

ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULLERTON,
CALIFORNIA, AMENDING CHAPTER 1.10 OF TITLE 1 OF THE FULLERTON
MUNICIPAL CODE RELATING TO ADMINISTRATIVE CITATIONS

WHEREAS, Chapter 1.10 of Title 1 of the Fullerton Municipal Code provides for the imposition of administrative fines or penalties as a method of enforcement for violations of the Fullerton Municipal Code and applicable state codes; and

WHEREAS, the authority for imposing such fines and penalties is set forth in California Government Code sections 53069.4; and

WHEREAS, Government Code section 53069.4 was recently amended by AB 2164; and

WHEREAS, the City Council of the City of Fullerton desires to amend Chapter 1.10 of the Fullerton Municipal Code consistent with the recent amendments to Government Code section 53069.4, as well as to update certain provisions in furtherance of effective enforcement.

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

[New text in **bold**, deleted text in ~~strike-through~~]

Chapter 1.10, ADMINISTRATIVE CIATIONS:

Chapter 1.10 of Title 1 of the Fullerton Municipal Code shall be amended as follows:

1.10.010 Purpose and intent.

The City Council of the City of Fullerton finds and declares that:

- A. There is a need for an alternative method of enforcement for violations of the Fullerton Municipal Code and applicable State Codes. The City Council further finds that an appropriate method of enforcement is the imposition of administrative fines or penalties as authorized by Government Code Section 53069.4.
- B. The issuance of an Administrative Citation under this chapter is solely at the City's discretion and is one option the City has to address violations of this code. By adopting this chapter, the City does not intend to limit its discretion to utilize any other remedy, civil or criminal, to address such violations.
- C. Enforcement of the Fullerton Municipal Code, other ordinances adopted by the City, conditions on entitlements and terms and conditions of City Agreements are matters of local concern and serve to protect the public health, safety and welfare of the citizens of the City of Fullerton.
- D. Issuing Administrative Citations, pursuant to this chapter, is to encourage voluntary and complete compliance with the provisions of this code for the protection and benefit of the entire community. (Ord. 2939 (part), 1998).

1.10.020 Definitions.

- A. "Enforcement Officer" means any officer or employee with the authority to enforce the Fullerton Municipal Code or applicable State Codes as provided in Section 2.09.080 of this code.
- B. "Hearing Officer" means the person appointed by the City Manager to serve as the hearing officer for administrative hearings.
- C. "Land Use Approval" means any approval required for a particular use of land, including but not limited to permits, licenses, conditional use permits, variances, or subdivision maps.
- D. "Owner" means the record owner of a parcel according to the County's latest equalized property tax assessment roll.
- E. "Person" includes a natural person or legal entity, and the owners, majority stockholders, corporate officers, trustees, and general partners of a legal entity.
- F. "Responsible Person" means any Person ~~individual who is the owner or occupant of real property, owner or authorized agent of any business, company, or entity, or the parent or the legal guardian of any person under the age of eighteen years, who causes or maintains a violation of the Fullerton Municipal Code or applicable State Codes,~~ **including the person occupying the premises which is the subject or location of a violation, the business owner of such location, or the property owner or property owner's agent/property manager. Responsible Person also includes the parent or legal guardian of any person under the age of eighteen years.** For the purposes of this chapter, there may be more than one Responsible Person for any one code violation.

1.10.030 Administrative Citations.

- A. Any person violating any provision of the Fullerton Municipal Code, or applicable State Code, may be issued an Administrative Citation by an Enforcement Officer as provided in this chapter. The Enforcement Officer shall allow a reasonable period of time for a Responsible Person to correct or otherwise remedy the violation prior to the imposition of an administrative fine or penalty. Fourteen days shall be deemed to be a reasonable period of time if the violation pertains to building, plumbing, electrical or other similar structural or zoning issues that do not create an immediate danger to health or safety. If the violation creates an immediate danger to health or safety **and/or if the violation exists as a result of, or to facilitate, the illegal cultivation of cannabis,** immediate action may be required.
 - 1. **There may be an immediate imposition of administrative fines or penalties if a violation is for building, plumbing, electrical, or other similar structural, health and safety, or zoning requirements and exists as a result of, or to facilitate, the illegal cultivation of cannabis. However, a reasonable period of time will be given for the correction or remedy of the violation prior to the imposition of administrative fines or penalties if all of the following are true:**

