

City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Dylan Feik, City Manager
DATE: September 20, 2016
SUBJECT: Consideration of an Ordinance Amending Title 1 of the Calistoga Municipal Code and adding a new section titled "Administrative Citations"

APPROVAL FOR FORWARDING:



Dylan Feik, City Manager

1 **ISSUE:** Consideration of an Ordinance Amending Title 1 of the Calistoga
2 Municipal Code and adding a new section titled "Administrative Citations".
3

4 **RECOMMENDATION:** Consider the ordinance and provide direction to staff.
5

6 **BACKGROUND:** Two common code enforcement tools are criminal
7 prosecution and civil injunction. A third tool is administrative enforcement.
8 Currently, the City of Calistoga uses the civil injunction process and in rare
9 instances, could use the criminal prosecution process in code enforcement
10 cases.

11
12 Working with the City Attorney, staff has developed an administrative
13 enforcement process for the adjudication of code enforcement issues. This
14 process will allow all city departments the ability to issue administrative citations
15 for violations of various City codes.

16
17 The Administrative Enforcement Program for code enforcement will achieve
18 compliance through the possible imposition of administrative fines to violators
19 who ignore or refuse to voluntarily comply with the Calistoga Municipal Code and

20 the Calistoga Zoning Ordinance. Administrative enforcement is designed to be
21 less expensive and achieve a quicker resolution to the violation than criminal or
22 civil enforcement.

23
24 If the violator wants to contest an administrative citation, they will receive a
25 hearing in front of a hearing officer comprised of the city manager or designee.
26 At this time, staff estimates that the hearings will be held infrequently and on
27 demand. It should be noted that each hearing can take up to one hour depending
28 on the evidence that is presented. If the violator wants to appeal the decision of
29 the hearing board, they must do so through the court system.

30
31 Overall, the Administrative Hearing Process consists of issuing “notice of
32 violations” and “administrative citations” concerning code enforcement issues
33 and adjudicating the citation in-house, rather than through established courts.
34 This is a process that has been established in many communities throughout
35 California with great success. The proposed ordinance was developed by staff as
36 a guide to benefit the needs and expectations of our community.

37
38 The following procedure provides an overview of how code enforcement is
39 currently handled and will continue to be handled.

- 40
41 **1. First Warning Notification.**
- 42 a. Upon becoming aware of a potential public nuisance, the
43 Enforcement Officer reviews the violation and conducts a field
44 inspection.
 - 45
 - 46 i. If the violation is verified, the Officer contacts the responsible
47 person and seeks voluntary corrective action.
 - 48 ii. If the violation is considered to be an imminent danger to the
49 public health and safety or the environment, and immediate
50 voluntary corrective action is not obtained, the Officer
51 commences the immediate abatement of the violation by the
52 City.
 - 53
 - 54 b. If immediate action is not required and voluntary compliance is not
55 achieved after the initial contact, the Officer issues a Notice of
56 Violation & Order to Abate to the responsible party, giving a specific
57 and reasonable amount of time to correct the violation. The notice
58 includes a description of the violation, and a time frame to correct
59 the violation. The notices under the new Administrative Citation
60 process will include the same information that is currently in use but
61 will also list a series of fines if the violation is not corrected by the
62 prescribed due date.
 - 63 i. The time frame to correct violations will depend on the
64 nature or adverse impact to health, life or safety issues. The
65 time frame for compliance will be between an immediate

66 cleanup and removal process for serious health, life or safety
67 issues to 30 days on non-safety issues that will require an
68 extensive amount of time to correct. Most violators will be
69 provided a 15 day window to correct the violation. Fifteen
70 days was chosen to allow at least two weekends to pass
71 allowing the responsible party enough time to correct the
72 violations.

