

CITY OF CLEARLAKE

ORDINANCE NO. 173-2015

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLEARLAKE, CALIFORNIA AMENDING CHAPTER X OF THE CLEARLAKE MUNICIPAL CODE ADDING SECTION 10-8 (ABATEMENT OF PUBLIC NUISANCES) AND 10-9 (ADMINISTRATIVE PENALTIES) AND REPEALING AND REPLACING SECTION 10-7 (MEDICAL MARIJUANA CULTIVATION), TO BAN THE CULTIVATION OF MEDICAL MARIJUANA

WHEREAS, in 1996 the California voters approved Proposition 215 (known as the Compassionate Use Act (the “CUA”) and codified as Health and Safety Code Section 11362.5, et seq.) to exempt certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for medical purposes; and

WHEREAS, in 2003 the California legislature enacted Senate Bill 420 (known as the Medical Marijuana Program Act (the “MMPA”) and codified as Health and Safety Code Section 11362.7 et seq.), as later amended, to clarify the scope of the Compassionate Use Act relating to the possession and cultivation of marijuana for medical purpose, and to authorize local governing bodies to adopt and enforce laws consistent with its provisions; and

WHEREAS, in 2005 the California Board of Equalization began issuing seller’s permits for sales consisting only of medical marijuana; and

WHEREAS, in 2008 the California Attorney General issued guidelines for the security and non-diversion of marijuana grown for medical use; and

WHEREAS, in 2014 the U.S. House of Representatives voted to stop federal law enforcement from interfering with medical marijuana operations in the various states which have decriminalized and/or authorized such operations; and

WHEREAS, Health & Safety Code Section 11362.83 provides that cities are free to adopt and enforce local ordinances that regulate the location, operation, or establishment of medical marijuana dispensaries and cultivation; and

WHEREAS, the City Council of the City of Clearlake intends that nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, nor to otherwise permit any activity that is prohibited under that Act or other applicable law; and

WHEREAS, the City Council of the City of Clearlake intends that nothing in this Ordinance shall be construed to allow persons to engage in conduct that endangers others or causes a public nuisance, to allow the use of marijuana for non-medical purposes, or to allow any activity relating to the cultivation, distribution or consumption of marijuana that is otherwise illegal; and

WHEREAS, the City Council of the City of Clearlake finds that medical marijuana cultivation requires a ban so as to prevent negative impacts on nearby residents and businesses; and

WHEREAS, the City Council of the City of Clearlake finds that the City of Clearlake has a compelling interest in protecting the public health, safety and welfare of its residents and businesses by banning medical marijuana cultivation, in preserving the peace and quiet of the neighborhoods in which medical marijuana is cultivated, and in providing compassionate access to medical marijuana to its seriously ill residents via dispensaries; and

WHEREAS, the California Constitution grants local governments in Article XI, Section 7 the authority under their police powers to regulate land use; and

WHEREAS, in a decision issued on February 6, 2013, Browne v. County of Tehama (2013) 213 Cal.App.4th 704, the California Court of Appeal found that the CUA does not confer a right to cultivate marijuana and that an ordinance limiting the number of medical marijuana plants that may be grown outside, precluding marijuana cultivation within one thousand (1,000) feet of schools, parks, and churches, and requiring that an opaque fence of at least six (6) feet to be installed around all marijuana grows was not preempted by state law. Further, in Maral v. City of Live Oak (2013) 221 Cal.App.4th 975, a decision issued on November 26, 2013, the Court of Appeal held that the CUA and the MMPA do not preempt a city's police power to completely prohibit the cultivation of all marijuana within that city. On March 26, 2014, the California Supreme Court refused to hear an appeal of the case and denied de-publication of the Court of Appeal decision in Maral; and

WHEREAS, pursuant to the City's police powers authorized in Article XI, Section 7 of the California Constitution, the California Court of Appeal decision in Maral v. City of Live Oak (2013) 221 Cal.App.4th 975, as well as under the Clearlake Municipal Code, the City has the power to regulate permissible land uses throughout the City and to enact regulations for the preservation of public health, safety and welfare of its residents and community. And, pursuant to Government Code section 38771, the City has the power through its City Council to declare actions and activities that constitute a public nuisance; and