- a. A tenant is in possession of the property that is the subject of the violation.
 - b. The property owner or agent can provide evidence that the rental or lease agreement prohibits the cultivation of cannabis.
 - c. The rental property owner or agent did not know the tenant was illegally cultivating cannabis and no complaint, property inspection, or other information caused the rental property owner or agent to have actual notice of the illegal cannabis cultivation.
- B. Every person who applies for and receives any type of Land Use Approval shall comply with all conditions imposed upon the issuance of said Land Use Approval. Violation of any condition of such Land Use Approval may be subject to an administrative fine or penalty as provided under the provisions of this chapter.
- C. Each day a violation of this code exists shall be a separate violation and be subject to a separate fine. An Administrative Citation may charge a violation for one or more days on which a violation exists, and for violation of one or more code sections.
- D. An Administrative Citation shall be on a form approved by the City Manager and shall contain the following information:
1. Name of the Responsible Person;
 2. Date, time and address or definite identification of the location where the violation(s) was observed;
 3. The code section(s) violated and a description of the violation(s);
 4. The specific actions that are required to correct the violation(s);
 - 4.5. The amount of the fine for the violation(s);
 - 5.6. A description of the fine payment process, including a specified time within which and the place to which the fine shall be paid;
 - 6.7. Notification of the right to appeal, including the time within which the Administrative Citation may be contested and the place process to obtain a Request for a Hearing from and/or the process to submit a Request for Hearing with Advance Deposit Hardship Waiver to contest the Administrative Citation;
 - 7.8. The name and signature of the Enforcement Officer; and
 - 8.9. Date the citation was issued. (Ord. 2939 (part), 1998).
- 1.10.040 Service procedures.

An Administrative Citation may be issued to a Responsible Person by an Enforcement Officer for violation(s) of the Municipal Code or applicable State Code by either personal service or mail in the following manner:

- A. Personal Service. The Enforcement Officer shall attempt to locate and personally serve the Responsible Person and obtain the signature of the Responsible Person on the Administrative Citation. If a Responsible Person refuses to sign the Administrative Citation, the failure or refusal to sign shall not affect the validity of the Administrative Citation or of subsequent proceedings.
- B. Service of Citation by Mail. ~~If the Enforcement Officer is unable to serve the Responsible Person by personal service, the~~ **The** Administrative Citation shall be mailed to the Responsible Person by certified mail, return receipt requested and by regular, first class mail. Service by mail shall be deemed effective as of the date of deposit in the U.S. Mail.
- C. ~~Service of Citation by Posting of Notice as a Courtesy. If the Enforcement Officer does not succeed in personally serving the Responsible Person, by certified mail or regular mail, the Enforcement Officer shall post the~~ **The** Administrative Citation may be posted on any real property within the City, in which the Enforcement Officer has knowledge that the Responsible Person has a legal interest, and such posting shall be deemed a courtesy; failure to post shall not constitute a failure of notice ~~effective service on the date of posting. (Ord. 2939 (part), 1998).~~

1.10.050 Amount of administrative fines/resolution.

The amount of fines imposed for code violations imposed pursuant to this chapter shall be established by separate resolution of the City Council. (Ord. 2939 (part), 1998).

