Ordinance #09-01

AN ORDINANCE OF THE ALBANY CITY COUNCIL INCORPORATING ARTICLE 1-11 *ADMINISTRATIVE CITATIONS* INTO CHAPTER 1 OF THE ALBANY MUNICIPAL CODE

WHEREAS, the City of Albany, in addition to any other code enforcement powers it may by authorized to exercise, wishes to establish an administration citation ordinance, and

WHEREAS, the City is a charter city and may exercise its police and charter powers to protect its citizens and the health and welfare of the community.

NOW, THEREFORE, THE ALBANY CITY COUNCIL ORDAINS THAT ARTICLE 1-11 *ADMINISTRATIVE CITATIONS* SHALL BE INCORPORATED INTO CHAPTER I OF THE ALBANY MUNICIPAL CODE AND WILL READ AS FOLLOWS:

Section 1:

ARTICLE 1-11 ADMINISTRATIVE CITATIONS

Section 1-11.01	Title.
Section 1-11.02	Purpose.
Section 1-11.03	Applicability
Section 1-11.04	Administrative Penalty – Defined
Section 1-11.05	Enforcement Officer – Defined – Authority
Section 1-11.06	Administrative Citation Content
Section 1-11.07	Administrative Citation Responsibility for Correction and Compliance
Section 1-11.08	Administrative Citation Compliance
Section 1-11.09	Administrative Citation Request for Hearing
Section 1-11.10	Administrative Citation Appeal Hearing Officer
Section 1-11.11	Administrative Citation Appeal Hearing Procedure
Section 1-11.12	Administrative Citation Appeal Hearing Decision
Section 1-11.13	Administrative Citation Fine Amounts
Section 1-11.14	Administrative Citation Failure to Pay
Section 1-11.15	Administrative Citation Right to Judicial Review
Section 1-11.16	Correction Notice
Section 1-11.17	Correction Notice Content
Section 1-11.18	Correction Notice Compliance

Section 1-11.01 Title.

This article shall be known as the "Administrative Citation Ordinance."

Section 1-11.02 Purpose.

a. This Article provides for administrative citations pursuant to the City's police and Charter powers.

b. The procedures and remedies established in this Article shall be in addition to civil, criminal, or other legal remedies established by law, which may be pursued to address violations of the Albany Municipal Code or applicable State Codes.

c. Use of this Article is in the sole discretion of the City and the City Council hereby finds and determines that enforcement of the City of Albany Municipal Code, other ordinances adopted by the City, and conditions on entitlements are matters of local concern and serve important public purposes.

Consistent with its powers as a Charter City, the City of Albany adopts this Administrative Citation Program provision in order to achieve the following goals:

(1) To protect the public health, safety, and welfare of the citizens of the City of Albany;

(2) To gain compliance with the Municipal Code and State Codes, Ordinances, and regulations in a timely and efficient manner;

(3) To provide for an administrative process to appeal the imposition of Administrative Citations and fines;

(4) To provide a method to hold parties responsible when they fail or refuse to comply with the provisions of the Municipal Code, other ordinances adopted by the City, and conditions on entitlements; and

(5) To minimize the expense and delay where the sole remedy is to pursue responsible parties in the civil or criminal justice system.

Section 1-11.03 Applicability

a. The City's philosophy for enforcing its ordinances is to obtain voluntary compliance through education and, when necessary, as determined in the sole discretion of the City, a persuasive administrative process. The City's police and Charter powers, as well as State law grant the City various authorities to issue

criminal and administrative citations, to file civil lawsuits, to order abatement of nuisances, to abate nuisances itself, and to impose administrative penalties.

b. The role of administrative penalties in the code enforcement process is to give violators a strong financial incentive to cure their violations—potentially up to $10,000 per violation, although in most cases the penalty will be less.

(1) An administrative citation starts the administrative process. When an administrative citation is issued to a violator, an applicable penalty is imposed and the responsible violator is obligated to correct the violation.

(2) A violator has the right to appeal both the City's initial determination that he or she has violated an ordinance, and the amount of the penalty imposed by the City. Appeals are heard by a City Hearing Officer (Section 1-11.09 of this Article), and if desired, the violator can challenge in a court of law the Hearing Officer's decision.

c. A violation that poses an imminent hazard may also be abated as a public nuisance under the applicable Uniform Code (e.g. Housing Code, Fire Code, Building Code, etc.). This procedure is advisable in cases where a violation has been determined to be an imminent threat to public safety, such as where a building is at risk of collapse or fire.

