



MEETING DATE: 02/17/04
AGENDA ITEM: 14

COUNCIL AGENDA REPORT

DATE: February 12, 2004
TO: MAYOR AND TOWN COUNCIL
FROM: ORRY P. KORB, TOWN ATTORNEY *for Orry Korb*
SUBJECT: INTRODUCE AN ORDINANCE ESTABLISHING AN ADMINISTRATIVE CITATION AND ADMINISTRATIVE REMEDIES PROCESS

RECOMMENDATION:

1. Accept public comment (not a formal public hearing);
2. Direct the Clerk to read the title;
3. Move to waive the reading; and
4. Introduce the Ordinance (Attachment 1)

INTRODUCTION:

At its meeting on November 3, 2003, Council discussed whether to implement a system of administrative code enforcement. Council directed staff to bring forward an ordinance for consideration. Council also expressed an interest in understanding the protocols that would be used by staff in implementing the ordinance. This agenda item addresses that issue. In addition, it provides Council with additional information about plans to implement administrative code enforcement.

BACKGROUND:

Attached (Attachment 2) for your reference is a copy of the staff report prepared for the meeting on November 3, 2003.

PREPARED BY: ORRY P. KORB, TOWN ATTORNEY

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Reviewed by:	<i>[Signature]</i> Town Manager	<i>PSJ</i> Assistant Town Manager	_____ Clerk
	_____ Finance	<i>Bill</i> Community Development	

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SUBJECT: POLICY DISCUSSION REGARDING WHETHER TO ESTABLISH AN
ADMINISTRATIVE CITATION AND ADMINISTRATIVE REMEDIES
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DISCUSSION:

How Administrative Code Enforcement Would be Implemented:

Should Council elect to introduce and later adopt the proposed ordinance, staff anticipates that the ordinance would be implemented in stages as follows:

1. Staff would prepare proposed administrative fines for approval by Council. These would likely address standard penalties for most violations, non-standard penalties for particular violations, multiplied penalties for second and third violations and delinquency penalties for late payments. The development of these fines would consider the amounts currently imposed by the courts for violations of the Town Code along with the fines imposed for similar violations by other cities using administrative code enforcement
3. Staff would contract directly with a hearing officer or with another public agency for shared hearing officer services.
3. A public information process would be undertaken utilizing Town resources such as the Vista, the website and the What's New e-mail notice service, along with one or more press releases to local media outlets.
4. The Community Development Department would develop a protocol for administrative enforcement of the zoning code. This protocol would address notices, the amount of time violators would be given to correct violations, and other procedures necessary to implement administrative code enforcement. Council would then have an opportunity to review the protocol. Community Development would then initiate administrative enforcement of the zoning code, which would serve as a pilot for implementation by other departments.
5. The Police Department would likely be the next to implement administrative code enforcement. It too would develop a protocol taking into consideration the experience of the Community Development Department.
6. Parks and Public Works would likely be the last department to develop a protocol and implement administrative code enforcement.

While the departments will have the opportunity to develop their own protocols, the goal is for all to work together to ensure uniformity and efficiency throughout the program of administrative code enforcement.

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CONCLUSION:

Administrative code enforcement is intended to increase the efficiency and efficacy of code enforcement efforts, while also shifting responsibility for a portion of the costs of code enforcement from the general fund to the individuals and/or organizations responsible for the violations.

ENVIRONMENTAL ANALYSIS:

Adoption of a system of administrative code enforcement is not a project as defined in the California Environmental Quality Act.

FISCAL ANALYSIS:

It is difficult to accurately estimate the number of citations and/or correction notices that would be issued and the penalties and costs that might be collected. Nevertheless, the following analysis was developed using conservative estimates obtained from some of the departments responsible for code enforcement, along with information obtained the Finance Department and cities currently engaged in administrative code enforcement.

Based on current experience, the Community Development Department anticipates that it would issue up to 200 citations and/or correction notices annually for violations of zoning and building rules; the Police Department estimates that it would issue approximately 25 citations annually for violations of various provisions of the Town Code; and the Department of Parks and Public Works estimates that it would issue approximately 20 citations and/or correction notices annually for violations of grading and tree protection ordinances. No estimates are available for violations of code provisions regarding Town parks.

Information obtained from Palo Alto and Mountain view indicates that the average administrative penalty in those cities is approximately \$250. Thus, excluding administrative costs, interest and other penalties that might be assessed by a hearing officer, approximately \$61,000 in penalties would be assessed on an annual basis. Based upon current collections, the Finance Department estimates that the Town may collect approximately 70% of the penalties assessed. Applying this percentage, and again without considering additional penalties and costs that might be assessed for more complex violations, staff estimates that the Town could realize approximately \$43,000 annually. This is consistent with the experience of the City of Monterey, which estimates that its administrative code enforcement program generates approximately \$50,000 in revenue to offset costs. Initially, conservative revenue assumptions would be programmed in developing the 04-05 budget in order to allow for program startup.

The primary additional cost associated with administration code enforcement is for the contract services

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of a hearing officer. Palo Alto currently estimates that it would contract out its hearing officer and support staff services for approximately \$125 per hour and further estimates that each citation appeal hearing would require a total of two hours. Some or all of these costs could be recovered should the Town prevail at the administrative hearing.

At present, the Town employs a number of employees who are responsible for code enforcement as part of their normal duties, including the Community Development code enforcement officer, numerous police officers, two park service officers, and the Parks and Public Works inspectors. The salaries for these positions, which range from approximately \$70,000 to \$130,000 annually, including benefits, are currently paid out of Town general fund revenues.

Attachment:

1. Proposed Ordinance
2. Copy of Staff Report dated November 3, 2003

ORDINANCE

ORDINANCE AMENDING CHAPTER 1 OF THE TOWN OF LOS GATOS
MUNICIPAL CODE AND ADDING ARTICLE II TO CHAPTER 1
OF THE TOWN OF LOS GATOS TOWN CODE ESTABLISHING AN
ADMINISTRATIVE CITATION AND ADMINISTRATIVE REMEDIES PROCESS

THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN AS FOLLOWS:

SECTION I

Chapter 1 of the Los Gatos Town Code is amended by adding the title *Article I. In General* to include sections 1.10.010 through 1.10.110.

SECTION II

Chapter 1 of the Los Gatos Town Code is amended by adding the following:

Article II
Administrative Citations

Section 1.20.010. Applicability

Sections 1.20.010 through 1.20.070 herein provide for administrative citations which are in addition to all other civil legal remedies and which are an alternative to any criminal legal remedies, which may be pursued by the Town to address any violation of this Code except for violations of Chapter 15 (Motor Vehicles and Traffic).

Section 1.20.015. Definitions

For purpose of this Article, the following definitions shall apply:

- (a) *Enforcement Officer* shall mean any Town employee or agent of the Town with the authority to enforce any provision of this Code, including, but not limited to, the Town Manager, Town Attorney, Director of Community Development, Director of Parks and Public Works and any police officer and code enforcement officer.
- (b) *Hearing Officer* shall mean any person designated by the Town Manager to hear appeals of administrative citations and to hear administrative compliance hearings. The Hearing Officer shall not be the citing Enforcement Officer. 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.

Section 1.20.020. Administrative Citation

- (a) Whenever an Enforcement Officer charged with the enforcement of this Code determines that a violation of that provision has occurred, the Enforcement Officer shall have the authority to issue an administrative citation to any person responsible for the violation.
- (b) Each administrative citation shall contain the following information:
 - 1. The date of the violation;
 - 2. The address or a definite description of the location where the violation occurred;
 - 3. The section of this Code violated and a description of the violation;
 - 4. The amount of the penalty for the code violation;
 - 5. A description of the penalty payment process, including a description of the time within which and the place to which the penalty shall be paid;
 - 6. An order prohibiting the continuation or repeated occurrence of the code violation described in the administrative 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 to contest the administrative citation may be obtained; and,
 - 8. The name and signature of the citing Enforcement Officer.
- (c) Prior to the issuance of an administrative citation for a violation which pertains to building, plumbing, electrical, or similar structural or zoning matters that do not create an immediate danger to health or safety, the Enforcement Officer shall provide a reasonable period of time not less than five (5) business days to correct or otherwise remedy the violation.

