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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

1 **Section 1-11.01 Title.**

2
3 This article shall be known as the "Administrative Citation Ordinance."
4
5

6 **Section 1-11.02 Purpose.**

7
8 a. This Article provides for administrative citations pursuant to the City's police
9 and Charter powers.

10
11 b. The procedures and remedies established in this Article shall be in addition to
12 civil, criminal, or other legal remedies established by law, which may be pursued to
13 address violations of the Albany Municipal Code or applicable State Codes.
14

15 c. Use of this Article is in the sole discretion of the City and the City Council
16 hereby finds and determines that enforcement of the City of Albany Municipal Code,
17 other ordinances adopted by the City, and conditions on entitlements are matters of
18 local concern and serve important public purposes.
19

20 Consistent with its powers as a Charter City, the City of Albany adopts this
21 Administrative Citation Program provision in order to achieve the following goals:
22

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

25
26 (2) To gain compliance with the Municipal Code and State Codes, Ordinances,
27 and regulations in a timely and efficient manner;
28

29 (3) To provide for an administrative process to appeal the imposition of
30 Administrative Citations and fines;
31

32 (4) To provide a method to hold parties responsible when they fail or refuse to
33 comply with the provisions of the Municipal Code, other ordinances adopted by the
34 City, and conditions on entitlements; and
35

36 (5) To minimize the expense and delay where the sole remedy is to pursue
37 responsible parties in the civil or criminal justice system.
38
39

40 **Section 1-11.03 Applicability**

41
42 a. The City's philosophy for enforcing its ordinances is to obtain voluntary
43 compliance through education and, when necessary, as determined in the sole
44 discretion of the City, a persuasive administrative process. The City's police and
45 Charter powers, as well as State law grant the City various authorities to issue

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

3
4 b. The role of administrative penalties in the code enforcement process is to give
5 violators a strong financial incentive to cure their violations—potentially up to
6 \$10,000 per violation, although in most cases the penalty will be less.

7
8 (1) An administrative citation starts the administrative process. When an
9 administrative citation is issued to a violator, an applicable penalty is imposed and the
10 responsible violator is obligated to correct the violation.

11
12 (2) A violator has the right to appeal both the City’s initial determination that he
13 or she has violated an ordinance, and the amount of the penalty imposed by the City.
14 Appeals are heard by a City Hearing Officer (Section 1-11.09 of this Article), and if
15 desired, the violator can challenge in a court of law the Hearing Officer’s decision.

16
17 c. A violation that poses an imminent hazard may also be abated as a public
18 nuisance under the applicable Uniform Code (e.g. Housing Code, Fire Code, Building
19 Code, etc.). This procedure is advisable in cases where a violation has been
20 determined to be an imminent threat to public safety, such as where a building is at
21 risk of collapse or fire.

22
23
24 **Section 1-11.04 Administrative Penalty Defined**

25
26 An administrative penalty is a monetary penalty, or fine, imposed by the City but
27 subject to review by a court. An administrative penalty is designed to deter violations
28 of City ordinances and to create a speedy and efficient way to gain compliance. It is a
29 civil matter, not a criminal proceeding. The amounts of penalties are set forth by
30 resolution of the City Council.

31
32
33 **Section 1-11.05 Enforcement Officer – Defined – Authority**

34
35 For the purposes of this Article, “enforcement officer” shall mean any City employee
36 or agent of the City given the authority to enforce any provision of this Code.
37 Designated Enforcement Officers shall have the authority to issue administrative
38 citations pursuant to this Article.

39
40
41 **Section 1-11.06 Administrative Citation - Content**

42
43 a. Each Administrative Citation shall contain accurate information applicable to
44 the circumstances of the violation and the remedies required. Such information shall
45 include:

- 1 1. Date, approximate time, and address, or definite description of the location
2 where the violation(s) was observed;
- 3
- 4 2. The Code sections or conditions violated and a description of the violation(s);
- 5
- 6 3. An order prohibiting the continuation or repeated occurrence of the code
7 violation described on the Administrative Citation;
- 8
- 9 4. An order to the responsible person to correct the violations within the time
10 specified (compliance date), and an explanation of the consequences of failure to
11 correct the violation(s) including the fine for the violation;
- 12
- 13 5. The amount of the fine and/or penalty and interest for the violation(s);
- 14
- 15 6. An explanation of how the fine shall be paid and the time period by which it
16 shall be paid;
- 17
- 18 7. Identification of rights of appeal, including the time within which the citation
19 may be contested and the place to obtain a Request for Hearing Form to contest
20 Administrative Citation; and
- 21
- 22 8. The name and signature of the Enforcement Officer.
- 23
- 24 b. In addition to the administrative citation and penalty authorized by this
25 chapter, an order to correct a violation under subsection (c) of this section may be
26 enforced as set forth in the chapter applicable to that violation.
- 27
- 28 c. In the case of a continuing violation pertaining to building, plumbing,
29 electrical, or other similar structural or zoning issues that do not create an immediate
30 danger to health or safety, a reasonable time not to exceed six (6) months shall be
31 provided to remedy or correct the violation prior to imposition of fines or penalties.
32 In determining what is a reasonable time, the City may consider the estimate of local
33 professionals including licensed contractors. In the case of such violations, the time
34 within which the violation must be corrected in order to avoid a fine shall also be
35 specified on the administrative citation.
- 36