Section 1-11.04 Administrative Penalty Defined

An administrative penalty is a monetary penalty, or fine, imposed by the City but subject to review by a court. An administrative penalty is designed to deter violations of City ordinances and to create a speedy and efficient way to gain compliance. It is a civil matter, not a criminal proceeding. The amounts of penalties are set forth by resolution of the City Council.

Section 1-11.05 Enforcement Officer – Defined – Authority

For the purposes of this Article, "enforcement officer" shall mean any City employee or agent of the City given the authority to enforce any provision of this Code. Designated Enforcement Officers shall have the authority to issue administrative citations pursuant to this Article.

Section 1-11.06 Administrative Citation - Content

a. Each Administrative Citation shall contain accurate information applicable to the circumstances of the violation and the remedies required. Such information shall include:

1. Date, approximate time, and address, or definite description of the location where the violation(s) was observed;

2. The Code sections or conditions violated and a description of the violation(s);

3. An order prohibiting the continuation or repeated occurrence of the code violation described on the Administrative Citation;

4. An order to the responsible person to correct the violations within the time specified (compliance date), and an explanation of the consequences of failure to correct the violation(s) including the fine for the violation;

5. The amount of the fine and/or penalty and interest for the violation(s);

6. An explanation of how the fine shall be paid and the time period by which it shall be paid;

7. Identification of rights of appeal, including the time within which the citation may be contested and the place to obtain a Request for Hearing Form to contest Administrative Citation; and

8. The name and signature of the Enforcement Officer.

b. In addition to the administrative citation and penalty authorized by this chapter, an order to correct a violation under subsection (c) of this section may be enforced as set forth in the chapter applicable to that violation.

c. In the case of a continuing violation pertaining to building, plumbing, electrical, or other similar structural or zoning issues that do not create an immediate danger to health or safety, a reasonable time not to exceed six (6) months shall be provided to remedy or correct the violation prior to imposition of fines or penalties. In determining what is a reasonable time, the City may consider the estimate of local professionals including licensed contractors. In the case of such violations, the time within which the violation must be corrected in order to avoid a fine shall also be specified on the administrative citation.

Section 1-11.07 Administrative Citation – Responsibility for Correction and Compliance

a. Ultimately, the property owner is responsible for ensuring code violations are corrected. The property owner/landlord must put the property into a condition fit for occupation, and repair all subsequent dilapidations that render the property untenantable, except dilapidations or injuries as a result of the tenant's lack of ordinary care (California Civil Code Section 1941).

b. Tenants who rent or lease property have an obligation to keep the property in good condition, and free from code violations. The tenant is required to take reasonable and ordinary care of rented property and is responsible for correcting damages caused by him or her. The tenant bears responsibility for correction if the tenant's violation contributes substantially to the existence of the dilapidation for which the correction is required (California Civil Code Sections 1928, 1929 and 1941.2).

Section 1-11.08 Administrative Citation – Compliance

Upon receipt of an Administrative Citation, the responsible party must do the following:

a. Pay the fine to the City within fifteen (15) days from the date the Administrative Citation was issued. All fines assessed shall be payable to the City of Albany. Payment of a fine shall not excuse or discharge the failure to correct the violation(s), nor shall it bar further enforcement action by the City; and

b. Remedy the violation(s). If the responsible person fails to correct the violation(s), subsequent Administrative Citations may be issued for the same violation(s). The amount of the fine for failure to correct the violation shall increase at a rate specified in this Article or in the Master Fee Resolution.

Section 1-11.09 Administrative Citation – Request for Hearing

Any recipient of an Administrative Citation may contest that there was a violation of the Municipal Code, other ordinances adopted by the City, or conditions on entitlements; or contest that he or she is the responsible party by paying the specified fine to the City; and completing a Request For Hearing Form and returning it to the City Clerk, or designee, within fifteen (15) days from the date the citation was issued.

Section 1-11.10 Administrative Citation Appeal Hearing

The City Administrator , or designee, shall designate the Hearing Officer for the Administrative Citation hearing. The employment, performance evaluation, compensation, and benefits of the Hearing Officer, if any, shall not be directly or indirectly conditioned upon the amount of fines upheld by the Hearing Officer.