Section 1.20.025 Amount of Penalties

- (a) The amounts of the penalties for code violations imposed pursuant to this Article shall be set forth in the schedule of penalties established by resolution by the Town Council.
- (b) The schedule of penalties shall specify any increased penalties for repeat violations of the same code provision within thirty-six (36) months from the date of an administrative citation.
- (c) The schedule of penalties shall specify the amount of any late payment charges imposed for the payment of a penalty after its due date.

Section 1.20.030 Payment of Penalty

- (a) The penalty shall be paid to the Town within thirty (30) days from the date of the administrative citation.
- (b) Payment of a penalty shall not excuse or discharge any continuation or repeated occurrence of the code violation that is the subject of the administrative citation.

Section 1.20.035 Hearing Request

- (a) Any recipient of an administrative citation may contest the citation by completing a request for hearing form and returning it to the Town within thirty (30) days from the date of the administrative citation, together with an advance deposit of the total penalty amount or an advance deposit hardship waiver Application form as described in section 1.20.075.
- (b) A request for hearing form may be obtained from the department specified on the administrative citation.
- (c) The person requesting the hearing shall be notified of the time and place set for the hearing at least 10 days prior to the date of the hearing.
- (d) If the Enforcement Officer submits an additional written report concerning the administrative citation to the Hearing Officer for consideration at the hearing, then a copy of this report also shall be served on the person requesting the hearing at least five days prior to the date of the hearing.

Section 1.20.040 Hearing Procedure

- (a) No hearing to contest an administrative citation before a Hearing Officer shall be held unless the penalty has been deposited in advance in accordance with section 1.20.035(a) or an advance deposit hardship waiver has been filed with and accepted by the Town pursuant to section 1.20.070.
- (b) A hearing before the Hearing Officer shall be set for a date that is not less than fifteen (15) days and not more than sixty (60) days from the date that the request for hearing is filed in accordance with the provisions of this Article.
- (c) At the hearing, the party contesting the administrative citation shall be given the opportunity to testify and to present evidence concerning the administrative citation.
- (d) The failure of any recipient of an administrative citation to appear at the administrative citation hearing shall constitute a forfeiture of the penalty and a failure to exhaust his or her administrative remedies.
- (e) The administrative citation and any additional report submitted by the Enforcement Officer shall constitute prima facie evidence of the respective facts contained in those documents.
- (f) The Hearing Officer may continue the hearing and request additional information from the Enforcement Officer or the recipient of the citation prior to issuing a written decision.

Section 1.20.045 Hearing Officer's Decision

- (a) After considering all of the testimony and evidence submitted at the hearing, the Hearing Officer shall issue a written decision to uphold or cancel the administrative citation and shall list the reasons for that decision. The decision of the Hearing Officer shall be final.

- (b) If the Hearing Officer determines that the administrative citation should be upheld, he or she shall impose a penalty not to exceed the maximum provided in the schedule of administrative penalties adopted by the Town Council resolution in effect on the date when the violation occurred. The Town shall retain the penalty amount on deposit with the Town. If the Hearing Officer determines that the administrative citation should be upheld and the penalty was not deposited pursuant to a waiver under section 1.20.075, the Hearing Officer shall set forth in the decision an order for payment of the penalty and a payment schedule for the penalty.
- (c) The Hearing Officer may assess administrative costs against the violator when the Hearing Officer determines that a violation has occurred and that compliance was not achieved. Administrative costs may include any and all costs incurred by the Town (both direct and indirect costs) in investigating and commencing administrative proceedings for the violation as well as any and all costs incurred by the Town in connection with the hearing before the Hearing Officer, including but not limited to costs the Enforcement Officer incurred in preparation for the hearing and for participating in the hearing itself, and costs of the Town to conduct the hearing.
- (d) Failure to pay administrative penalties and administrative costs in the amounts specified in the administrative Hearing Officer's decision on or before the date specified in that decision shall constitute a violation of this Code punishable as a misdemeanor and shall further be subject to collection and late charges as otherwise provided for administrative penalties herein.
- (e) If the Hearing Officer determines that the administrative citation should be cancelled, the Town shall promptly refund the amount of the deposited penalty.
- (f) The recipient of the administrative citation shall be served with a copy of the Hearing Officer's written decision.

Section 1.20.050 Late Payment Charges

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

Section 1.20.055 Recovery of Administrative Citation Penalties and Collection Costs

The Town may collect any past due administrative citation penalty, late payment charge and costs of collection by use of any and all available legal means.

Section 1.20.060 Right to Judicial Review

Any person aggrieved by an administrative decision of the Hearing Officer on an administrative citation may obtain review of the administrative decision by filing a petition for review with the Superior Court in Santa Clara County in accordance with the time lines and provisions set forth in California Government Code section 53069.4.

Section 1.20.065 Notices

Whenever a notice is required to be given under this Article, unless different provisions are otherwise specifically made, such notice may be given either by personal delivery to the person to be notified or by deposit in the United States Mail, in a sealed envelope, postage prepaid, addressed to such person to be notified at the last-known business or residence address as the same appears in the last equalized county assessment roll or to the records pertaining to the matter to which such notice is directed. Service by mail shall be deemed completed at the time of deposit in the United States Mail receptacle is made. Failure to receive any notice specified herein does not affect the validity of proceedings conducted hereunder.

Section 1.20.070 Advance Deposit Hardship Waiver

- (a) Any person who intends to request a hearing to contest an administrative citation, and who is financially unable to make the advance deposit of the penalty as required in section 1.20.035(a), may file a request for an advance deposit hardship waiver which shall include a sworn affidavit as described in subsection (c) below.
- (b) The request shall be filed, along with the request for hearing form, with the Town Attorney's Office on an advance deposit hardship waiver application form, available from the Town Clerk's Office, within thirty (30) days of the date of the administrative citation.
- (c) The Town may waive the requirement of an advance deposit and issue the advance deposit hardship waiver only if the cited party submits to the Town a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the Town Manager the person's actual financial inability to deposit with the Town the full amount of the penalty in advance of the hearing. In determining the cited party's financial ability or inability to deposit the full amount of the penalty in advance, the Town Manager shall consider the amount of the penalty imposed, the income of the cited party, the expenses of the cited party, and any other factors that are reasonably related to the cited party's ability to deposit the full amount.
- (d) The requirement of depositing the full amount of the penalty as described in section 1.20.035(a) shall be stayed unless or until the Town makes a full determination not to issue the advance deposit hardship waiver.
- (e) If the Town makes a determination to deny the advance deposit hardship waiver application, a written determination listing the reasons for said denial shall be issued. The written determination to deny the waiver shall be final.
- (f) The written determination of the Town's denial of the advance deposit hardship waiver shall be served by mail upon the person who applied for the waiver.

Article III
Administrative Orders

Section 1.30.010 Applicability

Sections 1.30.010 through Section 1.30.105 herein provide for administrative orders which are in addition to all other civil legal remedies and which are an alternative to any criminal legal remedies, which may be pursued by the Town to address any violation of this Code except for violations of Chapter 15 (Motor Vehicles and Traffic).

Section 1.30.015 Definitions

For purpose of this Article, the following definitions shall apply:

- (a) *Enforcement Officer* shall mean any Town employee or agent of the Town with the authority to enforce any provision of this Code, including, but not limited to, the Town Manager, Town Attorney, Director of Community Development, Director of Parks and Public Works and any police officer and code enforcement officer,
- (b) *Hearing Officer* shall mean any person designated by the Town Manager to hear appeals of administrative citations and to hear administrative compliance hearings. The Hearing Officer shall not be the investigating Enforcement Officer. The employment, performance evaluation, compensation and benefits of the Hearing Officer shall not be directly or indirectly conditioned upon the amount of administrative penalties upheld by the Hearing Officer.