WHEREAS, the City Council of the City of Clearlake finds that marijuana cultivation throughout the City constitutes a threat to the public health, welfare and safety based on, but not limited to: a) an increased risk to public safety, based on the value of marijuana plants and the accompanying threat of break-ins, robbery and theft, and attendant violence and injury; b) the strong "skunk like" fumes emitted from mature plants which can interfere with the use and enjoyment of neighboring properties by their occupants; c) the potential for theft and use by school age children where medical marijuana is cultivated in a visible location, particularly where such location is close to schools; and d) the cultivation of medical marijuana can also result in various code violations, including improper and dangerous electrical alterations and use. These secondary effects pose serious safety risks, and require the commitment of scarce police and public resources; and

WHEREAS, the City Council of the City of Clearlake finds that the public health, safety and general welfare of the City and its residents requires the adoption of this ordinance, prohibiting cultivation of marijuana within the City in order to: a) protect and safeguard against the detrimental secondary impacts of marijuana cultivation; b) prevent minors in the community from gaining access to marijuana in cultivation areas; and c) reduce the burden on the City's law enforcement services; and

WHEREAS, the proposed ordinance does not meet any of the thresholds contained in the Checklist that would trigger an environmental impact, and thus according to the "general rule exemption" (Section 15061(b)(3)) of the CEQA Guidelines, projects which have no potential for causing a significant effect on the environment are not subject to CEQA, no further environmental analysis is required, and a notice of exemption will be filed.

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

SECTION 1. Section 10-7 [“COMMERCIAL MEDICAL MARIJUANA CULTIVATION AND CULTIVATION ON VACANT PROPERTIES, AND LIMITING CULTIVATION AMOUNTS”] of Chapter X of the Clearlake Municipal Code is hereby repealed and replaced with the following:

Section 10-7 Medical Marijuana Cultivation

Subsections:

10-7.010 - Purpose and intent.

It is the purpose and intent of this section to prohibit cultivation of medical marijuana in order to preserve the public peace, health, safety and general welfare of the citizens of the City of Clearlake.

10-7.020 - Relationship to other laws.

This section is not intended to, nor shall it be construed or given effect in a manner that causes it to apply to, any activity that is regulated by federal or state law to the extent that application of this section would conflict with such law or would unduly interfere with the achievement of federal or state regulatory purposes. It is the intention of the Council that this section shall be interpreted to be compatible and consistent with federal, City, and state enactments and in furtherance of the public purposes which those enactments express. It is intended that the provisions of this section will supersede any other provisions of this code found to be in conflict.

10-7.030 - Definitions.

For purposes of this section, these words and phrases shall be defined as follows:

- A. "City" means the City of Clearlake.
- B. "Marijuana" shall have the same definition as in California Health and Safety Code Section 11018 as it now reads or as amended.
- C. "Medical marijuana" means marijuana used for medical purposes in accordance with California Health and Safety Code Sections 11362.7 et seq.
- D. "Cultivate" or "cultivation" is the planting, growing, harvesting, drying, processing, or storage of one or more marijuana plants or any part thereof in any location.
- E. "Primary caregiver" shall have the same definition as in California Health and Safety Code section 11362.7 et seq. as it now reads or as amended.
- F. "Qualified patient" shall have the same definition as California Health and Safety Code section 11362.7 et seq. as it now reads or as amended.

10-7.040 – Prohibition of Marijuana Cultivation.

Marijuana cultivation by any person, including primary caregivers and qualified patients, collectives, cooperatives or dispensaries, is prohibited in all zone districts within the City.

10-7.050 - Prohibited medical marijuana cultivation declared a public nuisance.

The establishment, maintenance, or operation of any prohibited cultivation of medical marijuana, as defined in this section, within the City is declared to be a public nuisance and each person or responsible party is subject to abatement proceedings under section 10-8.

10-7.060 - Penalties for violation.

- A. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and subject to the penalties as set forth in section 10-1.9, as well as the administrative penalties as set forth in section 10-9. Violators shall be subject to any other enforcement remedies available to the City under any applicable state or federal statute or pursuant to any other lawful power the City may possess.
- B. Cultivation of medical marijuana is hereby declared to be a public nuisance, and may be abated pursuant to the provisions of Section 10-8.
- C. Each day a violation is allowed to continue shall constitute a separate violation and shall be subject to all remedies.

10-7.070 - Severability.

If any part or subsection of this section is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity, unlawfulness, or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any other part of this section.

10-7.080 - Applicability.

