

**CITY OF OROVILLE
ORDINANCE NO. 1718**

**Chapter 2
Article VII. Administrative Civil Penalties.**

2-101 Purpose.

The purpose of this article is to provide for the protection, health, safety, and general public welfare of the residents of the City of Oroville and to preserve the livability, appearance, property values, and social and economic stability of the City of Oroville by providing an alternative method of code enforcement to affect abatement of violations of the codes and ordinances identified in this article.

2-102 Scope.

(a) This article relates to the administrative assessment of civil penalties for violations of the Code of the City of Oroville.

(b) Civil penalties established in this article are in addition to any other administrative or legal remedy which may be pursued by the City to address violations of the codes and ordinances identified in this article.

2-103 Definitions.

For purposes of this article, the following words shall have the following specified meanings:

(a) Responsible Department. The “responsible department” shall be the City department, its director or deputy director, or other person so designated either by the city council or city code or ordinance as responsible for enforcement of the provisions of the codes and ordinances identified in this article.

(b) Person. The term “person” shall be a natural person, firm, partnership, corporation, business, trust, organization, or any other entity.

(c) “Enforcement officer” shall mean any person authorized to enforce provisions of the Oroville Municipal Code.

(d) “Administrative Hearing Officer” shall mean any person appointed by a majority of the city council to preside over the administrative hearings provided for in this article.

(e) “City” shall mean the City of Oroville.

(f) “Contestant” shall mean any person or entity that is liable for administrative penalties in accordance with the applicable sections of this code, and who contests or disputes liability for civil penalties.

(g) “This code” shall mean the Oroville Municipal Code.

(h) “Responsible party” shall mean the person who is in immediate control of the premises or activity which constitutes a violation of this code, or the actor of conduct prohibited or declared unlawful by this code.

2-104 Use of Administrative Citations.

(a) Any person violating any provision of this code for which a civil penalty has been prescribed may be issued an administrative citation by an enforcement officer as

provided in this article.

(b) Each and every day a violation of any provision of this code exists shall constitute a separate and distinct offense for which an administrative citation may be issued by an enforcement officer.

(c) The responsible person(s) creating, committing, condoning, or maintaining a violation of any provision of the codes and ordinances identified in this article shall be subject to civil penalties as established in this article.

(d) Separate civil penalties may be assessed for separate major violations or separate dates of occurrence.

(e) Full or partial reimbursement or recovery of civil penalties and administrative expenses shall not excuse the failure to correct the violations wholly and permanently nor shall it preclude the assessment of additional civil penalties or other abatement actions by the City of Oroville.

(f) Civil penalties and related administrative expenses, including attorneys' fees, shall accrue to the account of the City of Oroville and may be recovered by all appropriate legal means, including but not limited to priority lien and special assessment of the general tax levy, or by civil and small claims action brought by the City of Oroville, or both.

2-105 Procedures of Issuance of Administrative Citations.

(a) Upon discovering or observing any violation of this code for which a civil penalty has been prescribed, the enforcement officer may issue an administrative citation to the violator or property owner in the manner prescribed in this article VII. The administrative citation shall be issued on a form prescribed by the city council.

(b) The enforcement officer shall identify the responsible party. Once the person responsible for the violation is identified, the enforcement officer may obtain the signature of that person on the administrative citation for the purpose of establishing personal service of the citation. The failure to obtain the signature of the responsible party on the administrative citation shall in no way affect the validity of the citation and proceedings taken thereunder.

(c) If the enforcement officer is unable to locate the responsible party, or the responsible party refuses or otherwise fails to sign the administrative citation, the administrative citation shall be served on the responsible party as follows.

(1) A copy of the administrative citation shall be mailed to the responsible party by first class U.S. mail, postage prepaid, addressed to the responsible party at his or her last known mailing address, together with a copy of a declaration of service signed under penalty of perjury by the person mailing such documents.

(2) The declaration of service shall show the date and manner of service by mail and shall recite the name and address of the person to whom it is addressed.

(3) When so mailed as set forth above, the administrative citation shall be deemed received on the date it is deposited in the U.S. mail. The failure of any responsible party to receive an administrative citation that is mailed in accordance with the provisions of this article shall not affect the validity of any proceeding taken under this article.