Section 1.30.020 Compliance Order

- (a) Whenever the Town Manager or designee determines that a violation of any provision of this Code is occurring or exists on a continuing basis, a written compliance order may be issued to any person responsible for the violation and/or the property owner.
- (b) A compliance order issued pursuant to this Article shall contain the following information:
 - 1. The date and location of the violation;
 - 2. The section of this Code violated and a description of the violation;
 - 3. The actions required to correct the violation;
 - 4. The time period after which administrative penalties will begin to accrue if compliance with the order has not been achieved;
 - 5. Either a copy of Article III of this Chapter or an explanation of the consequences of noncompliance with this Article and a description of the hearing procedure and appeal process.

Section 1.30.025 Method of Service

- (a) All notices required herein shall be served as provided in section 1.30.030 of this Article unless otherwise specified.

- (b) Where real property is involved, written notice shall be mailed to the property owner at the address as shown on the last equalized county assessment roll.
- (c) Where personal service or service by mail upon the property owner cannot be made despite a diligent effort, a copy of the order shall be conspicuously posted at the property that is the subject of the order.
- (d) The failure of any person to receive any notice required under this Article shall not affect the validity of any proceedings taken under this Article.

Section 1.30.030 Notice Service Procedure

Whenever a notice is required to be given under this Article, unless different provisions are otherwise specifically made, such notice may be given either by personal delivery to the person to be notified or by deposit in the United States Mail, in a sealed envelope, postage prepaid, addressed to such person to be notified at the last-known business or residence address as the same appears in the last equalized county assessment roll or to the records pertaining to the matter to which such notice is directed. Service by mail shall be deemed completed at the time of deposit in the United States Mail receptacle is made.

Section 1.30.035 Hearing

- (a) If the Town Manager determines that all violations have been corrected within the time specified in the compliance order, no further action shall be taken.
- (b) If full or partial compliance is not achieved within any of the times specified in the compliance order for full or partial compliance, the Town Manager shall set a hearing before the Hearing Officer.
- (c) The Town Manager shall cause a written notice of hearing to be served on the violator and, where real property is involved, a notice of hearing shall be served on the property owner at the address as it appears on the last equalized county assessment roll available on the date the notice is prepared.
- (d) All hearings shall be open and public.

Section 1.30.040 Notice of Hearing

- (a) Every notice of hearing on a compliance order shall contain the date, time and place at which the hearing shall be conducted by the Hearing Officer.
- (b) Each hearing shall be set for a date not less than fifteen (15) days nor more than sixty (60) days from the date of the notice of hearing unless the Town Manager determines that the matter is urgent or that good cause exists for an extension of time.
- (c) The hearing serves to provide the full opportunity of a person subject to a compliance order to object to the determination that a violation has occurred and/or that the violation has

continued to exist. The failure of any person subject to a compliance order, pursuant to this Article, to appear at the hearing shall constitute a failure to exhaust administrative remedies.

Section 1.30.045 Hearing - Findings and Order

- (a) At the place and time set forth in the notice of hearing, the Hearing Officer shall conduct a hearing on the compliance order issued pursuant to section 1.30.020.
- (b) The Hearing Officer shall consider any written or oral evidence consistent with its rules and procedures regarding the violation and compliance by the violator and/or by the real property owner, including but not limited to:
 - 1. The report of the Enforcement Officer;
 - 2. Objections or protests of property owners or other responsible or interested persons who may be held liable for the amounts owed or whose property may be assessed or lienied for the amounts owed;
 - 3. Evidence on whether the person before the Hearing Officer is responsible for the amounts owed to the Town;
 - 4. Evidence on whether the person responsible for the amounts owed to the Town has taken the required corrective action within the required time period; and
 - 5. Such other and further evidence as justice may require
- (c) Within a reasonable time following the conclusion of the hearing, the Hearing Officer shall make findings and issue its determination regarding:
 - 1. The existence of the violation; and
 - 2. The failure of the violator or owner to take required corrective action within the required time period.
- (d) The Hearing Officer shall issue written findings on each violation. The findings shall be supported by evidence received at the hearing.
- (e) If the Hearing Officer finds by a preponderance of the evidence that a violation has occurred and that the violation was not corrected within the time period specified in the compliance order, the Hearing Officer shall issue an administrative order pursuant to section 1.30.050.
- (f) If the Hearing Officer finds that no violation has occurred or that the violation was corrected within the time period specified in the compliance order, the Hearing Officer shall issue a finding of those facts.

Section 1.30.050 Administrative Order

- (a) If the Hearing Officer determines that a violation occurred which was not corrected within the time period specified in the compliance order, the Hearing Officer shall issue an administrative order that imposes any or all of the following:
 - 1. An order to correct, including a schedule for correction where appropriate;

2. Administrative penalties as provided in section 1.30.055;
 3. Administrative costs as provided in section 1.30.060; and
 4. Interest as provided in section 1.30.065.
- (b) The Administrative Order shall state that failure to comply with its provisions may, pursuant to section 1.10.100, result in the Town abating the nuisance and charging the cost of said abatement plus all administrative costs to the property owner, and may further result in the Town collecting the monies due as a personal obligation of the responsible party or by recordation of a lien or filing of a special assessment against the subject real property.

Section 1.30.055 Administrative Penalties

- (a) The Hearing Officer may impose daily administrative penalties for the violation of any provision of this Code except for violation of Chapter 15 (Motor Vehicles and Traffic) in the amount set forth in the schedule of penalties established by resolution by the Town Council. The Hearing Officer may suspend administrative penalties for any period of time during which the violator has filed for necessary permits and such permit applications are actively pending before the Town, state or other appropriate public agency.
- (b) In determining the amount of the administrative penalty, the Hearing Officer may take any or all of the following factors into consideration:
1. The duration of the violation;
 2. The frequency, recurrence and number of violations, related or unrelated, by the same violator;
 3. The seriousness of the violation;
 4. The good faith efforts of the violator to come into compliance;
 5. The economic impact of the penalty on the violator;
 6. The impact of the violation on the community; and
 7. Such other factors as justice may require.
- (c) Administrative penalties imposed by the Hearing Officer shall accrue from the date specified in the compliance order and shall cease to accrue on the date the violation is corrected as determined by the Town Manager or the Hearing Officer.
- (d) Administrative penalties assessed by the Hearing Officer shall be due by the date specified in the administrative order.
- (e) If the violation is not corrected as specified in the Hearing Officer's order to correct, administrative penalties shall continue to accrue on a daily basis until the violation is corrected, subject to the maximum amount set forth in subsection (a) above.
- (f) If the violator gives written notice to the Town Manager that the violation has been corrected and if the Town Manager finds that compliance has been achieved, the Town Manager shall deem the date the written notice was postmarked or personally delivered to the Town Manager or the date of the final inspection, whichever first occurred, to be the date the violation was corrected. If no written notice is provided to the Town Manager, the violation will be deemed

corrected on the date of the final inspection.

Section 1.30.060 Administrative Costs

- (a) The Hearing Officer shall assess administrative costs against the violator when it finds that a violation has occurred and that compliance has not been achieved within the time specified in the compliance order.
- (b) The administrative costs may include any and all costs incurred by the Town in connection with the matter before the Hearing Officer including, but not limited to, costs of investigation of the violation, staffing costs incurred in preparation for the hearing and for the hearing itself, and costs for all subsequent inspections necessary to enforce the compliance order.

Section 1.30.065 Interest

The Hearing Officer may also assess interest on the amount of administrative penalties, abatement costs and administrative costs imposed at the legal rate from the date of the administrative order.

Section 1.30.070 Force and Effect

- (a) The administrative order of the Hearing Officer is final at the time it is made; however, the Hearing Officer shall maintain continuing jurisdiction and shall have the power to modify the administrative order, after providing the person subject to the administrative order with notice and an opportunity to be heard, until full compliance is achieved.
- (b) The administrative order of the Hearing Officer, once recorded, shall have the same force and effect and priority as a judgment lien governed by the provisions of section 697.340 of the California Code of Civil Procedure and may be extended as provided in sections 683.110 to 683.220, inclusive, of the Code of Civil Procedure.
- (c) The administrative order shall have the same force and effect as a resolution of the Town Council for the purpose of filing a lien, special assessment, or special collection with the County of Santa Clara or tax collector's office pursuant to this code and for the purpose of pursuing any other collection or enforcement action to obtain payment of the amounts owed to the Town.