Any person legally cultivating marijuana prior to the effective date of this section shall have 30 days from the effective date of this section to harvest their crop of marijuana. After the 30 day grace period, all the provisions of this section shall be immediately enforceable.

SECTION 2. Section 10-8 [“ABATEMENT OF PUBLIC NUISANCES CREATED BY CULTIVATION OF MEDICAL MARIJUANA IN VIOLATION OF SECTION 10-7”] of Section X of the Clearlake Municipal Code is hereby added to Chapter X as follows:

Section 10-8 - ABATEMENT OF PUBLIC NUISANCES CREATED BY CULTIVATION OF MEDICAL MARIJUANA IN VIOLATION OF SECTION 10-7

Subsections:

10-8.010 – Authority and purpose.

This section is enacted pursuant to Government Code Sections 36901, 38771 and 38773.5(a) and complies with Health and Safety Code Section 17980. The purpose of this section is to set forth the procedures to be followed for the abatement of marijuana cultivation in the City of Clear Lake.

10-8.020 - Definitions.

For purposes of this section, these words and phrases shall be defined as follows:

- A. “City” means the City of Clearlake.

- B. "Days" means calendar days.
- C. "Marijuana" has the same definition as set forth in Health and Safety Code section 11018, and as may be amended.
- D. "Medical marijuana" means marijuana used for medical purposes in accordance with the Compassionate Use Act (Health and Safety Code section 11362.5) and the Medical Marijuana Program Act (Health and Safety Code sections 11362.7 et seq.).
- E. "Property" means and includes property, structures and the abutting half of the street, and/or alley, between the sidelines thereof as extended.
- F. "Public nuisance" means the indoor or outdoor cultivation of marijuana in any zone within the City of Clearlake.
- G. "Public official" means the building official, code enforcement official or police officer, or any other individual or body appointed by the City Council to enforce codes and which is authorized to administer this section.
- H. "Responsible party" means an individual, association, co-partnership, political subdivision, government agency, municipality, industry, public or private corporation, firm, organization, partnership, joint venture or any other entity whatsoever whose action or actions caused or contributed to violations of codes specified in this section.

10-8.030 - Investigation.

The public official, upon receipt of information leading him/her to believe that a public nuisance, subject to this section, exists upon private property in any zone in the City, shall make a reasonable investigation of the facts and inspect the property to determine whether or not a public nuisance exists. Inspections may include photographing the conditions or obtaining samples or other physical evidence. If an owner, occupant or agent refuses permission to enter or inspect, the public official may seek an inspection warrant pursuant to the procedures provided for in the California Code of Civil Procedure Section 1822.50 through Section 1822.59.

10-8.040 - Abatement order.

- A. Upon making a reasonable determination that a public nuisance exists, the public official shall notify the property owner, as such person's name appears on the last equalized assessment roll, as well as any lessees or occupants of the property, that a public nuisance exists upon the property. Notice shall be given by means of first class mail postage prepaid. If the address of the property owner or occupant is unknown to the public official, then a copy shall be posted on the property. A copy of the notice shall also be sent by first class mail postage prepaid to the last known address of any responsible party if the public official determines that such responsible party directly or indirectly contributed to the condition creating the nuisance.
- B. The notice shall describe the use or condition which constitutes the public nuisance, and shall also state what repair or other work is required in order to abate the nuisance.
- C. The notice shall order that the uses or conditions constituting the nuisance be abated within a reasonable time as determined by the public official, normally being 15 days from the date such notice is mailed.
- D. The notice shall contain instructions to the property owner describing procedures for scheduling a hearing for the purpose of presenting information as to why the property

should not be considered a public nuisance.

- E. The notice shall also state that if the work is not completed within the number of days specified on the notice, or hearing has not been requested in accordance with section 10-8.070, the City may abate the nuisance without further notification and the property owner may be responsible for all costs associated with the investigation and abatement of the public nuisance.
- F. The notice shall also state that if the property owner fails to request a hearing, all rights to appeal any action of the City to abate the nuisance are waived.

10-8.050 - Immediate threat to public health or safety.