Section 1-11.11 Administrative Citation Appeal Hearing Procedure

a. No hearing to contest an Administrative Citation before a Hearing Officer shall be held unless and until the specified fine has been paid and a Request for

Hearing Form has been completed and submitted to the City pursuant to Section 1-11.09 of this Chapter.

b. A hearing before the Hearing Officer shall be set for a date that is not less than fifteen (15) and not more than thirty (30) days from the date that the request for hearing is filed in accordance with the provisions of this chapter. The person requesting the hearing shall be notified of the time and place set for the hearing at least ten days prior to the date of the hearing.

c. The Hearing Officer shall ensure a record of the hearing is made.

d. The Hearing Officer shall consider all relevant evidence including whether the violation(s) occurred and whether the responsible person has caused or maintained the violation(s) of the Municipal Code, other applicable State Codes, other ordinances adopted by the City, and conditions on entitlements on the date(s) specified in the Administrative Citation.

e. The responsible party contesting the Administrative Citation shall be given the opportunity to testify and present witnesses and evidence concerning the citation. The failure of any recipient of the Administrative Citation to appear at the Administrative Citation hearing without a showing of good cause shall constitute a forfeiture of any fine already paid and a failure to exhaust their administrative remedies.

f. The Administrative Citation and any additional documents submitted by the Enforcement Officer shall constitute prima facie evidence of the respective facts contained in those documents. 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 by mail on the person requesting the hearing at least five days prior to the date of the hearing.

g. The Enforcement Officer or his or her designee will be in attendance at the hearings to present the City's case; the responsible party may also have in attendance other parties of his or her choosing.

h. The Hearing Officer may continue the hearing and request additional information from the Enforcement Officer or the recipient of the Administrative Citation prior to issuing a written decision.

Section 1-7.12 Administrative Citation Appeal Hearing Decision

a. After considering all of the testimony and evidence submitted at the hearing, the Hearing Officer shall issue a written decision containing findings of fact and an evaluation of the sufficiency of evidence to support the finding of a violation. The written decision shall be prepared and mailed to the appellant (appealing Responsible

Party) within ten days of the conclusion of the hearing to uphold or deny of the Administrative Citation and shall list in the decision the reasons for that decision.

The decision of the Hearing Officer shall be final. The recipient of the Administrative Citation shall be notified that a decision has been rendered and receive a copy of the Hearing Officer's written decision by mail.

b. If the Hearing Officer determines that the Administrative Citation should be upheld, then the fine amount on deposit shall be retained by the City. If the Hearing Officer determines that the Administrative Citation should be invalidated, any fine already paid to the City shall be refunded within thirty (30) days. If for whatever reason the full fine was not deposited with the City, the Hearing Officer shall determine the full amount of the fine, together with any penalties and interest.

Section 1-11.13 Administrative Citation Fine Amounts

a. The amount of the penalties for violations that are cited pursuant to this Chapter are set forth in the City of Albany Master Fee Resolution.

b. A ten percent (10%) late payment fee shall be imposed on any fine that is not paid within thirty (30) days of the issuance of the citation.

c. The administrative fines outlined in this chapter are levied in addition to any recovery of costs outlined in the Albany Municipal Code.

d. Each and every day a violation of the provisions of the code exists constitutes a separate and distinct offense and shall be subject to a citation.

Section 1-11.14 Administrative Citation Failure to Pay Fines

The failure of any person to pay the civil fines assessed by an Administrative Citation within the time specified on the citation or after an administrative hearing will result in the collection of the fine by the City. The City may pursue any available legal remedy to collect civil fines, including but not limited to judgments, liens, small claims actions, and collections. The City may also recover its collections costs according to proof.

Section 1-11.15 Administrative Citation Right to Judicial Review

Any person aggrieved by an administrative decision of a Hearing Officer on the Administrative Citation may obtain review of the administrative decision by filing a petition for review with the Alameda County Superior Court in accordance with the timelines and provisions as set forth in California Government Code Section 53069.4.

This Government Code section shall be limited to proceedings under Chapter 1-11 of the Albany Municipal Code.