Section 1.30.075 Failure to Comply with Administrative Order

- (a) If unpaid as of the date specified in the administrative order, the administrative penalties, administrative costs and interest assessed by the Hearing Officer shall be collected by the Town by use of all available legal means, and may be enforced as:
 - 1. A personal obligation of the violator; and/or
 - 2. If the violation is in connection with real property, a lien or special assessment upon the real property. The lien or special assessment shall remain in effect until all of the administrative penalties, interest and administrative costs are paid in full.

- (b) In addition to any other remedies provided by law, failure to pay administrative penalties, administrative costs and interest in the amounts specified in the Hearing Officer's decision on or before the date specified in that decision shall constitute a violation of this Code punishable as a misdemeanor.

Section 1.30.080 Right of Judicial Review

The decision of the Hearing Officer shall be final. Any person aggrieved by an administrative order of the Hearing Officer may obtain review of the administrative order in the Superior Court of Santa Clara County by filing with the court a notice of appeal pursuant to Government Code section 53069.4.

Section 1.40.085 Report of Compliance after Administrative Order

If the Town Manager determines that compliance has been achieved after a compliance order has been sustained by the Hearing Officer, the Town Manager shall prepare a report indicating that compliance has been achieved. A copy of the compliance report shall be served on the violator.

Section 1.30.090 Lien / Special Assessment

Whenever the amount of any administrative penalty and/or administrative cost imposed by the Hearing Officer pursuant to this Article in connection with real property has not been satisfied in full within ninety (90) days and/or has not been successfully challenged by a timely appeal pursuant to Government Code section 53069.4, this obligation may constitute a lien or, in the alternative, a special assessment against the real property on which the violation occurred.

Section 1.30.095 Lien Procedure

- (a) There is hereby established the following procedure for collection of administrative penalties and costs imposed by the Hearing Officer pursuant to this Article or other abatement and related administrative costs by recordation of a lien.
- (b) Upon determination by the Town Manager that the administrative penalty, administrative costs and interest imposed by the Hearing Officer has not been satisfied in full within ninety (90) days and/or not been successfully challenged by a timely appeal, the Town Manager shall prepare and file with the Town Council a report stating the amounts due and owing, the date of the administrative order, the street address, legal description and assessor's parcel number of the subject property, and the name and address of the recorded owner of the property.
- (c) Prior to recordation of the lien, the Town Manager shall serve a copy of the report provided under subsection (b) above on the property owner, along with notice to the property owner that a lien in the amounts stated in the report will be filed against the subject property in the County Recorder's Office.
- (d) The notice set forth in subsection (c) above shall be served in the same manner as summons in a civil action in accordance with Code of Civil Procedure section 415.10 et seq. if the owner of record, after diligent search cannot be found, the notice may be served by posting a copy

thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in a newspaper of general circulation published in Santa Clara County.

- (e) Following proper notice to the owner of record as provided in subsection (d) above, the Town Manager's report and a copy of the administrative or abatement order shall be recorded as a lien with the County Recorder. Once recorded, the administrative order shall have the force and effect and priority of a judgment lien governed by the provision of section 697.340 of the Code of Civil Procedure and may be extended as provided in sections 683.110 to 683.220, inclusive, of the Code of Civil Procedure.
- (f) Interest at the legal rate per year shall accrue on the principal amount of the lien until satisfied pursuant to law.
- (g) A lien pursuant to this section may be foreclosed by an action brought by the Town for a money judgment.

Section 1.30.100 Special Assessment Procedure

- (a) As an alternative to the procedure authorized by section 1.30.085, there is hereby established a procedure for making the administrative penalties and costs imposed by the Hearing Officer pursuant to this Article or abatement and related administrative costs a special assessment against the subject real property.
- (b) Upon determination by the Town Manager or the Hearing Officer that the administrative penalty, administrative cost and/or interest imposed by the Hearing Officer has not been satisfied in full within ninety (90) days and/or not been successfully challenged by a timely appeal, the Town Manager shall prepare and file with the Town Council a report stating the amounts due and owing, the date of the administrative order or abatement order, the street address, legal description and assessor's parcel number of the subject property, and the name and address of the recorded owner of the property.
- (c) Prior to the imposing of the special assessment, the Town Manager shall serve a copy of the report provided under subsection (b) above on the property owner, along with notice that the property may be sold after three years by the County of Santa Clara tax collector for unpaid delinquent assessments. Such notice shall be served by certified mail to the property owner. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in a newspaper of general circulation published in Santa Clara County. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice.
- (d) The assessment 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 provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the assessment 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 attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the assessment shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

- (e) Interest shall accrue on the principal amount of the assessment until satisfied pursuant to law.
- (f) The Town may, subject to the requirements applicable to the sale of property pursuant to section 3691 of the Revenue and Taxation Code, conduct a sale of vacant residential developed property for which the payment of the assessment is delinquent.
- (g) Notices or instruments relating to the administrative order, abatement order or special assessment shall be entitled to recordation.

Section 1.30.105 Satisfaction of Lien / Special Assessment

Once payment in full is received by the Town for outstanding penalties and costs, the Director of Finance shall:

- (a) With respect to a lien, either record a notice of satisfaction or provide the property owner or financial institution with a notice of satisfaction so they may record this notice with the Office of the County Recorder. Such notice of satisfaction shall cancel the Town's lien; or
- (b) With respect to a special assessment, provide written notice to the County of Santa Clara tax collector that the special assessment amount has been paid in full and should no longer be imposed against the subject property. Such written notice shall cancel the Town's special assessment.

SECTION IV

If any of the provisions of this ordinance or the application thereof to any person or property is held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION V

Any judicial review of this ordinance shall be by writ of mandate, under Code of Civil Procedure 1085. Any action or proceeding seeking to attack, review, set aside, void or annul this ordinance shall be commenced within 90 days after adoption of this ordinance

This ordinance was introduced at a regular meeting of the Town Council of the Town of Los

Gatos on _____, 2003 and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on _____, 2003. This ordinance takes effect 30 days after it is adopted.

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

N:\ATY\Admin.Cit.ORD.wpd.wpd



MEETING DATE: 11/03/03
AGENDA ITEM: 21

COUNCIL AGENDA REPORT

DATE: October 31, 2003
TO: MAYOR AND TOWN COUNCIL
FROM: ORRY P. KORB, TOWN ATTORNEY *OK*
SUBJECT: POLICY DISCUSSION REGARDING WHETHER TO ESTABLISH AN ADMINISTRATIVE CITATION AND ADMINISTRATIVE REMEDIES PROCESS

RECOMMENDATION:

Hold a policy discussion regarding whether to establish an administrative citation and administrative remedies process.

PURPOSE:

This agenda item is intended to afford Council an opportunity to discuss the issues associated with the establishment of administrative code enforcement. Currently the Town enforces the Town Code almost exclusively through persuasion coupled with criminal prosecution, although it also is empowered to employ civil court remedies to abate certain nuisances. This report introduces the concept of administrative code enforcement, where, in essence, the Town is enabled to issue its own citations and collect penalties directly from violators. It also discusses some of the related issues, including additional administrative burdens and expenses.

BACKGROUND:

Provisions of the Town Code are regularly subject to enforcement by members of the Town staff, including rules regarding improper public behavior, rules prohibiting parties involving unsupervised alcohol use by minors, noise restrictions, park conduct rules, and Town building, grading and zoning standards. Enforcement of these provisions is undertaken by officers of the Police Department, park

PREPARED BY: ORRY P. KORB, TOWN ATTORNEY

OPK/wp (N:\ATY\administrative citation tcr word)

Reviewed by: *[Signature]* Town Manager PSJ Assistant Town Manager _____ Clerk
[Signature] Finance _____ Community Development

Rev: 10/31/03 1:31 pm
Reformatted: 7/19/99

File# 301-03

ATTACHMENT 2

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SUBJECT: POLICY DISCUSSION REGARDING WHETHER TO ESTABLISH AN
ADMINISTRATIVE CITATION AND ADMINISTRATIVE REMEDIES
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service officers, building and engineering inspectors, and Community Development code enforcement personnel in consultation with the Town Attorney.