- A. The public official, upon making a finding that an immediate threat or danger exists to the health, safety or welfare of the occupants or the public, may order a summary abatement of the nuisance.
- B. Upon such finding, the public official may require immediate action on the part of the property owner or occupant to eliminate the hazardous condition.
 - 1. The public official shall make a reasonable attempt to notify the owner and occupant of the property or responsible party of the dangerous conditions that require the immediate vacation, repair, cleanup and/or securing of the property or structures thereof, either by telephone, or by personally visiting the premises; and
 - 2. If the imminently dangerous condition can be substantially relieved by the performance of minor repairs, disconnection of certain utility services, or other acts, then the public official may perform or direct such acts of work without the prior consent of, or notice to, the owners, occupants, or responsible party; and
 - 3. If such danger cannot be substantially relieved by such work and upon the failure or refusal of the occupants to voluntarily vacate such premises, then the public official may personally disconnect the electrical, gas and other utility services to such premises or may request the appropriate utility companies to do so; and
 - 4. If the public official finds that an immediate threat to public health, safety or welfare exists, and that it is unhealthy or hazardous to delay abatement action, he/she may order City staff or contractors to abate the condition. Abatement may be, but is not limited to, clean-up and disposal of rubbish or other materials which threaten public health; and
 - 5. Following a noticed hearing, the property owner, occupant and/or responsible party may be liable for all costs associated with this abatement, including administrative, labor (including staff time), equipment, material and other costs; and
 - 6. The public official shall post warnings to all persons not to enter the premises stating the reasons therefor.

10-8.060 - Request for a hearing regarding abatement order.

- A. A hearing regarding an abatement order may be requested by filing a written request for a hearing with the main office of the public official whose department issued the abatement order prior to such date set for the abatement of the nuisance.
- B. The filing of such request for hearing shall stay the effectiveness of the order of abatement until such time as the case has been decided by the City Council.
- C. If a request for a hearing is not filed within the number of days to abate the nuisance as specified on the abatement order, the public official may order the work to be performed.

10-8.070 - Hearing notice.

- A. Upon receipt of a request for hearing, filed in accordance with section 10-8.060, the public official shall schedule a hearing before the City Council. Notice of the hearing shall be sent by first class mail postage prepaid to the person filing the request and to those persons identified under section 10-8.040(A).
- B. The notice shall state the date, time and place of the hearing (which in no event shall be sooner than 10 days from the date of mailing and posting such notice unless mutually agreed to by the property owner or responsible party and the public official), the specific conditions or uses which constitute the public nuisance, and shall direct the owner(s) and/or lessees to appear and show cause why the specified condition or use should not be declared a public nuisance and abated.
- C. The failure of any property owner, occupant, responsible party, or other person to receive any notice required to be given or posted pursuant to the provisions of this section shall not affect in any manner the validity of any proceedings taken thereunder.

10-8.080 – Hearing and determination.

- A. At the time fixed in the notice, the City Council shall proceed to hear testimony from any interested person regarding the specified condition or use deemed by the public official to be a public nuisance, the estimated cost of its reconstruction, repair, removal or other work, and any other matter which the City Council may deem pertinent thereto.
- B. Upon the conclusion of the hearing, the City Council will make a determination by resolution based on the evidence presented at the hearing. The resolution shall set forth the Council’s decision and the findings supporting its decision. The resolution shall cite to the provisions of Section 1094.5 and 1094.6 of the Code of Civil Procedure.
- C. In the event that the City Council declares the condition or use is a public nuisance, the Council may direct the owner(s) to abate the same within 30 days after posting and mailing and impose an administrative fine as provided for in section 10-9.
- D. After the determination of the Council directing the abatement of a public nuisance, the public official shall conspicuously post a copy thereof on the building, structure or other property declared a public nuisance and shall mail a copy to the owner(s) thereof as well as to the occupants, to the mortgagees of record and trust deed beneficiaries of record, and to any responsible persons.
- E. The City Council may grant reasonable extensions of time to abate the nuisance upon good cause shown.
- F. If the City Council finds no public nuisance, the Council shall grant the applicant’s appeal and take no further action.

10-8.090 - Failure of property owner to abate.

If the property owner, lessee or other responsible party fails to abate the nuisance within the time specified by the City Council, or the public official, and is not granted a time extension, the public official, upon authorization of the department head, shall obtain an abatement warrant to secure, remove, demolish, raze or otherwise abate the nuisance at the expense of the owner(s).

10-8.100 - Sale of materials.

Any materials obtained from the nuisance abatement may be sold by the City at public sale to the highest responsible bidder after not less than ten days’ notice of the intended sale, published at least once in a newspaper of general circulation in the City, either before or after the

nuisance is abated. The City may allow contractors to consider the salvage value of the materials in the preparation of abatement bids.