- 73 ii. Any and all “responsible persons” will be issued a notice of
74 violation. A responsible person will be defined as property
75 owners, tenants, users of the property, on-site managers,
76 etc. It is possible that more than one person can be
77 responsible for a code violation. If it is effective to issue a
78 notice of violation to more than one responsible person, then
79 each responsible person would be issued a separate notice
80 of violation. d. Enforcement officers have the authority to
81 inspect property for code violations within the limits of the
82 law and, if necessary, to seek inspection and/or abatement
83 warrants from the courts.
84

85 2. Administrative Citation

- 86 a. If a person who has been issued an initial notice of violation does
87 not correct the violation before the prescribed deadline, an
88 enforcement officer or other city employee is authorized to issue
89 this person an administrative citation.
90 b. An administrative citation:
91 i. Imposes a fine as set forth in the fee schedule, due within 30
92 days of issuance of the citation;
93 ii. Requires correction of the violation be completed within a
94 time certain;
95 iii. Sets forth appeal rights.
96 c. The citation will describe the unlawful condition, the code section(s)
97 violated, and, if applicable, corrections to bring the property into
98 compliance.
99 d. If a cited person does not correct the violation within the prescribed
100 time set forth in the first administrative citation, a second
101 administrative citation may be issued. If the violation is not
102 corrected in the prescribed time as set forth in the second citation,
103 a third citation may be issued for up to the highest prescribed fine
104 according to the fee schedule which is adopted by City Council.
105 Continued violations not corrected within the time prescribed in the
106 third (and any subsequent administrative citations) will result in the
107 issuance of the citation with a fine of the highest prescribed
108 amount. A new administrative citation may be issued each day the
109 violation continues to exist in any twelve (12) consecutive month
110 period.

- 111 e. More than one person can be issued an administrative citation, as
112 long as each person cited is a “responsible person” as defined in
113 the ordinance, was previously given a notice of violation, and failed
114 to correct the violation within the time prescribed in the notice of
115 violation. However, the City cannot collect on double citations for
116 the same violation. If, for example, a property owner and a tenant
117 were each issued a citation for a \$200 fine for the same code
118 violation, the City would be owed only a total of \$200 (not \$400),
119 with each liable party (the owner and the tenant) individually
120 responsible for payment of the \$200 fine. Between the two of them,
121 a \$200 fine must be paid.
- 122 f. The City may also issue an administrative citation without prior
123 notification to any responsible party for violations that are egregious
124 in nature, flagrant or any violation that the responsible party knows
125 is a violation of the law.
- 126
127

128 **DISCUSSION:** Should the City Council proceed with adoption of administrative
129 citations, an ordinance amendment will be prepared and a public hearing will be
130 set at an upcoming City Council meeting.

131

132 **FISCAL IMPACT:** The fiscal impact is difficult to determine at this time because
133 currently, administrative citations are not used, nor has the City Council adopted
134 a fine schedule for administrative citations.

135

136 **ATTACHMENT:**

- 137 1. Administrative Citation Ordinance DRAFT
138 2. Code Enforcement Manual, City of Calistoga
- 139

Chapter 1.28 Administrative Citations

1.28.010 Purpose and intent.

Pursuant to Government Code Section 53069.4, the City is authorized to adopt an administrative citation program. The purpose of this chapter is to provide the City with an alternative method of enforcement of violations of the Calistoga Municipal Code and conditions on land use entitlements by using a combination of judicial and administrative remedies to gain compliance. Enforcement of the Calistoga Municipal Code and conditions on land use entitlements is vital to the protection of the public's health, safety and welfare, and such enforcement is a valid exercise of the City's police power. Issuing administrative citations encourages voluntary and complete compliance with the Calistoga Municipal Code and conditions on land use entitlements in a timely and cost efficient manner for the protection and benefit of the entire community.

1.28.020 Application.

The provisions of this chapter apply to any violation of the Calistoga Municipal Code and/or any condition imposed by any land use entitlement. The issuance of an administrative citation under this chapter is solely at the City's discretion. This chapter does not limit the City's discretion to utilize any other remedy, civil or criminal, to address such violations, and multiple enforcement remedies may be used to achieve compliance with respect to persons who commit continuing violations.

1.28.030 Definitions.

For purposes of this chapter, the following definitions apply:

"City Manager" means the City Manager of the City of Calistoga, or the City Manager's designee.

"Code" means the Calistoga Municipal Code, as may be updated from time to time.

"Continuing violation" means either (1) a particular violation of the Code or violations of conditions imposed upon the issuance of a land use entitlement that continues for more than twenty-four (24) hours without correction; or (2) a repeated, consecutive violation of the same offense without intervening days.

"Enforcement officer" means any officer or employee designated by the City Manager to enforce this code.

"Hearing officer" means a person appointed by the City Manager, in compliance with any and all applicable legal requirements, to serve as the hearing officer for administrative citation hearings.