Code enforcement is a time and labor intensive undertaking. Depending on the violation, enforcement officers often spend hours learning the details of about violations, locating and contacting responsible parties, monitoring corrective activities, if any, and conducting follow up inspections. Code enforcement cases often require numerous contacts and correspondence with violators. Even simple violations such as sign violations often require numerous follow up contacts with the violators, who have little incentive to immediately correct violations. Each year several cases are referred to the Town Attorney for prosecution and a handful result in court proceedings.

The Town's code enforcement efforts, while highly successful, come at a high price. No fines are paid by, nor are code enforcement costs recovered from, the many individuals and business entities that are convinced to correct violations before the initiation of a code enforcement court case. And while cases that go to court can produce fines and penalties, only a minute portion of the amounts collected come back to the Town.

In an effort to increase the efficiency, efficacy and cost effectiveness of code enforcement, a number of cities have initiated administrative penalty code enforcement systems. In the immediate area, these include San Jose, Sunnyvale, Mountain View, Santa Clara, Palo Alto, Milpitas, Campbell, Fremont and Monterey. Los Altos is also considering implementing administrative code enforcement. While each of these cities has initiated their own version of administrative code enforcement, all basically follow the model initially established in San Jose. Changes in the numbers of violations corrected, citations issued, amounts of cost recovery, etc., vary in all cities depending on their individual approaches to code enforcement; that is, how aggressive each is in identifying and acting on code violations. Nevertheless, in each case cities are better able to control the administration of citations once issued and to obtain some cost recovery for their enforcement efforts.

DISCUSSION:

A. Considerations in Changing to Administrative Code Enforcement:

Government Code section 53069.4 permits the Town to adopt an ordinance establishing administrative procedures to make any violation of the Town Code subject to administrative enforcement, including the payment of fines or penalties. As described in detail below, adopting such an ordinance would result in significant changes to the current system of code enforcement in the Town.

Administrative code enforcement establishes one system for issuing citations and collecting penalties for one time violations and a separate system for issuing correction notices and collecting

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penalties and costs for ongoing violations. This would allow some cost recovery for existing services that currently are paid for entirely out of General Fund revenues. Significantly, those costs would be paid by the violators. However, administrative code enforcement also results in some additional administrative costs. For example, a new hearing process must be established, either utilizing Town personnel or an outside contractor. Also, increased record keeping requirements are placed on code enforcement personnel, including, for the first time, timekeeping for enforcement activities.

While the draft ordinance (attached) empowers staff to issue citations or correction notices five (5) business days after giving notice of most types of violations, staff retains the discretion and fully intends to develop internal policies regarding the content and number of notices to be given before citations or correction notices would be issued. Administrative code enforcement is not intended to change the philosophy regarding obtaining compliance with the Town Code, but instead, to shift some portion of the financial burden of doing so from the General Fund to the persons and/or organizations responsible for the violations. Nevertheless, Council should also consider the possibility that more citations would be issued, and that an increase in complaints about the nature and extent of the Town's code enforcement activities might result.

B. How Administrative Code Enforcement Works:

1. Administrative Citations

Administrative citations can be issued by any authorized officer or employee of the Town to any person responsible for having violated any provision of the Town Code. Where the violation concerns building, plumbing, electrical, or similar structural or zoning matters that do not create an immediate danger to health or safety, a reasonable period of time, but not less than five business days, is allowed to correct the violation. The citation would require payment of a penalty in an amount to be determined by Council resolution. Multiple violation and late payment penalties can also be assessed. Should the violator appeal the citation, an administrative hearing would then be held before a hearing officer designated by the Town. The hearing officer, in addition to the penalties, may also assess administrative costs based on a determination that the violation occurred and compliance was not achieved. These costs may include the costs of investigating and commencing administrative proceedings as well as any and all costs incurred by the Town in connection with the hearing before the Hearing Officer. A violator who continues to contest the citation can seek review by the superior court.

2. Correction Notices

Compliance orders are issued to the person or persons responsible for continuing violations. Unless full compliance is achieved, compliance orders are considered in an administrative hearing before the hearing officer designated by the Town. At the conclusion of the hearing, the hearing officer

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makes findings regarding the existence of the violation and the responsiveness of the party responsible for the violation. If a preponderance of the evidence establishes the existence of a violation, the hearing officer can impose the administrative penalty, administrative costs and interest. A violator who continues to contest the outcome of the administrative hearing can seek review by the superior court.

C. How Administrative Code Enforcement Would be Implemented:

Should Council elect to introduce and later adopt the proposed ordinance, staff anticipates the following steps to implement the ordinance:

1. Determine administrative penalties for all code violations, which would require approval by Council.
2. Establish internal policies for the administration of the ordinance.
3. Train appropriate personal in the departments responsible for issuing administrative citations or correction notices.
5. Prepare official documents such as administrative citations, correction notices, hearing instructions, etc.
6. Train an in-house hearing officer or contracting for such services with one or more independent contractors or with another public agency that provides such services.

CONCLUSION:

Administrative code enforcement is intended to increase the efficiency and efficacy of code enforcement efforts, while also shifting responsibility for a portion of the costs of code enforcement from the general fund to the individuals and/or organizations responsible for the violations.

ENVIRONMENTAL ANALYSIS:

Adoption of a system of administrative code enforcement is not a project as defined in the California Environmental Quality Act.

FISCAL ANALYSIS:

It is difficult to accurately estimate the number of citations and/or correction notices that would be issued and the penalties and costs that might be collected. Nevertheless, the following analysis was developed using conservative estimates obtained from some of the departments responsible for code

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enforcement, along with information obtained the Finance Department and cities currently engaged in administrative code enforcement.

Based on current experience, the Community Development Department anticipates that it would issue up to 200 citations and/or correction notices annually for violations of zoning and building rules, the Police Department estimates that it would issue approximately 25 citations annually for violations of various provisions of the Town Code, and the Department of Parks and Public Works estimates that it would issue approximately 20 citations and/or correction notices annually for violations of grading and tree protection ordinances. No estimates are available for violations of code provisions regarding Town parks.

Information obtained from Palo Alto and Mountain view indicates that the average administrative penalty in those cities is approximately \$250. Thus, excluding administrative costs, interest and other penalties that might be assessed by a hearing officer, approximately \$61,000 in penalties would be assessed on an annual basis. Based upon current collections, the Finance Department estimates that the Town may collect approximately 70% of the penalties assessed. Applying this percentage, and again without considering additional penalties and costs that might be assessed for more complex violations, staff estimates that the Town could realize approximately \$43,000 annually. This is consistent with the experience of the City of Monterey, which estimates that its administrative code enforcement program generates approximately \$50,000 in revenue to offset costs..

The primary additional cost associated with administration code enforcement is for the contract services of a hearing officer. Palo Alto currently estimates that it would contract out its hearing officer and support staff services for approximately \$125 per hour and further estimates that each citation appeal hearing would require a total of two hours. Some or all of these costs could be recovered should the Town prevail at the administrative hearing.

At present, the Town employs a number of employees who are responsible for code enforcement as part of their normal duties, including the Community Development code enforcement officer, numerous police officers, two park service officers, and the Parks and Public Works inspectors. The salaries for these positions, which range from approximately \$70,000 to \$130,000 annually, including benefits, are currently paid out of Town general fund revenues.

Attachment: Draft of proposed Ordinance Implementing Administrative Code Enforcement

ORDINANCE

ORDINANCE AMENDING CHAPTER 1 OF THE TOWN OF LOS GATOS MUNICIPAL CODE AND ADDING ARTICLE II TO CHAPTER 1 OF THE TOWN OF LOS GATOS TOWN CODE ESTABLISHING AN ADMINISTRATIVE CITATION AND ADMINISTRATIVE REMEDIES PROCESS

THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN AS FOLLOWS:

SECTION I

Chapter 1 of the Los Gatos Town Code is amended by adding the title *Article I. In General* to include sections 1.10.010 through 1.10.110.