10-8.110 - Accounting of abatement expenses.

The public official shall keep an itemized account of the expenses incurred in abating the nuisance and shall deduct therefrom the amounts receivable from the sale of such materials.

10-8.120 - Abatement expenses statement—Posting.

- A. The public official shall cause to be conspicuously posted on the property from which the nuisance was abated a statement verified by the public official in charge of abating the nuisance showing the expenses of abatement, together with a notice of the time and place that the statement will be submitted to the City Council for approval and confirmation.
- B. At such time and place the City Council shall consider objections or protests, if any, which may be raised by any person liable to be assessed for the cost of such abatement work, and any other interested person. A copy of the statement and notice shall be mailed to the owner and occupant of the property, and to the responsible party, in the manner prescribed in section 10-8.050. The time of submitting the statement to the City Council for confirmation shall be not less than 10 days from the date of posting and mailing the statement notice.

10-8.130 - Statement of expense—Hearing.

At the time fixed for hearing objections or protests to the statement of expense the City Council shall consider the statement together with any objections or protests which may be raised. The City Council may make such revision, correction or modification in such statements as it may deem just. The Council's decisions on the statement, protests and objections shall be final and conclusive. Notice of the Council's decision shall be mailed to owner(s) and lessees in accordance with the provisions of section 10-8.050, and shall include reference to Sections 1094.5 and 1094.6 of the Code of Civil Procedure.

10-8.140 - Collection of unrecovered costs.

- A. In the event that the cost of abating the nuisance exceeds the proceeds received from the sale of materials, such unrecovered costs, if not paid within 10 days after the Council's decision, shall constitute a special assessment on the real property from which the nuisance was abated.
- B. The assessment may be collected at the same time and in the same manner as ordinary City taxes are collected and shall be subject to the same penalties and the same procedure for sale in case of delinquency as provided for ordinary City taxes. All laws applicable to the levy, collection and enforcement of City taxes shall be applicable to such special assessment, except that if any real property to which such cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrance for value has been created and attached hereon prior to the date on which the first installment of such taxes would become delinquent, then such cost of abatement shall not result in a lien against such real property but instead shall be transferred to the unsecured roll for collection.
- C. The public official shall file a notice of a lien in the office of the recorder of the City in an amount no greater than the total cost of abatement appearing in the statement of expense earlier approved by the City Council. The notice of lien shall be in a form approved by City Attorney.

- D. From and after the date of recording the notice of lien, all persons shall be deemed to have notice of the contents thereof. The statute of limitations shall not run against the right of the City to enforce the payment of the lien.
- E. Amounts owed to the City for abatement shall bear interest at the maximum rate allowed by law per year from the date of the abatement.

10-8.150 - Refund of excess receipts.

In the event that the amounts received from the sale of materials exceed the expenses of razing, removing or otherwise abating the nuisance, such excess shall be deposited with the treasurer of the City to the credit of the owner of such property or to such other person legally entitled thereto. Such excess shall be payable to the owner or other person upon production of evidence of ownership, or other interest, satisfactory to the treasurer.

SECTION 3. Section 10-9 [“ADMINISTRATIVE PENALTIES FOR PUBLIC NUISANCES CREATED BY CULTIVATION OF MEDICAL MARIJUANA IN VIOLATION OF SECTION 10-7”] of Section X of the Clearlake Municipal Code is hereby added to Chapter X with the following:

Section 10-9 - ADMINISTRATIVE PENALTIES FOR PUBLIC NUISANCES CREATED BY CULTIVATION OF MEDICAL MARIJUANA IN VIOLATION OF SECTION 10-7

Subsections:

10-9.010 - Effect.

This section does not in any way supersede City of Clearlake Municipal Code section 10-1.9: Administrative Fines.

10-9.020 - Purpose of administrative penalties on public nuisance.

- A. This section is adopted to achieve the following goals:
 - 1. To protect the public health, safety and welfare of the communities and citizens in the City of Clearlake; and
 - 2. To provide a method to penalize responsible parties who fail or refuse to comply with medical marijuana cultivation provisions of the Clearlake Municipal Code; and
 - 3. To minimize the expense and delay where otherwise the City must pursue responsible parties in the civil or criminal justice system.
- B. The procedures established in this section shall be in addition to criminal, civil or any other legal remedy established by law and available to address violations of the Clearlake Municipal Code.
- C. Notwithstanding any other provision of this code, whenever an act, event or condition results in violation of section 10-7 of this code, the procedures set out in this section may be used to impose a penalty on violators.