Section 1-11.16 Correction Notice

a. In lieu of an Administrative Citation, a Correction Notice may be issued to the responsible party as a warning the first time a violation occurs. Issuing a Correction Notice in lieu of an Administrative Citation is discretionary for the enforcement officer based on the circumstances and appropriateness to warn a first-time violator.

b. In such cases when a Correction Notice is issued for a first-time violation, an Administrative Citation will be issued for the violation(s) with appropriate fine(s) if the violation is not corrected by the compliance date specified in the Correction Notice.

c. Whenever a Correction Notice is issued, such notice may be given by either personal delivery to the person to be notified, by posting same on real property owned by the responsible party, or by deposit in the United States Mail in a sealed envelope postage prepaid, addressed to such person to be notified at his last known business or residence address as the same appears in the last equalized county assessment roll or as known to the Enforcement Officer. Service by United States mail shall be deemed completed at the time of deposit in the United States Mail receptacle. The failure of any person to receive notice properly given shall not affect the validity of any proceedings hereunder.

d. The Enforcement Officer may attempt to locate and personally serve the responsible party and obtain his or her signature on the Administrative Citation. If the responsible party served refuses or fails to sign the Administrative Citation, the failure or refusal to sign shall not affect the validity of the Administrative Citation or of subsequent proceedings.

Section 1-11.17 Correction Notice Content

Each Correction Notice shall contain the following information:

a. Date, approximate time, and address or definite description of the location where the violation(s) was observed;

b. The Code sections or conditions violated and a description of the violation(s);

c. An order to the responsible party to correct the violations within the time specified (compliance date), and an explanation of the consequences of failure to correct the violation(s) including the fine for the violation;

d. The name and signature of the Enforcement Officer.

Section 1-11.18 Correction Notice Compliance

Upon receipt of a Correction Notice, the responsible party must remedy the violation(s) and notify the Enforcement Officer at the address provided on the Notice that the correction has been accomplished. If the violation(s) is corrected before the compliance date provided, no fine shall be imposed.

Section 2: Publication

This ordinance shall be published in a newspaper of general circulation in the City of Albany, which said newspaper is designated for that purpose, or it shall be posted in three locations.

Section 3: Severability

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clause or phrases be declared invalid.

Section 4: Effective Date

This ordinance shall become effective 30 days on or after its final passage and adoption.

City of Albany

1000 SAN PABLO AVENUE • ALBANY, CALIFORNIA 94706-2295

CITY ADMINISTRATOR
PH. (510) 528-5710
FAX (510) 528-5797

CITY ATTORNEY
PH. (510) 524-9205
FAX (510) 526-9190

CITY CLERK
PH. (510) 528-5720
FAX (510) 528-5797

CITY COUNCIL
PH. (510) 528-5720
FAX (510) 528-5797

COMMUNITY DEVELOPMENT & ENVIRONMENTAL RESOURCES
- Building
- Engineering
- Environmental Resources
- Maintenance
- Planning

PH. (510) 528-5760
FAX (510) 524-9359

FINANCE & ADMINISTRATIVE SERVICES
CITY TREASURER
PH. (510) 528-5730
FAX (510) 528-2743

FIRE & EMERGENCY MEDICAL SERVICES
PH. (510) 528-5771
FAX (510) 528-5774

PERSONNEL
PH. (510) 528-5714
FAX (510) 528-5797

POLICE
PH. (510) 525-7300
FAX (510) 525-1360

RECREATION & COMMUNITY SERVICES
1249 Marin Avenue
PH. (510) 524-9283
FAX (510) 528-8914
- Friendship Club/ Childcare Program PH. (510) 524-0135
- Senior Center PH. (510) 524-9122 FAX (510) 524-8940
- Teen Center PH. (510) 525-0576

STATE OF CALIFORNIA)
COUNTY OF ALAMEDA) ss
CITY OF ALBANY)

I, JACQUELINE L. BUCHOLZ, City Clerk of the City of Albany, California, do hereby certify that the whole number of members of the City Council of said City of Albany is five and that the foregoing is a true and correct copy of Ordinance No. 09-01 which was passed and adopted by the said City Council, approved and signed by the Mayor of said City, and attested by the City Clerk of said City, all at a regular meeting of the said Council on the 2nd day of February 20 09 A.D., and that the same was so passed and adopted by the following votes and duly published or posted according to State law.

AYES: Council Members Javandel, Lieber, Thomsen, Wile & Mayor Atkinson

NOES: None

ABSENT: None

In witness whereof, I have hereunto set my hand and affixed the official seal of the City of Albany, this 4th day of February, 20 09.

JACQUELINE L. BUCHOLZ, CMC
CITY CLERK