1.10.060 Payment of administrative fine.

- A. The fine shall be paid to the City within thirty days from the date of service of the Administrative Citation.
- B. A late payment fee of thirty dollars shall be charged if the fine is not paid within thirty days from the date of the Administrative Citation.
- C. Any Administrative Citation fine paid pursuant to Section 1.10.060 shall be refunded in accordance with Section 1.10.090 if it is determined, after a hearing, that the person charged in the Administrative Citation was not responsible for the violation or that there was no violation as charged in the Administrative Citation.
- D. Payment of a fine shall not excuse the ~~citee~~ **Responsible Person** from correcting the code violation. The issuance of a citation and/or payment of a fine does not bar the City from taking other enforcement action regarding a code violation that is not corrected, including but not limited to issuing additional Administrative Citations. (Ord. 2939 (part), 1998).
- E. **A Responsible Person who has been issued a second or multiple additional fine(s) for violations of the same ordinance within one year may apply for a Hardship Waiver to reduce the amount of the fine, which will be granted upon a showing that the Responsible Person has made a bona fide effort to comply after the first**

violation and that payment of the full amount of the fine would impose an undue financial burden. Any person wishing to apply for a Hardship Waiver must timely complete a Hardship Waiver form and deliver it, together with any supporting documents, to the Code Enforcement Division of the Community Development Department. Once a completed Hardship Waiver form is received, payment of any owed fines is stayed until a written determination on the application is issued. The Community Development Director or designee may request additional documentation or information regarding the request prior to issuing a determination. A determination may be to grant in full, grant in part, or deny the application for a Hardship Waiver. Such determination shall be final. The failure of any Responsible Person to timely submit all requested additional documentation and information shall be deemed a failure to exhaust the Responsible Person's administrative remedies with regard to any reductions of the fines.

1.10.070 Request for administrative hearing.

Any recipient of an Administrative Citation may contest the citation by completing a Request for Hearing form and returning it to the City within fifteen days from the date of service of the Administrative Citation, together with an advanced deposit of the fine or a completed Advance Deposit Hardship Waiver form with any supporting documents. Once a completed Advance Deposit Hardship Waiver form is received, payment of the fine is stayed until a written determination by the Community Development Director or designee granting or denying the Advance Deposit Hardship Waiver is issued. Such determination shall be final. If the determination is to deny the Advance Deposit Hardship Waiver, the full amount of the fine shall be due ten days from the date of service of the determination. A hearing before the Hearing Officer shall be set for a date that is not less than fifteen, nor more than sixty days from the date the Request for Hearing is filed. 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. (Ord. 2939 (part), 1998).

1.10.080 Administrative hearing procedure.

- A. ~~No hearing to contest an Administrative Citation before a Hearing Officer shall be held unless and until a Request for Hearing form has been completed and filed and the fine has been deposited.~~ A Request for Hearing to contest an Administrative Citation before a Hearing Officer shall not be deemed complete until a Request for Hearing form has been timely completed and filed with the Code Enforcement Division and either the fine has been deposited in full or an Advance Deposit Hardship Waiver has been granted. A hearing before the Hearing Officer shall be set for a date that is not less than fifteen, nor more than sixty days from the date of a completed Request for Hearing. 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.
- B. The Hearing Officer shall only consider evidence that is relevant to whether the violation(s) occurred and whether the appellant is a Responsible Person as defined in this chapter. ~~caused and/or maintained the violation(s) of the Municipal Code or other applicable State Code on the date(s) specified in the Administrative Citation.~~
- C. The Responsible Person person contesting the Administrative Citation shall be given the opportunity to testify and present witnesses and relevant evidence concerning the charges set forth in the Administrative Citation.