10-9.030 - Definitions.

For purposes of this section, these words and phrases shall be defined as follows:

- A. "Citation" or "administrative citation" means a civil citation issued pursuant to this section stating that there has been a violation of one or more provisions of section 10-

7 of this code and setting the amount of the administrative penalty to be paid by the responsible party.

- B. "Days" means calendar days.
- C. "Public official" means the building official, code enforcement officer, police officer or designees, or any other individual or body appointed by the City Council to enforce codes and which is authorized to administer this section.
- D. "Responsible party" means an individual, association, co-partnership, political subdivision, government agency, municipality, industry, public or private corporation, firm, organization, partnership, joint venture or any other entity whatsoever whose action or actions caused or contributed to violations of codes specified in this section.
- E. "Year" means three hundred and sixty-five days.

10-9.40 - Administrative penalty.

- A. Any responsible party violating any provision of section 10-7 of this code may be issued an administrative citation by a public official or the City Council in accordance with this section. The administrative citation penalty for each and every medical marijuana plant cultivated in violation of section 10-7 shall be: (1) One thousand dollars per plant; plus (2) one hundred dollars per plant per day the plant remains unabated past the abatement deadline set forth in the administrative citation.
- B. Each and every day a violation of the provisions of the code exists constitutes a separate and distinct offense and shall be subject to citation.
- C. The public official may issue a citation for a violation not committed in the official's presence, if the official has determined through investigation that the responsible party did commit or is otherwise responsible for the violation.

10-9.050 - Procedures.

- A. The administrative citation shall be issued on a form containing:
 - 1. The name and address of the property owner(s), as such persons' names appear on the last equalized assessment roll, any lessees and responsible parties and the physical address of the property or location where the violation exists or occurred;
 - 2. A statement of the acts, events or conditions which resulted in a violation of the code, including a reference to the appropriate title and section and the date of occurrence of the violation(s) included within the citation;
 - 3. The amount of the administrative penalty imposed by the citation;
 - 4. A statement explaining how, where, to whom, and within what number of days the penalty shall be paid;
 - 5. The number of days provided to correct the violation prior to the administrative penalty becoming effective;
 - 6. Identification of appeal rights, including the time within which the administrative citation may be contested and how to contest the citation; and
 - 7. The signature of the public official issuing the citation along with the date of issuance of the citation.
- B. The administrative citation shall be served upon the owner of the real property, the occupant and any other responsible party. Failure of the public official to serve any party as required in this section shall not invalidate any provisions of this section.
- C. Service of an administrative citation may be made upon the parties either by personal delivery or by first class mail postage prepaid, return receipt requested, and shall be deemed completed when it is served to the address of record of the responsible party.
- D. In lieu of personally serving the parties by personal delivery or first class mail postage prepaid, substituted service of the administrative citation and any amended or supplemental citation may be made as follows:
 - (1) By leaving a copy during usual business hours with the person who is

- apparently in charge at the recipient's place of business, and by thereafter mailing by first class mail postage prepaid a copy to the recipient at the address where the copy was left, or
- (2) By leaving a copy at the recipient's dwelling or usual place of abode, in the presence of a competent member of the household, and thereafter mailing by first class mail postage prepaid a copy to the recipient at the address where the copy was left; or
 - (3) In the event the party cannot be served by first class mail postage prepaid, or cannot be personally served and has a property manager or rental agency overseeing the premises, substituted service may be made as set forth above in subsection (D)(1) and (2) of this section upon the property manager or rental agency; or
 - (4) Substitute service may be effected by posting the property with the administrative citation and mailing a copy of the citation by first class mail postage prepaid to the party in violation at the address of the property where the violation exists; or
 - (5) If the party cannot be located or service cannot be effected as set forth in this section, service may be made by publication one in a newspaper of general circulation.
- E. Failure of any party to receive such administrative citation shall not affect the validity of any proceedings taken under this section against any other party. Service by first class mail postage prepaid in the manner provided for in this section shall be effective on the date of mailing.

10-9.060 - Appeal of citation.