SECTION II

Chapter 1 of the Los Gatos Town Code is amended by adding the following:

Article II Administrative Citations

Section 1.20.010. Applicability

Sections 1.20.010 through 1.20.070 herein provide for administrative citations which are in addition to all other civil legal remedies and which are an alternative to any criminal legal remedies, which may be pursued by the Town to address any violation of this Code except for violations of Chapter 15 (Motor Vehicles and Traffic).

Section 1.20.015. Definitions

For purpose of this Article, the following definitions shall apply:

- (a) *Enforcement Officer* shall mean any Town employee or agent of the Town with the authority to enforce any provision of this Code, including, but not limited to, the Town Manager, Town Attorney, Director of Community Development, Director of Parks and Public Works and any police officer and code enforcement officer.
- (b) *Hearing Officer* shall mean any person designated by the Town Manager to hear appeals of administrative citations and to hear administrative compliance hearings. The Hearing Officer shall not be the citing Enforcement Officer. 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.

Section 1.20.020. Administrative Citation

- (a) Whenever an Enforcement Officer charged with the enforcement of this Code determines that a violation of that provision has occurred, the Enforcement Officer shall have the authority to issue an administrative citation to any person responsible for the violation.
- (b) Each administrative citation shall contain the following information:
 - 1. The date of the violation;
 - 2. The address or a definite description of the location where the violation occurred;
 - 3. The section of this Code violated and a description of the violation;
 - 4. The amount of the penalty for the code violation;
 - 5. A description of the penalty payment process, including a description of the time within which and the place to which the penalty shall be paid;
 - 6. An order prohibiting the continuation or repeated occurrence of the code violation described in the administrative 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 to contest the administrative citation may be obtained; and,
 - 8. The name and signature of the citing Enforcement Officer.
- (c) Prior to the issuance of an administrative citation for a violation which pertains to building, plumbing, electrical, or similar structural or zoning matters that do not create an immediate danger to health or safety, the Enforcement Officer shall provide a reasonable period of time not less than five (5) business days to correct or otherwise remedy the violation.

Section 1.20.025 Amount of Penalties

- (a) The amounts of the penalties for code violations imposed pursuant to this Article shall be set forth in the schedule of penalties established by resolution by the Town Council.
- (b) The schedule of penalties shall specify any increased penalties for repeat violations of the same code provision within thirty-six (36) months from the date of an administrative citation.
- (c) The schedule of penalties shall specify the amount of any late payment charges imposed for the payment of a penalty after its due date.

Section 1.20.030 Payment of Penalty

- (a) The penalty shall be paid to the Town within thirty (30) days from the date of the administrative citation.
- (b) Payment of a penalty shall not excuse or discharge any continuation or repeated occurrence of the code violation that is the subject of the administrative citation.

Section 1.20.035 Hearing Request

- (a) Any recipient of an administrative citation may contest the citation by completing a request for hearing form and returning it to the Town within thirty (30) days from the date of the administrative citation, together with an advance deposit of the total penalty amount or an advance deposit hardship waiver Application form as described in section 1.20.075.
- (b) A request for hearing form may be obtained from the department specified on the administrative citation.
- (c) The person requesting the hearing shall be notified of the time and place set for the hearing at least 10 days prior to the date of the hearing.
- (d) If the Enforcement Officer submits an additional written report concerning the administrative citation to the Hearing Officer for consideration at the hearing, then a copy of this report also shall be served on the person requesting the hearing at least five days prior to the date of the hearing.

Section 1.20.040 Hearing Procedure

- (a) No hearing to contest an administrative citation before a Hearing Officer shall be held unless the penalty has been deposited in advance in accordance with section 1.20.035(a) or an advance deposit hardship waiver has been filed with and accepted by the Town pursuant to section 1.20.070.
- (b) A hearing before the Hearing Officer shall be set for a date that is not less than fifteen (15) days and not more than sixty (60) days from the date that the request for hearing is filed in accordance with the provisions of this Article.
- (c) At the hearing, the party contesting the administrative citation shall be given the opportunity to testify and to present evidence concerning the administrative citation.
- (d) The failure of any recipient of an administrative citation to appear at the administrative citation hearing shall constitute a forfeiture of the penalty and a failure to exhaust his or her administrative remedies.
- (e) The administrative citation and any additional report submitted by the Enforcement Officer shall constitute prima facie evidence of the respective facts contained in those documents.
- (f) The Hearing Officer may continue the hearing and request additional information from the Enforcement Officer or the recipient of the citation prior to issuing a written decision.

Section 1.20.045 Hearing Officer's Decision

- (a) After considering all of the testimony and evidence submitted at the hearing, the Hearing Officer shall issue a written decision to uphold or cancel the administrative citation and shall list the reasons for that decision. The decision of the Hearing Officer shall be final.

- (b) If the Hearing Officer determines that the administrative citation should be upheld, he or she shall impose a penalty not to exceed the maximum provided in the schedule of administrative penalties adopted by the Town Council resolution in effect on the date when the violation occurred. The Town shall retain the penalty amount on deposit with the Town. If the Hearing Officer determines that the administrative citation should be upheld and the penalty was not deposited pursuant to a waiver under section 1.20.075, the Hearing Officer shall set forth in the decision an order for payment of the penalty and a payment schedule for the penalty.
- (c) The Hearing Officer may assess administrative costs against the violator when the Hearing Officer determines that a violation has occurred and that compliance was not achieved. Administrative costs may include any and all costs incurred by the Town (both direct and indirect costs) in investigating and commencing administrative proceedings for the violation as well as any and all costs incurred by the Town in connection with the hearing before the Hearing Officer, including but not limited to costs the Enforcement Officer incurred in preparation for the hearing and for participating in the hearing itself, and costs of the Town to conduct the hearing.
- (d) Failure to pay administrative penalties and administrative costs in the amounts specified in the administrative Hearing Officer's decision on or before the date specified in that decision shall constitute a violation of this Code punishable as a misdemeanor and shall further be subject to collection and late charges as otherwise provided for administrative penalties herein.
- (e) If the Hearing Officer determines that the administrative citation should be cancelled, the Town shall promptly refund the amount of the deposited penalty.
- (f) The recipient of the administrative citation shall be served with a copy of the Hearing Officer's written decision.

Section 1.20.050 Late Payment Charges

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

Section 1.20.055 Recovery of Administrative Citation Penalties and Collection Costs

The Town may collect any past due administrative citation penalty, late payment charge and costs of collection by use of any and all available legal means.

Section 1.20.060 Right to Judicial Review

Any person aggrieved by an administrative decision of the Hearing Officer on an administrative citation may obtain review of the administrative decision by filing a petition for review with the Superior Court in Santa Clara County in accordance with the time lines and provisions set forth in California Government Code section 53069.4.

Section 1.20.065 Notices

Whenever a notice is required to be given under this Article, unless different provisions are otherwise specifically made, such notice may be given either by personal delivery to the person to be notified or by deposit in the United States Mail, in a sealed envelope, postage prepaid, addressed to such person to be notified at the last-known business or residence address as the same appears in the last equalized county assessment roll or to the records pertaining to the matter to which such notice is directed. Service by mail shall be deemed completed at the time of deposit in the United States Mail receptacle is made. Failure to receive any notice specified herein does not affect the validity of proceedings conducted hereunder.

Section 1.20.070 Advance Deposit Hardship Waiver

- (a) Any person who intends to request a hearing to contest an administrative citation, and who is financially unable to make the advance deposit of the penalty as required in section 1.20.035(a), may file a request for an advance deposit hardship waiver which shall include a sworn affidavit as described in subsection (c) below.
- (b) The request shall be filed, along with the request for hearing form, with the Town Attorney's Office on an advance deposit hardship waiver application form, available from the Town Clerk's Office, within thirty (30) days of the date of the administrative citation.
- (c) The Town may waive the requirement of an advance deposit and issue the advance deposit hardship waiver only if the cited party submits to the Town a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the Town Manager the person's actual financial inability to deposit with the Town the full amount of the penalty in advance of the hearing. In determining the cited party's financial ability or inability to deposit the full amount of the penalty in advance, the Town Manager shall consider the amount of the penalty imposed, the income of the cited party, the expenses of the cited party, and any other factors that are reasonably related to the cited party's ability to deposit the full amount.
- (d) The requirement of depositing the full amount of the penalty as described in section 1.20.035(a) shall be stayed unless or until the Town makes a full determination not to issue the advance deposit hardship waiver.
- (e) If the Town makes a determination to deny the advance deposit hardship waiver application, a written determination listing the reasons for said denial shall be issued. The written determination to deny the waiver shall be final.
- (f) The written determination of the Town's denial of the advance deposit hardship waiver shall be served by mail upon the person who applied for the waiver.