37
38 **Section 1-11.07 Administrative Citation – Responsibility for Correction**
39 **and Compliance**
40

- 41 a. Ultimately, the property owner is responsible for ensuring code violations are
42 corrected. The property owner/landlord must put the property into a condition fit for
43 occupation, and repair all subsequent dilapidations that render the property
44 untenantable, except dilapidations or injuries as a result of the tenant's lack of
45 ordinary care (California Civil Code Section 1941).
- 46

1 b. Tenants who rent or lease property have an obligation to keep the property in
2 good condition, and free from code violations. The tenant is required to take
3 reasonable and ordinary care of rented property and is responsible for correcting
4 damages caused by him or her. The tenant bears responsibility for correction if the
5 tenant's violation contributes substantially to the existence of the dilapidation for
6 which the correction is required (California Civil Code Sections 1928, 1929 and
7 1941.2).

8
9
10 **Section 1-11.08 Administrative Citation – Compliance**

11
12 Upon receipt of an Administrative Citation, the responsible party must do the
13 following:

14
15 a. Pay the fine to the City within fifteen (15) days from the date the
16 Administrative Citation was issued. All fines assessed shall be payable to the City of
17 Albany. Payment of a fine shall not excuse or discharge the failure to correct the
18 violation(s), nor shall it bar further enforcement action by the City; and

19
20 b. Remedy the violation(s). If the responsible person fails to correct the
21 violation(s), subsequent Administrative Citations may be issued for the same
22 violation(s). The amount of the fine for failure to correct the violation shall increase
23 at a rate specified in this Article or in the Master Fee Resolution.

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25
26 **Section 1-11.09 Administrative Citation – Request for Hearing**

27
28 Any recipient of an Administrative Citation may contest that there was a violation of
29 the Municipal Code, other ordinances adopted by the City, or conditions on
30 entitlements; or contest that he or she is the responsible party by paying the specified
31 fine to the City; and completing a Request For Hearing Form and returning it to the
32 City Clerk, or designee, within fifteen (15) days from the date the citation was issued.

33
34
35 **Section 1-11.10 Administrative Citation Appeal Hearing**

36
37 The City Administrator , or designee, shall designate the Hearing Officer for the
38 Administrative Citation hearing. The employment, performance evaluation,
39 compensation, and benefits of the Hearing Officer, if any, shall not be directly or
40 indirectly conditioned upon the amount of fines upheld by the Hearing Officer.

41
42
43 **Section 1-11.11 Administrative Citation Appeal Hearing Procedure**

44
45 a. No hearing to contest an Administrative Citation before a Hearing Officer
46 shall be held unless and until the specified fine has been paid and a Request for

1 Hearing Form has been completed and submitted to the City pursuant to Section 1-
2 11.09 of this Chapter.

3
4 b. A hearing before the Hearing Officer shall be set for a date that is not less than
5 fifteen (15) and not more than thirty (30) days from the date that the request for
6 hearing is filed in accordance with the provisions of this chapter. The person
7 requesting the hearing shall be notified of the time and place set for the hearing at
8 least ten days prior to the date of the hearing.

9
10 c. The Hearing Officer shall ensure a record of the hearing is made.

11
12 d. The Hearing Officer shall consider all relevant evidence including whether the
13 violation(s) occurred and whether the responsible person has caused or maintained
14 the violation(s) of the Municipal Code, other applicable State Codes, other ordinances
15 adopted by the City, and conditions on entitlements on the date(s) specified in the
16 Administrative Citation.

17
18 e. The responsible party contesting the Administrative Citation shall be given the
19 opportunity to testify and present witnesses and evidence concerning the citation. The
20 failure of any recipient of the Administrative Citation to appear at the Administrative
21 Citation hearing without a showing of good cause shall constitute a forfeiture of any
22 fine already paid and a failure to exhaust their administrative remedies.

23
24 f. The Administrative Citation and any additional documents submitted by the
25 Enforcement Officer shall constitute prima facie evidence of the respective facts
26 contained in those documents. If the Enforcement Officer submits an additional
27 written report concerning the Administrative Citation to the Hearing Officer for
28 consideration at the hearing, then a copy of this report also shall be served by mail on
29 the person requesting the hearing at least five days prior to the date of the hearing.