Any person disputing the issuance of an administrative citation may contest the citation by completing a request for hearing form and returning it to the address stated on the form within 15 days from the date of issuance of the administrative citation. The time requirement for filing a request for hearing form shall be deemed jurisdictional and may not be waived. If no timely appeal is filed, the administrative citation and fee set forth therein is final.

10-9.070 - Hearing before a hearing officer.

- A. A hearing officer shall preside at the hearing and hear all facts and testimony presented and deemed relevant. The hearing shall be set for a date that is not less than 10 days from the date of mailing and posting of the notice of hearing. The notice of hearing shall state the date, time and place of the hearing and direct the property owners or occupant and other responsible parties to appear and show cause why the administrative fine should not be imposed. The notice of the hearing shall be sent by first class mail postage prepaid.
- B. The hearing officer shall only consider evidence that is relevant to whether the violation(s) occurred and whether the recipient of the administrative citation has caused or maintained the violation(s) on the date(s) specified in the administrative citation.
- C. Any hearing conducted pursuant to this section need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions.
- D. The hearing officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time. Personal information about any reporting party related to the violation(s) shall not be disclosed.

- E. The hearing officer may continue the hearing as necessary. The decision of the hearing officer shall be final upon adoption of an order containing its determination.
- F. The hearing officer's decision shall include that an aggrieved party may file a petition for review with the California Superior Court, County of Lake, pursuant to California Government Code Section 53069.4. The failure of a responsible party to appear at the administrative citation hearing shall be deemed a failure to exhaust administrative remedies.
- G. Neither imposition nor payment of an administrative penalty shall relieve the responsible party from his/her obligation to correct the violation, nor shall it bar further enforcement action by the public official.

10-9.080 - Payment and collection.

- A. In the event the responsible party fails to pay the administrative penalty when due, the City may take any actions permitted by law or ordinance to collect the unpaid penalty, which shall accrue interest at a rate of ten percent per annum, commencing thirty days after the administrative penalty becomes due and continuing until paid.
- B. In the event a civil action is commenced to collect the administrative penalty, the City shall be entitled to recover all costs associated with the enforcement, investigation, establishment and collection of the penalty. Costs include, but are not limited to, staff time and costs incurred in the enforcement, investigation, establishment and the collection or processing of the penalty and those costs set forth in Code of Civil Procedures Sections 685.010 et seq. and 1033.5.
- C. The amount of any unpaid administrative penalty, plus any other costs as provided in this section, may be declared a lien on real property owned by the responsible party within the City as follows:
 - 1. Notice shall be given to the responsible party prior to the recordation of the lien, and shall be mailed first class mail postage prepaid to the last known address; and
 - 2. When the public official records a lien listing delinquent unpaid administrative penalties with the City recorder's office, the lien shall specify the amount of the lien, the date of the code violations, the date of the final administrative decision, the street address, legal description, and assessor's parcel number of the parcel on which the lien is imposed, and the name of the owner of the parcel according to the last equalized assessment roll; and
 - 3. In the event that the lien is discharged, released or satisfied, either through payment or foreclosure, notice of the discharge and release of the lien shall be prepared by the public official.
- D. The amount of the unpaid administrative penalty, plus any other costs as provided by this section, may be declared a special assessment against any real property owned by the responsible party and located within the City. The City Council may impose the special assessment on one or more parcels. The amount of the assessment shall not exceed the amount of administrative penalty imposed for the violation, plus any cost authorized by other sections of this code. The public official may present a resolution to the City Council to declare a special assessment, and, upon passage and adoption thereof, shall cause a certified copy to be recorded with the Lake County recorder's office. The assessment may then be collected at the same time and in the same manner as ordinary taxes are collected, and shall be subjected to the same penalties and the same procedure and sale in the case of delinquency as provided for ordinary property taxes.
- E. The City may withhold issuance of licenses, permits and other entitlement for any property whenever an administrative penalty resulting from a code violation on that property remains unpaid or the owner of the property has outstanding, unpaid administrative penalties for violations of the code.
- F. The City may take any action permitted for enforcement of a civil money judgment pursuant to the Enforcement of Law, California Code of Civil Procedure Section 680.010 et seq.

SECTION 4. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 5. Execution. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days from its adoption.

I hereby certify that the foregoing Ordinance was PASSED, APPROVED and ADOPTED this ___ day of February, 2015.

Denise Loustalot, Mayor

Attest:

Melissa Swanson, City Clerk