“Land use entitlement” means any approval required for a particular use of land, including without limitation, licenses and conditional use permits.

“Owner” means the record owner of a parcel according to Napa County’s latest equalized property tax assessment roll.

“Person” means and includes a natural person or legal entity, and the owners, majority stockholders, corporate officers, trustees and general partners of a legal entity.

“Responsible person” has the same definition as set forth in CMC 1.08.010(B).

1.28.040 Issuance of administrative citation.

- A. Any person violating any provision of this code and/or any condition imposed by any land use entitlement may, at the City’s discretion, be issued an administrative citation by an enforcement officer as provided in this chapter.
- B. In accordance with Government Code Section 53069.4(a)(2), no responsible person shall be assessed an administrative fine or penalty under this chapter for a continuing violation pertaining to a building, plumbing, electrical or similar structural or zoning issue that does not create an immediate danger to the public health or safety without first receiving a reasonable opportunity to correct or otherwise remedy the violation.
- C. An administrative citation shall be issued on a form approved by the City Manager and shall contain the following information:
 - 1. Name of the person who is charged as a responsible person for the violation;
 - 2. Date, time and address, or definite description, of the location where the violation was observed;
 - 3. The code section or condition violated and a description of the violation;
 - 4. A description of the action required to correct the violation;
 - 5. An order prohibiting the continuation or repeated occurrence of the violation;
 - 6. Whether the offense is a continuing violation which shall accrue fines until properly ceased and abated;
 - 7. The amount of the fine for the violation, including the amount due for the initial violation and any prospective daily fine for failure to correct the violation (if applicable to a continuing violation);
 - 8. An explanation of how the fine must be paid and when it must be paid;

9. Potential penalties for late payment or failure to pay the fine;
 10. Notification of the right to appeal, including the time within which the administrative citation may be contested and the place to obtain a request for hearing form to appeal the administrative citation;
 11. The name and signature of the enforcement officer; and
 12. Date the citation was issued.
- D. For the purposes of this chapter, there may be more than one responsible person for any violation and each responsible person shall be jointly and severally liable for any violation.
- E. In the event that an enforcement officer determines that an administrative citation was issued in error, the enforcement officer may cancel the administrative citation, regardless of whether the responsible person has filed a request for a hearing and any fines or fees paid under this chapter shall be refunded.

1.28.050 Amount and payment of administrative citation fines; satisfaction of administrative citation.

- A. Upon receipt of the citation, the responsible person must immediately cease and abate the violation. The abatement of a continuing violation must be verified by an enforcement officer. The responsible person must contact the phone number designated on the citation and schedule an inspection by an enforcement officer. Fines shall accrue until the abatement is verified, less any days delayed by action of the City in scheduling such inspection.
- B. If the offense is a continuing violation and the responsible person fails to properly cease and abate the violation, fines shall accrue for each day until the abatement is properly verified. Additionally, subsequent administrative citations may be issued for the same violation.
- C. The amount of the fines for violations pursuant to this chapter shall be established by separate resolution of the City Council, which may be amended from time to time.
- D. The fine must be paid to the City Administrative Services Department within thirty (30) calendar days from the date on the citation that the administrative citation was issued.
- E. If the fine citation is not paid within the time prescribed in this section, a late payment fee may be charged in an amount to be established by separate resolution of the City Council, which may be amended from time to time.

- F. Any administrative citation fine paid pursuant to this section shall be refunded if after an administrative hearing the fine is cancelled or modified by the hearing officer.
- G. Payment of a fine under this chapter shall not excuse or discharge any continuation or repeated occurrence of any violation that is the subject of the administrative citation, nor shall it bar further enforcement action by the City.