**Article III
Administrative Orders**

Section 1.30.010 Applicability

Sections 1.30.010 through Section 1.30.105 herein provide for administrative orders which are in addition to all other civil legal remedies and which are an alternative to any criminal legal remedies, which may be pursued by the Town to address any violation of this Code except for violations of Chapter 15 (Motor Vehicles and Traffic).

Section 1.30.015 Definitions

For purpose of this Article, the following definitions shall apply:

- (a) *Enforcement Officer* shall mean any Town employee or agent of the Town with the authority to enforce any provision of this Code, including, but not limited to, the Town Manager, Town Attorney, Director of Community Development, Director of Parks and Public Works and any police officer and code enforcement officer,
- (b) *Hearing Officer* shall mean any person designated by the Town Manager to hear appeals of administrative citations and to hear administrative compliance hearings. The Hearing Officer shall not be the investigating Enforcement Officer. The employment, performance evaluation, compensation and benefits of the Hearing Officer shall not be directly or indirectly conditioned upon the amount of administrative penalties upheld by the Hearing Officer.

Section 1.30.020 Compliance Order

- (a) Whenever the Town Manager or designee determines that a violation of any provision of this Code is occurring or exists on a continuing basis, a written compliance order may be issued to any person responsible for the violation and/or the property owner.
- (b) A compliance order issued pursuant to this Article shall contain the following information:
 - 1. The date and location of the violation;
 - 2. The section of this Code violated and a description of the violation;
 - 3. The actions required to correct the violation;
 - 4. The time period after which administrative penalties will begin to accrue if compliance with the order has not been achieved;
 - 5. Either a copy of Article III of this Chapter or an explanation of the consequences of noncompliance with this Article and a description of the hearing procedure and appeal process.

Section 1.30.025 Method of Service

- (a) All notices required herein shall be served as provided in section 1.30.030 of this Article unless otherwise specified.

- (b) Where real property is involved, written notice shall be mailed to the property owner at the address as shown on the last equalized county assessment roll.
- (c) Where personal service or service by mail upon the property owner cannot be made despite a diligent effort, a copy of the order shall be conspicuously posted at the property that is the subject of the order.
- (d) The failure of any person to receive any notice required under this Article shall not affect the validity of any proceedings taken under this Article.

Section 1.30.030 Notice Service Procedure

Whenever a notice is required to be given under this Article, unless different provisions are otherwise specifically made, such notice may be given either by personal delivery to the person to be notified or by deposit in the United States Mail, in a sealed envelope, postage prepaid, addressed to such person to be notified at the last-known business or residence address as the same appears in the last equalized county assessment roll or to the records pertaining to the matter to which such notice is directed. Service by mail shall be deemed completed at the time of deposit in the United States Mail receptacle is made.

Section 1.30.035 Hearing

- (a) If the Town Manager determines that all violations have been corrected within the time specified in the compliance order, no further action shall be taken.
- (b) If full or partial compliance is not achieved within any of the times specified in the compliance order for full or partial compliance, the Town Manager shall set a hearing before the Hearing Officer.
- (c) The Town Manager shall cause a written notice of hearing to be served on the violator and, where real property is involved, a notice of hearing shall be served on the property owner at the address as it appears on the last equalized county assessment roll available on the date the notice is prepared.
- (d) All hearings shall be open and public.

Section 1.30.040 Notice of Hearing

- (a) Every notice of hearing on a compliance order shall contain the date, time and place at which the hearing shall be conducted by the Hearing Officer.
- (b) Each hearing shall be set for a date not less than fifteen (15) days nor more than sixty (60) days from the date of the notice of hearing unless the Town Manager determines that the matter is urgent or that good cause exists for an extension of time.
- (c) The hearing serves to provide the full opportunity of a person subject to a compliance order to object to the determination that a violation has occurred and/or that the violation has

continued to exist. The failure of any person subject to a compliance order, pursuant to this Article, to appear at the hearing shall constitute a failure to exhaust administrative remedies.

Section 1.30.045 Hearing - Findings and Order

- (a) At the place and time set forth in the notice of hearing, the Hearing Officer shall conduct a hearing on the compliance order issued pursuant to section 1.30.020.
- (b) The Hearing Officer shall consider any written or oral evidence consistent with its rules and procedures regarding the violation and compliance by the violator and/or by the real property owner, including but not limited to:
 - 1. The report of the Enforcement Officer;
 - 2. Objections or protests of property owners or other responsible or interested persons who may be held liable for the amounts owed or whose property may be assessed or liened for the amounts owed;
 - 3. Evidence on whether the person before the Hearing Officer is responsible for the amounts owed to the Town;
 - 4. Evidence on whether the person responsible for the amounts owed to the Town has taken the required corrective action within the required time period; and
 - 5. Such other and further evidence as justice may require
- (c) Within a reasonable time following the conclusion of the hearing, the Hearing Officer shall make findings and issue its determination regarding;
 - 1. The existence of the violation; and
 - 2. The failure of the violator or owner to take required corrective action within the required time period.
- (d) The Hearing Officer shall issue written findings on each violation. The findings shall be supported by evidence received at the hearing.
- (e) If the Hearing Officer finds by a preponderance of the evidence that a violation has occurred and that the violation was not corrected within the time period specified in the compliance order, the Hearing Officer shall issue an administrative order pursuant to section 1.30.050.
- (f) If the Hearing Officer finds that no violation has occurred or that the violation was corrected within the time period specified in the compliance order, the Hearing Officer shall issue a finding of those facts.

Section 1.30.050 Administrative Order

- (a) If the Hearing Officer determines that a violation occurred which was not corrected within the time period specified in the compliance order, the Hearing Officer shall issue an administrative order that imposes any or all of the following:
 - 1. An order to correct, including a schedule for correction where appropriate;

2. Administrative penalties as provided in section 1.30.055;
3. Administrative costs as provided in section 1.30.060; and
4. Interest as provided in section 1.30.065.

- (b) The Administrative Order shall state that failure to comply with its provisions may, pursuant to section 1.10.100, result in the Town abating the nuisance and charging the cost of said abatement plus all administrative costs to the property owner, and may further result in the Town collecting the monies due as a personal obligation of the responsible party or by recordation of a lien or filing of a special assessment against the subject real property.

Section 1.30.055 Administrative Penalties

- (a) The Hearing Officer may impose daily administrative penalties for the violation of any provision of this Code except for violation of Chapter 15 (Motor Vehicles and Traffic) in the amount set forth in the schedule of penalties established by resolution by the Town Council. The Hearing Officer may suspend administrative penalties for any period of time during which the violator has filed for necessary permits and such permit applications are actively pending before the Town, state or other appropriate public agency.
- (b) In determining the amount of the administrative penalty, the Hearing Officer may take any or all of the following factors into consideration:
1. The duration of the violation;
 2. The frequency, recurrence and number of violations, related or unrelated, by the same violator;
 3. The seriousness of the violation;
 4. The good faith efforts of the violator to come into compliance;
 5. The economic impact of the penalty on the violator;
 6. The impact of the violation on the community; and
 7. Such other factors as justice may require.
- (c) Administrative penalties imposed by the Hearing Officer shall accrue from the date specified in the compliance order and shall cease to accrue on the date the violation is corrected as determined by the Town Manager or the Hearing Officer.
- (d) Administrative penalties assessed by the Hearing Officer shall be due by the date specified in the administrative order.
- (e) If the violation is not corrected as specified in the Hearing Officer's order to correct, administrative penalties shall continue to accrue on a daily basis until the violation is corrected, subject to the maximum amount set forth in subsection (a) above.
- (f) If the violator gives written notice to the Town Manager that the violation has been corrected and if the Town Manager finds that compliance has been achieved, the Town Manager shall deem the date the written notice was postmarked or personally delivered to the Town Manager or the date of the final inspection, whichever first occurred, to be the date the violation was corrected. If no written notice is provided to the Town Manager, the violation will be deemed

corrected on the date of the final inspection.