(d) When the code enforcement officer determines it is necessary, he or she may issue an administrative citation without providing prior written notice and an opportunity to correct for any violation that:

- (1) creates an immediate danger to the public health, safety and welfare and for which immediate correction is required;
- (2) Is not a continuing violation.

2-106 Contents of Administrative Citation.

The administrative citation shall have at its top, printed in bold capital letters, the words "NOTICE OF CITY CODE VIOLATION" and shall include the following:

(a) The date, location and approximate time each violation was observed, the section(s) of this code violated and a description of the violation including a description of any property, instrumentality or animal involved in the violation;

(b) A description of any corrective action required, where appropriate;

(c) The amount of civil penalty imposed for the violation(s) and the additional penalties for late payment;

(d) An explanation of the applicable time limits, the penalty payment procedure, the place of payment, and the consequences of failure to pay an administrative penalty;

(e) The rights of appeal; and

(f) The signature of the enforcement officer, and the date, where applicable.

2-107 Appeal of Administrative Citation.

(a) Any person who has been issued an administrative citation shall be entitled to appeal it by filing a notice of appeal with the responsible department as indicated on the administrative citation. The appeal shall be in writing, signed by the person making the appeal and shall specify the basis for the appeal. The notice of appeal shall be filed within ten (10) calendar days after issuance of the administrative citation. If the last day to file an appeal falls on a weekend or city holiday, then the deadline shall be extended until close of business on the next regular business day.

(b) Upon receipt of a written notice of appeal, or as soon as practical thereafter, the responsible department shall review the administrative citation and, if it is found to be complete and in conformance with the requirements of this article, shall fix a date, time and place for hearing the administrative appeal before an Administrative Hearing Officer. Written notice of the time and place for hearing the administrative appeal shall be served on the party protesting the administrative citation and by any other person who received notice of the citation, by any one of the following means:

(1) Personal service;

(2) First class mail; or

(3) Posting the notice of hearing conspicuously on or in front of the real property upon which the violation is located.

(c) Service of the notice of administrative hearing by first class postage pre-paid shall be deemed complete on the date of mailing. The failure of any person with an interest in the proceedings to receive a properly addressed notice of the administrative hearing shall not affect the validity of any proceedings under this article.

(d) Failure of any person to file an appeal in accordance with the provisions of this article shall constitute a waiver of that person's rights to administrative determination of the merits of the administrative citation and the amount of the penalty.

2-107.1 Administrative Hearing Officer.

a) The council shall appoint an Administrative Hearing Officer.

b) The Administrative Hearing Officer shall exercise all the powers and duties to conduct and decide hearings pursuant to this article.

2-108 Hearings; Generally.

At the time set for hearing Administrative Hearing Officer shall proceed to hear the testimony of city staff, the responsible party, and other persons respecting the violation or the imposition of an administrative penalty.

2-109 Record of Oral Evidence at Hearing.

(a) The proceedings at the hearing shall be recorded by a tape recorder. Either party may provide a certified shorthand reporter to prepare a record of the proceedings at the party's own expense.

(b) Preparation of a record of the proceeding shall be governed by California Code of Civil Procedure section 1094.6, as presently written or hereinafter amended.

2-110 Continuances.

The Administrative Hearing Officer may grant continuances from time to time for good cause shown.

2-111 Oaths.

All oral evidence shall be upon oath or affirmation. The Administrative Hearing Officer or a notary public shall administer the oath or affirmation.

2-112 Evidence Rules.

California Government Code, section 11513, subsections (a), (b) and (c), as presently written or hereinafter amended, shall apply to hearings under this article.

2-113 Rights of Parties.

(a) The parties and anyone who participates in a hearing under this article may be represented by an attorney or other person of the party's choice.

(b) If a party does not proficiently speak or understand the English language, the party may provide an interpreter, at the party's own cost, to translate for the party. An interpreter shall not have had any involvement in the issues of the case prior to the hearing.

2-114 Official Notice.

In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or which may appear in any of the official records of the city or any of its departments.

2-115 Inspection of Premises.