1.28.060 Request for administrative hearing.

- A. Any recipient of an administrative citation may appeal the citation by completing a request for hearing form, to be obtained from and returned to the City Clerk within fifteen (15) calendar days from the date on the citation that the administrative citation was issued. The request for hearing must contain the following information:
 - 1. The name, address, and signature of the responsible person appealing the administrative citation;
 - 2. A brief statement in ordinary and concise language of the specific item that is contested, together with any supportive facts; and
 - 3. A brief statement in ordinary and concise language of the relief sought and the reason why the administrative citation should be rescinded, modified, or otherwise set aside.
- B. Any request for hearing form submitted that fails to provide all of the information required by this section shall be deemed incomplete and the person submitting the form shall be notified of such determination.
- C. The request for hearing form must be accompanied by a deposit of the fine in the amount specified in the Administrative Citation or a request for a deposit hardship waiver as described in Section 1.28.070. If the deposit is not timely paid and no hardship waiver has been granted, an administrative hearing shall not be scheduled.
- D. A hearing before the hearing officer shall be set by the City Clerk for a date that is not less than fifteen (15) or more than thirty (30) calendar days from the date the request for hearing is submitted to the City. The person requesting the hearing shall be notified by regular mail of the time and place set for the hearing at least ten (10) calendar days before the date of the hearing. If multiple citations are being appealed, the City Clerk and hearing officer may consolidate the appeals into one hearing.
- E. Failure of a responsible person to appeal the administrative citation within the timeframe provided by this section shall constitute: (1) a waiver of any right to an administrative hearing for a determination of the matter contested; and (2) failure to exhaust his or her administrative remedies. The order of the

citation shall serve as a final determination and conclusive evidence of the named responsible person's liability for the citation.

1.28.070 Request for fine deposit hardship waiver.

- A. Any person who intends to request an administrative hearing to appeal an administrative citation and who is financially unable to make the fine deposit may request a fine deposit hardship waiver.
- B. The request must be submitted to the City Clerk, and shall be processed by the hearing officer. The requirement of depositing the full amount of the fine shall be stayed unless or until the hearing officer, or his or her designee, makes a determination to grant or deny the fine deposit hardship waiver.
- C. The hearing officer, or his or her designee, may grant the advance deposit hardship waiver if the cited person has submitted a sworn affidavit documenting financial hardship to the satisfaction of the hearing officer, or his or her designee.
- F. The hearing officer, or his or her designee, shall issue a written determination to issue or not issue the fine deposit hardship waiver. The written determination shall be final and shall be served by regular mail upon the person who applied for the hardship waiver.
- G. If the hardship waiver is not issued, a deposit of the fine must be remitted to the City within ten (10) calendar days of the date of the decision or thirty (30) calendar days from the date of the administrative citation, whichever is later. If the deposit is not paid within this time, an administrative hearing shall not be scheduled.

1.28.080 Administrative hearing procedure.

- A. No hearing to contest an administrative citation before a hearing officer shall be held unless: (1) a request for hearing form has been completed and returned to the City Clerk; and (2) the fine has been deposited or a fine deposit hardship waiver obtained.
- B. At least ten (10) calendar days before the hearing, the responsible person shall be provided with copies of any and all citations, reports, and other documents to be submitted by the enforcement officer to the hearing officer.
- C. 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.
- D. The formal rules of evidence shall not apply to the administrative hearing. All relevant evidence may be considered, and the hearing officer has the

discretion to exclude evidence that the hearing officer finds to be irrelevant or redundant.

- E. The responsible person contesting the administrative citation shall be given the opportunity to: (1) testify and present witnesses; (2) introduce relevant evidence; (3) cross-examine and/or rebut any witness testifying in support of the administrative citation; and (4) be represented by anyone designated by the responsible party.
- F. Unless requested in advance by the person contesting the administrative citation, neither the enforcement officer nor any other representative of the City is required to attend the hearing, provided that any such appearance may be made at the discretion of the enforcement officer or City Manager.
- G. The hearing officer may continue the hearing and request additional information from the enforcement officer or the responsible person contesting the administrative citation before issuing a written decision.
- H. The failure of any responsible person contesting an administrative citation to appear at the administrative citation hearing shall constitute a forfeiture of the fine and a failure to exhaust administrative remedies, and the order of the citation shall become the final determination.

1.28.090 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 cancel all or part of the administrative citation, listing the reasons for the decision. The hearing officer's decision must be supported by the preponderance of the evidence.
- B. The decision of the hearing officer shall be issued within fifteen (15) calendar days of the hearing. Within five (5) calendar days of issuance of the hearing officer's decision, the City shall provide notice of the written decision to recipient of the administrative citation and include a copy of the decision.
- C. The decision of the hearing officer shall be final.
- D. If the hearing officer determines that the administrative citation should be upheld, the amount of the fine on deposit with the City shall be retained by the City. If the fine has not been deposited and hardship waiver has been obtained, the hearing officer shall set forth a reasonable schedule of payment. The hearing officer may also impose conditions and deadlines to correct the violation or require payment of any outstanding fines, penalties, and interest.
- E. If the hearing officer determines that the administrative citation should be modified or cancelled in whole or in part, the City shall refund the applicable

amount of the deposited fine within fifteen (15) calendar days from the date of issuance of the hearing officer's decision.

