including without limitation, off-site replacement of dam- aged 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 re- fused 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 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 90th day following the date on which this decision becomes final, except that where a shorter time is provided by any State or Federal law, such shorter time limit shall apply."

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.

C. 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.

D. 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 con- firm 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 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 agendized 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.

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 de- scribed 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 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)~~

This Ordinance shall take effect thirty (30) days after its passage and shall be published within (15) days after its final passage as required by law.

Said Ordinance was introduced at a regular meeting of the City Council of the City of Sonora held on _____, and passed and adopted as an Ordinance of said City at a regular meeting of said Council held on _____, by the following vote:

AYES: _____

NOES: _____

ABSENT OR ABSTAIN: _____

_____
James M. Garaventa, Mayor

ATTEST: _____
City Clerk

Approved as to Form:

_____
Douglas L. White, City Attorney

Publish: The Union Democrat, Sonora
_____, 2019

DRAFT