Section 1.30.060 Administrative Costs

- (a) The Hearing Officer shall assess administrative costs against the violator when it finds that a violation has occurred and that compliance has not been achieved within the time specified in the compliance order.
- (b) The administrative costs may include any and all costs incurred by the Town in connection with the matter before the Hearing Officer including, but not limited to, costs of investigation of the violation, staffing costs incurred in preparation for the hearing and for the hearing itself, and costs for all subsequent inspections necessary to enforce the compliance order.

Section 1.30.065 Interest

The Hearing Officer may also assess interest on the amount of administrative penalties, abatement costs and administrative costs imposed at the legal rate from the date of the administrative order.

Section 1.30.070 Force and Effect

- (a) The administrative order of the Hearing Officer is final at the time it is made; however, the Hearing Officer shall maintain continuing jurisdiction and shall have the power to modify the administrative order, after providing the person subject to the administrative order with notice and an opportunity to be heard, until full compliance is achieved.
- (b) The administrative order of the Hearing Officer, once recorded, shall have the same force and effect and priority as a judgment lien governed by the provisions of section 697.340 of the California Code of Civil Procedure and may be extended as provided in sections 683.110 to 683.220, inclusive, of the Code of Civil Procedure.
- (c) The administrative order shall have the same force and effect as a resolution of the Town Council for the purpose of filing a lien, special assessment, or special collection with the County of Santa Clara or tax collector's office pursuant to this code and for the purpose of pursuing any other collection or enforcement action to obtain payment of the amounts owed to the Town.

Section 1.30.075 Failure to Comply with Administrative Order

- (a) If unpaid as of the date specified in the administrative order, the administrative penalties, administrative costs and interest assessed by the Hearing Officer shall be collected by the Town by use of all available legal means, and may be enforced as:
 - 1. A personal obligation of the violator; and/or
 - 2. If the violation is in connection with real property, a lien or special assessment upon the real property. The lien or special assessment shall remain in effect until all of the administrative penalties, interest and administrative costs are paid in full.

- (b) In addition to any other remedies provided by law, failure to pay administrative penalties, administrative costs and interest in the amounts specified in the Hearing Officer's decision on or before the date specified in that decision shall constitute a violation of this Code punishable as a misdemeanor.

Section 1.30.080 Right of Judicial Review

The decision of the Hearing Officer shall be final. Any person aggrieved by an administrative order of the Hearing Officer may obtain review of the administrative order in the Superior Court of Santa Clara County by filing with the court a notice of appeal pursuant to Government Code section 53069.4.

Section 1.40.085 Report of Compliance after Administrative Order

If the Town Manager determines that compliance has been achieved after a compliance order has been sustained by the Hearing Officer, the Town Manager shall prepare a report indicating that compliance has been achieved. A copy of the compliance report shall be served on the violator.

Section 1.30.090 Lien / Special Assessment

Whenever the amount of any administrative penalty and/or administrative cost imposed by the Hearing Officer pursuant to this Article in connection with real property has not been satisfied in full within ninety (90) days and/or has not been successfully challenged by a timely appeal pursuant to Government Code section 53069.4, this obligation may constitute a lien or, in the alternative, a special assessment against the real property on which the violation occurred.

Section 1.30.095 Lien Procedure

- (a) There is hereby established the following procedure for collection of administrative penalties and costs imposed by the Hearing Officer pursuant to this Article or other abatement and related administrative costs by recordation of a lien.
- (b) Upon determination by the Town Manager that the administrative penalty, administrative costs and interest imposed by the Hearing Officer has not been satisfied in full within ninety (90) days and/or not been successfully challenged by a timely appeal, the Town Manager shall prepare and file with the Town Council a report stating the amounts due and owing, the date of the administrative order, the street address, legal description and assessor's parcel number of the subject property, and the name and address of the recorded owner of the property.
- (c) Prior to recordation of the lien, the Town Manager shall serve a copy of the report provided under subsection (b) above on the property owner, along with notice to the property owner that a lien in the amounts stated in the report will be filed against the subject property in the County Recorder's Office.
- (d) The notice set forth in subsection (c) above shall be served in the same manner as summons in a civil action in accordance with Code of Civil Procedure section 415.10 et seq. if the owner of record, after diligent search cannot be found, the notice may be served by posting a copy

thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in a newspaper of general circulation published in Santa Clara County.

- (e) Following proper notice to the owner of record as provided in subsection (d) above, the Town Manager's report and a copy of the administrative or abatement order shall be recorded as a lien with the County Recorder. Once recorded, the administrative order shall have the force and effect and priority of a judgment lien governed by the provision of section 697.340 of the Code of Civil Procedure and may be extended as provided in sections 683.110 to 683.220, inclusive, of the Code of Civil Procedure.
- (f) Interest at the legal rate per year shall accrue on the principal amount of the lien until satisfied pursuant to law.
- (g) A lien pursuant to this section may be foreclosed by an action brought by the Town for a money judgment.

Section 1.30.100 Special Assessment Procedure

- (a) As an alternative to the procedure authorized by section 1.30.085, there is hereby established a procedure for making the administrative penalties and costs imposed by the Hearing Officer pursuant to this Article or abatement and related administrative costs a special assessment against the subject real property.
- (b) Upon determination by the Town Manager or the Hearing Officer that the administrative penalty, administrative cost and/or interest imposed by the Hearing Officer has not been satisfied in full within ninety (90) days and/or not been successfully challenged by a timely appeal, the Town Manager shall prepare and file with the Town Council a report stating the amounts due and owing, the date of the administrative order or abatement order, the street address, legal description and assessor's parcel number of the subject property, and the name and address of the recorded owner of the property.
- (c) Prior to the imposing of the special assessment, the Town Manager shall serve a copy of the report provided under subsection (b) above on the property owner, along with notice that the property may be sold after three years by the County of Santa Clara tax collector for unpaid delinquent assessments. Such notice shall be served by certified mail to the property owner. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in a newspaper of general circulation published in Santa Clara County. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice.
- (d) The assessment 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 provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the assessment 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 attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the assessment shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

- (e) Interest shall accrue on the principal amount of the assessment until satisfied pursuant to law.
- (f) The Town may, subject to the requirements applicable to the sale of property pursuant to section 3691 of the Revenue and Taxation Code, conduct a sale of vacant residential developed property for which the payment of the assessment is delinquent.
- (g) Notices or instruments relating to the administrative order, abatement order or special assessment shall be entitled to recordation.

Section 1.30.105 Satisfaction of Lien / Special Assessment

Once payment in full is received by the Town for outstanding penalties and costs, the Director of Finance shall:

- (a) With respect to a lien, either record a notice of satisfaction or provide the property owner or financial institution with a notice of satisfaction so they may record this notice with the Office of the County Recorder. Such notice of satisfaction shall cancel the Town's lien; or
- (b) With respect to a special assessment, provide written notice to the County of Santa Clara tax collector that the special assessment amount has been paid in full and should no longer be imposed against the subject property. Such written notice shall cancel the Town's special assessment.

SECTION IV

If any of the provisions of this ordinance or the application thereof to any person or property is held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION V

Any judicial review of this ordinance shall be by writ of mandate, under Code of Civil Procedure 1085. Any action or proceeding seeking to attack, review, set aside, void or annul this ordinance shall be commenced within 90 days after adoption of this ordinance

This ordinance was introduced at a regular meeting of the Town Council of the Town of Los

Gatos on _____, 2003 and adopted by the following vote as an ordinance of the Town of Los
Gatos at a regular meeting of the Town Council of the Town of Los Gatos on _____, 2003. This ordinance
takes effect 30 days after it is adopted.

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

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