- D. The failure of ~~any recipient of an~~ **the person contesting the** Administrative Citation to appear at the Administrative Citation hearing shall constitute a forfeiture of ~~the~~ **any fines paid** and a failure to exhaust their administrative remedies.
 - E. 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.
 - F. Neither the Enforcement Officer nor any other representative of the City shall be required to attend the hearing, nor shall the Hearing Officer require that there be submitted any evidence, other than the citation, that may exist among the public records of the City on the violation. However, any such appearance and/or submission may be made at the discretion of the Enforcement Officer or any City employee or agent.
 - G. If the Enforcement Officer submits ~~an additional written report~~ **any additional records** concerning the Administrative Citation to the Hearing Officer for consideration at the hearing, then a copy of **any such records that have not already been provided to this** ~~report also shall be served by mail on the person requesting the hearing~~ **shall be provided to the person** at least five ~~ten~~ days prior to the date of the hearing. **No other discovery is permitted, although formal rules of evidence shall not apply.**
 - ~~H. At least ten days prior to the hearing, the recipient of an Administrative Citation shall be provided with copies of the citations, reports, and other documents submitted or relied upon by the Enforcement Officer. No other discovery is permitted, although formal rules of evidence shall not apply.~~
 - 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. (Ord. 2939 (part), 1998).
- 1.10.90 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, modify or revoke the Administrative Citation and shall list in the decision the reasons for that decision. The decision of the Hearing Officer shall be final.
 - B. If the decision is to uphold the citation, the City shall keep the fine deposited. **If an Advance Deposit Hardship Waiver was granted, full payment of the fine must be made within thirty days of the service of the decision.** If the decision is to revoke the citation, then the City shall refund the fine deposit ~~to the city~~ within thirty days of the service of the decision.
 - C. The recipient of the Administrative Citation shall be served with a copy of the Hearing Officer's written decision within twenty days from the date of the hearing **is concluded.**
 - D. The Hearing Officer shall not be a Fullerton City employee. The employment, performance evaluation, compensation and benefits of the Hearing Officer, if any, shall not be directly or indirectly conditioned upon the amount of the fine or number of Administrative Citations upheld by the Hearing Officer. (Ord. 2939 (part), 1998).

1.10.100 Collection of unpaid fines.

- A. The City at its discretion may pursue any and all legal and equitable remedies for the collection of unpaid fines and penalties. Pursuit of one remedy does not preclude the pursuit of any other remedies until the total fines and penalties owed by a person under this chapter have been collected.
- B. Any Responsible Person who has unpaid and/or delinquent fines, may be refused the issuance of a Land Use Approval, or other City approval pertaining to the property, real or personal, that is the subject of the citation issued pursuant to this chapter.
- C. Any violation of the code shall constitute a nuisance. To compel code compliance, the City may seek to abate the nuisance and collect the costs incurred by means of a nuisance abatement lien against the property where a property related violation occurred in accordance with the provisions of ~~Sections 6.01.130 through 6.01.160~~ **Chapter 6.01** of this code. When the City has incurred actual abatement costs, any unpaid delinquent civil fines, interest and penalties may also be recovered as such a lien against the property of the Responsible Person who is the Owner of the property where the violation occurred. (Ord. 2939 (part), 1998).

1.10.110 Right to judicial review.

Any ~~A~~ person aggrieved by who wishes to contest a decision of the Hearing Officer on an Administrative Citation may ~~obtain~~ **seek** review of the administrative decision by filing an appeal to be heard by the superior court a Petition for Review with the Orange County Municipal Court in accordance with the timelines and provisions set forth in California Government Code Section 53069.4. (Ord. 2939 (part), 1998).

1.10.120 Notices.

Except as specifically provided herein, all notices to be given by this chapter shall be served on ~~the Responsible Person~~ in accordance with the provision of Section 1.12.090 of the Fullerton Municipal Code. Failure to receive any notice specified in this chapter does not affect the validity of proceedings conducted herein. (Ord. 2939 (part), 1998).

~~1.10.130 Severability.~~

~~If any chapter, article, section, subsection, sentence, clause, phrase, or portion of this chapter, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of the chapter or its application to other persons. The City Council hereby declares that it would have adopted this chapter and each chapter, article, section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions thereof to any person be declared invalid or unconstitutional. No portion of the chapter shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors. (Ord. 2939 (part), 1998).~~

SECTION 2. Any provision of the Fullerton Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 3. If any section, subsection, phrase, or clause of this Ordinance is for any reason held to be unconstitutional, such decision will not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses may be declared unconstitutional.

SECTION 4. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published in the manner required by law. This Ordinance shall become effective thirty (30) days from and after its passage.

ADOPTED BY THE FULLERTON CITY COUNCIL ON _____, 2019.

Jesus J. Silva, Mayor

Attest:

Lucinda Williams, City Clerk

Date _____