1.28.110 Right to judicial review.

Any person aggrieved by a decision of the hearing officer on an administrative citation may obtain review of the decision by: (1) filing an appeal with the Napa County Superior Court in accordance with the timelines and provisions set forth in California Government Code section 53069.4; or (2) seeking a petition of writ of mandate in accordance with Code of Civil Procedure Sections 1094.5 and 1094.6.

1.28.120 Collection of unpaid fines and costs.

A. To recover past due administrative citation fine(s) and recoverable costs:

1. The enforcement officer shall cause a copy of the citation(s) to be filed with the City's Administrative Services Department.
2. An invoice for the citation fine(s) and recoverable costs shall be mailed to the property owner and/or responsible party.
 - a. The invoice for property-related citations shall include notification that if not paid within thirty (30) calendar days of the date due, a lien and/or assessment on the property may be recorded.
 - b. The invoice for non-property related citations shall include notification that if not paid within thirty (30) calendar days of the date due, the account may be referred to a collection agency.
3. If the property owner and/or responsible party does not pay the non-property related citation fine and recoverable costs within thirty (30) calendar days from the date due, the account may be forwarded to a collection agency.
4. If the property owner and/or responsible party does not pay a property related citation fine and recoverable costs within thirty (30) calendar days from the date due, City Manager or designee may authorize that a lien on the property be recorded.
5. If the property related citation fine and recoverable costs remains unpaid forty-five (45) calendar days from the due date, the City Manager may submit the matter as a report to the City Council for a special assessment hearing. The report shall include, at a minimum, the names and addresses of the record owner of the property and all persons having any record interest in the property (including but not limited to, holders of

mortgages or deeds of trust), the date upon which the violation occurred, a description of the real property subject to the lien, and the total costs.

6. At least ten (10) calendar days prior to the hearing, the City Clerk shall give notice, by certified mail, of the hearing to all persons named in the report. The notice shall describe the property by assessor's parcel number and street number or some other description sufficient to enable identification of the property and contain a statement of the amount of the proposed assessment.
 7. At the time fixed for receiving and considering the report, the City Council shall hear the report and the objections of any of the owners liable to be assessed for the costs or any other persons who may have a legal interest in the property. The City Council may add to the proposed assessment an amount equal to the cost of conducting the assessment hearing. The City Council may also make such other modifications in the report as it deems necessary, after which, the Council may order the report confirmed. The order and modified report shall be filed with the City Clerk and shall be final and conclusive.
 8. The amounts and the costs mentioned in the report as confirmed shall constitute a special assessment against such property and are a lien on the property for the amount of the respective assessment. The assessment shall continue until it is paid, together with interest at the legal maximum rate computed from the date of confirmation of the statement until payment.
 9. The County Assessor shall enter each assessment on the county tax roll upon the parcel of land. The assessment shall 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 procedure and sale in case of delinquency as is 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 citation and recoverable costs relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer 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 citation and recoverable costs shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice.
- B. Notwithstanding any other provision of this chapter, the City Manager may, on behalf of the City, collect any citation fines and recoverable costs by use of all available legal means, including filing an action in a court of law or small

claims court, and the choice of one remedy does not affect the City's ability to use alternative remedies.

1.28.130 Service procedures.

Except as otherwise provided in this chapter, whenever an administrative citation is issued or a notice is required to be given under this chapter, it must be given as follows:

- A. Service on the responsible person or persons either by personal service, first class mail, or by certified mail, return receipt requested.
- B. When real property is involved in the violation, service on the responsible person and, if not the responsible person, on the property owner at the address as shown on the latest equalized county assessment roll. If personal service or service by mail on the property owner is unsuccessful, a copy of the citation must be conspicuously posted at the property which is the subject of the violation. The City may, in its discretion, also serve notice on a tenant, a mortgagor or any other person having an interest in the property by personal service, by first class mail, or by certified mail, return receipt requested.
- C. The failure of any person to receive, accept, or sign any notice shall not affect the validity of any proceedings taken under this chapter.
- D. Service of an administrative citation by mail is effective on the date of mailing.