The Administrative Hearing Officer may inspect the exterior of the premises involved in the hearing prior to, during, or after the hearing, provided that:

(a) Consent is granted by a person with the lawful right to grant consent or an inspection warrant is obtained;

(b) Reasonable notice of such inspection shall be given to the owner before the inspection is made;

(c) The parties are given an opportunity to be present during the inspection;

(d) The Administrative Hearing Officer shall state for the record during the hearing, or file a written statement after the hearing for inclusion in the hearing record, upon completion of the inspection, the material facts observed and the conclusions drawn therefrom; and

(e) Each party then shall have a right to rebut or explain the matters so stated by the Administrative Hearing Officer either for the record during the hearing or by filing a written statement after the hearing for inclusion in the record.

2-116 Decision of the Administrative Hearing Officer.

(a) The Administrative Hearing Officer may impose conditions and deadlines for correction of violations or payment of outstanding penalties.

(b) The Administrative Hearing Officer shall make findings based on the record of the hearing and shall issue a written decision, signed by its presiding officer, based on the findings. The responsible department shall preserve all exhibits submitted by the parties and shall serve the decision on the protestant by first class mail, postage prepaid, within ten working days after the decision is issued. The decision of the Administrative Hearing Officer affirming or dismissing an administrative citation is final and conclusive.

The decision shall inform the owner that the time for judicial review of the Administrative Hearing Officer's decision is governed by California Government Code section 53069.4.

2-117 Court Review.

(a) After receipt of the Administrative Hearing Officer's decision, the contestant may file an appeal with the superior court for de novo review. The request for review shall be submitted on a form prescribed by the court and must be filed within twenty (20) days after the date of service of the final decision of the Administrative Hearing Officer. The appeal shall state the reasons the contestant appeals to the Administrative Hearing Officer's findings or decision.

(b) The superior court shall conduct a de novo hearing except the contents of the responsible department's file shall be received into evidence.

(c) A copy of the notice of city code violation and imposition of penalty shall be entered into evidence as prima facie evidence of the facts stated therein.

(d) The superior court shall establish a fee for filing of the appeal. If the court finds in favor of the contestant, the amount of the fee and any deposit of penalty shall be reimbursed to the contestant by the city.

(e) If the penalty has not been deposited, and the decision of the court is against the contestant, the city may proceed to collect the civil penalty in the manner provided by law.

2-118 Assessment of Civil Penalties.

(a) The City Council shall, by resolution, establish a schedule of violations and assessments or similar guidelines for assessing the amount, rate of recurrence, and duration of civil penalties.

(b) Civil penalties, excluding accruing interest, shall not exceed the amounts set forth in this code.

(c) The assessment of civil penalties may begin to accrue on the date of initial occurrence of the violation, as identified by the City of Oroville.

(d) Payment of the penalty shall not excuse a failure to correct the violation nor shall it bar further enforcement action by the city.

(e) The failure of any person to pay a penalty assessed by administrative citation within the time specified on the citation shall result in the assessment of a late fee. The amount of the late fee shall be one hundred percent of the total amount of the administrative penalty owed.

(f) A civil penalty assessed by administrative citation constitutes a debt to the city. In the event any person fails to pay a civil penalty within the time specified, the city may take such action as is appropriate to collect the debt, including, but not limited to an action in small claims court, an assessment lien, or any other legal remedy.

2-119 Administrative Expenses.

Administrative costs, charges, and fees shall be as established by resolution of the city council.

2-120 Procedures for Collection of Administrative Penalty.

(a) The administrative penalty shall be due and payable within thirty days (30) after issuance of the Administrative Hearing Officer's decision. If the penalty is not timely paid, the city council may thereupon order that the penalty be specially assessed against any real property involved. If the city council orders that the penalty be specially assessed against the real property, it shall confirm the assessment and thereafter said assessment may be collected at the same time and in the same manner as ordinary real property 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 real property taxes. All laws applicable to the levy, collection, and enforcement of real property taxes are applicable to the special assessment.

(b) The city council may also cause a notice of lien to be recorded. The notice shall, at a minimum, identify the record owner or possessor of the real property, set forth the last known address of the record owner or possessor, the date on which the penalty was imposed, a description of the real property subject to the lien, and the amount of the penalty.

2-121 Severability.

If any section, subsection, sentence, clause, phrase or other part of this article is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this article. The city council hereby declares that it would have enacted this article and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or words or other parts be declared unconstitutional or otherwise invalid.

PASSED AND ADOPTED

on August 2, 2005