30
31 g. The Enforcement Officer or his or her designee will be in attendance at the
32 hearings to present the City's case; the responsible party may also have in attendance
33 other parties of his or her choosing.

34
35 h. The Hearing Officer may continue the hearing and request additional
36 information from the Enforcement Officer or the recipient of the Administrative
37 Citation prior to issuing a written decision.

38
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40 **Section 1-7.12 Administrative Citation Appeal Hearing Decision**

41
42 a. After considering all of the testimony and evidence submitted at the hearing,
43 the Hearing Officer shall issue a written decision containing findings of fact and an
44 evaluation of the sufficiency of evidence to support the finding of a violation. The
45 written decision shall be prepared and mailed to the appellant (appealing Responsible

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

3
4 The decision of the Hearing Officer shall be final. The recipient of the Administrative
5 Citation shall be notified that a decision has been rendered and receive a copy of the
6 Hearing Officer's written decision by mail.

7
8 b. If the Hearing Officer determines that the Administrative Citation should be
9 upheld, then the fine amount on deposit shall be retained by the City. If the Hearing
10 Officer determines that the Administrative Citation should be invalidated, any fine
11 already paid to the City shall be refunded within thirty (30) days. If for whatever
12 reason the full fine was not deposited with the City, the Hearing Officer shall
13 determine the full amount of the fine, together with any penalties and interest.

14
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16 **Section 1-11.13 Administrative Citation Fine Amounts**

17
18 a. The amount of the penalties for violations that are cited pursuant to this
19 Chapter are set forth in the City of Albany Master Fee Resolution.

20
21 b. A ten percent (10%) late payment fee shall be imposed on any fine that is not
22 paid within thirty (30) days of the issuance of the citation.

23
24 c. The administrative fines outlined in this chapter are levied in addition to any
25 recovery of costs outlined in the Albany Municipal Code.

26
27 d. Each and every day a violation of the provisions of the code exists constitutes
28 a separate and distinct offense and shall be subject to a citation.

29
30
31 **Section 1-11.14 Administrative Citation Failure to Pay Fines**

32
33 The failure of any person to pay the civil fines assessed by an Administrative Citation
34 within the time specified on the citation or after an administrative hearing will result
35 in the collection of the fine by the City. The City may pursue any available legal
36 remedy to collect civil fines, including but not limited to judgments, liens, small
37 claims actions, and collections. The City may also recover its collections costs
38 according to proof.

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41 **Section 1-11.15 Administrative Citation Right to Judicial Review**

42
43 Any person aggrieved by an administrative decision of a Hearing Officer on the
44 Administrative Citation may obtain review of the administrative decision by filing a
45 petition for review with the Alameda County Superior Court in accordance with the
46 timelines and provisions as set forth in California Government Code Section 53069.4.

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

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4
5 **Section 1-11.16** **Correction Notice**

6
7 a. In lieu of an Administrative Citation, a Correction Notice may be issued to the
8 responsible party as a warning the first time a violation occurs. Issuing a Correction
9 Notice in lieu of an Administrative Citation is discretionary for the enforcement
10 officer based on the circumstances and appropriateness to warn a first-time violator.

11
12 b. In such cases when a Correction Notice is issued for a first-time violation, an
13 Administrative Citation will be issued for the violation(s) with appropriate fine(s) if
14 the violation is not corrected by the compliance date specified in the Correction
15 Notice.

16
17 c. Whenever a Correction Notice is issued, such notice may be given by either
18 personal delivery to the person to be notified, by posting same on real property owned
19 by the responsible party, or by deposit in the United States Mail in a sealed envelope
20 postage prepaid, addressed to such person to be notified at his last known business or
21 residence address as the same appears in the last equalized county assessment roll or
22 as known to the Enforcement Officer. Service by United States mail shall be deemed
23 completed at the time of deposit in the United States Mail receptacle. The failure of
24 any person to receive notice properly given shall not affect the validity of any
25 proceedings hereunder.

26
27 d. The Enforcement Officer may attempt to locate and personally serve the
28 responsible party and obtain his or her signature on the Administrative Citation. If the
29 responsible party served refuses or fails to sign the Administrative Citation, the
30 failure or refusal to sign shall not affect the validity of the Administrative Citation or
31 of subsequent proceedings.

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34 **Section 1-11.17** **Correction Notice Content**

35
36 Each Correction Notice shall contain the following information:

37
38 a. Date, approximate time, and address or definite description of the location
39 where the violation(s) was observed;

40
41 b. The Code sections or conditions violated and a description of the violation(s);

42
43 c. An order to the responsible party to correct the violations within the time
44 specified (compliance date), and an explanation of the consequences of failure to
45 correct the violation(s) including the fine for the violation;

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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.