



City of Huntington Beach Planning and Building Department
STAFF REPORT

TO: Planning Commission
FROM: Scott Hess, AICP, Director of Planning and Building
BY: Mike Fuentes, Senior Code Enforcement Officer *MF/HF*
DATE: July 27, 2010

SUBJECT: ZONING TEXT AMENDMENT NO. 09-004 (CONDITIONS OF APPROVAL CITATION AUTHORITY - CONTINUED FROM JULY 13, 2010 WITH PUBLIC HEARING OPEN)

APPLICANT: City of Huntington Beach, 2000 Main Street, Huntington Beach, CA 92648

LOCATION: Citywide

STATEMENT OF ISSUE:

- ◆ Zoning Text Amendment No. 09-004 request:
 - Amend the Huntington each Zoning and Subdivision Ordinance (HBZSO) to clarify the City’s authority to issue administrative (civil) citations for violations of conditions of approval associated with any permits.
- ◆ Staff’s Recommendation:
 - Approve Zoning Text Amendment No. 09-004 based upon the following:
 - Clarifies the City’s ability to enforce violations of conditions, requirements, and standards related to any permits.
 - Provides enforcement methods that can be issued for violations of any permits.
 - Clarifies the City’s ability to issue administrative (civil) citations to the violating party(s).

RECOMMENDATION:

Motion to:

“Approve Zoning Text Amendment No. 09-004 with findings for approval (Attachment No. 1) and forward Draft Ordinances (Attachment No.2) to the City Council for adoption.”

ALTERNATIVE ACTION(S):

The Planning Commission may take alternative actions such as:

- A. “Continue Zoning Text Amendment No. 09-004 and direct staff accordingly.”

B. "Deny Zoning Text Amendment No. 09-004 with findings for denial."

PROJECT PROPOSAL:

Zoning Text Amendment No. 09-004 represents a City initiated request to amend Chapters 241 (Conditional Use Permits, etc.) and 249 (Enforcement) of the Huntington Beach Zoning and Subdivision Ordinance pursuant to Chapter 247 (Amendments). Zoning Text Amendment No. 09-004 would clarify the City's authority to issue administrative (civil) citations for violations of conditions of approval associated with any permits. The following amendments are specifically proposed (a legislative draft is provided in Attachment No. 3):

1. Adding Section 241.13 (Violation of Conditions) (Attachment No.1);
2. Clarifying Section 249.02 (Permits, etc.) (Attachment No.2); and
3. Clarifying Section 249.08 (Enforcement Penalties).

ISSUES:

Subject Property And Surrounding Land Use, Zoning And General Plan Designations:

Zoning Text Amendment (ZTA) No. 09-004 is applicable citywide.

General Plan Conformance:

The proposed Zoning Text Amendment is consistent with the goals, policies, and objectives of the City's General Plan as follows:

Land Use Element

Goal LU 4: Achieve and maintain high quality architecture, landscape, and public open spaces in the City.

LU 4.1.3: Require property owners to maintain landscaping, remove and abate weeds, and replace unhealthy or dead landscape.

The proposed amendment will clarify the City's ability to enforce and issue administrative (civil) citations for violations of conditions of approval relating to any permits which helps maintain the quality of life in the city.

Zoning Compliance: Not Applicable.

Urban Design Guidelines Conformance: Not Applicable.

Environmental Status: The proposed ZTA is categorically exempt pursuant to City Council Resolution No. 4501, Class 20, which supplements the California Environmental Quality Act because it is a minor

zoning text amendment which does not change the development standards, intensity, or density of any zoning district.

Coastal Status: The proposed ZTA will be combined with other minor amendments that will be forwarded to the Coastal Commission as a minor Local Coastal Program amendment for certification.

Redevelopment Status: Not applicable.

Design Review Board: Not applicable.

Subdivision Committee: Not applicable.

Other Departments Concerns and Requirements:

The proposed amendments to the City's existing ordinance were prepared with the input from the City Attorney's Office. The amendments do not affect the operations or services of other city departments.

Public Notification:

Legal notice was published in the Huntington Beach/Fountain Valley Independent on July 1, 2010, and notices were sent to individuals/organizations requesting notification (Planning and Building Department's Notification Matrix). Because the item was continued from the July 13 to the July 27, 2010 meeting specifically no re-noticing is required. As of July 20, 2010 one resident has provided comments to staff regarding the proposed amendments. No other communications supporting or opposing the request have been received.

Application Processing Dates:

DATE OF COMPLETE APPLICATION:

May 4, 2009

MANDATORY PROCESSING DATE(S):

Legislative Action - Not Applicable

ANALYSIS:

The existing HBZSO is unclear regarding the City's ability to enforce entitlement conditions of approval and issue civil citations for non-compliance. The primary focus of the proposed ZTA is to clarify these matters in the HBZSO.

With the addition of Section 241.13 (Violations of Conditions) it is now clear in the HBZSO that all conditions, requirements and standards indicated as part of any approved permit has the same force and effect as the HBZSO. With the proposed revision to Section 249.02 (Permits, etc.) the HBZSO now specifies that all uses approved by any permit must remain in compliance with the HBZSO and all conditions, requirements or standards associated with the approvals granted. Revised Section 249.08 now specifies that available enforcement remedies apply to violations of all conditions, requirements and

standards related to any permits and identifies who may be cited for violations of the conditions of approval associated with any permit.

With adoption of the proposed zoning text amendment staff believes that the HBZSO now contains the proper provisions that give the City clear authority to enforce entitlement conditions of approval and issue civil citations when they are violated thereby helping to maintain quality of life in the city in conformance with the General Plan and good zoning practice.

ATTACHMENTS:

1. Suggested Findings for Approval – ZTA No. 09-004
2. Draft Ordinances - ZTA No. 09-004
3. Legislative Draft HBZSO Chapter 241 (Conditional Use Permits, etc.) and Chapter 249 (Enforcement) – ZTA No. 09-004
4. Code Enforcement Violation Matrix Dated July 15, 2010.

SH:HF:RR:MF:kd

ATTACHMENT NO. 1

SUGGESTED FINDINGS OF APPROVAL

ZONING TEXT AMENDMENT NO. 09-004

SUGGESTED FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Planning Commission finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to City Council Resolution No. 4501, Class 20, which supplements the California Environmental Quality Act because it is a minor zoning text amendment which does not change development standards, intensity, or density of any zoning district.

SUGGESTED FINDINGS FOR APPROVAL - ZONING TEXT AMENDMENT NO. 09-004:

1. Zoning Text Amendment No. 09-004 to amend Chapters 241 (Conditional Use Permits, etc.) and 249 (Enforcement) of the Huntington Beach Zoning and Subdivision Ordinance to clarify the City's authority to issue administrative (civil) citations for violations of conditions of approval associated with any permits is consistent with the objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan by helping maintain the quality of life in the city.
2. The zoning text amendment does not pertain to a general land use provision and therefore will not affect any authorized uses or zoning district standards. The zoning text amendment simply clarifies that conditions of approval associated with any permits have the same force as the HBZSO and clarifies the City's ability to issue administrative (civil) citations for violations of conditions of approval.
3. A community need is demonstrated for the change proposed. The zoning text amendment will help maintain the quality of life in the city and ensure the enforceability of conditions of approval associated with any permits.
4. Its adoption will be in conformity with public convenience, general welfare and good zoning practice by giving the City clear authority to enforce entitlement conditions of approval and issue civil citations to help maintain quality of life in the city.

DRAFT

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH
AMENDING CHAPTER 241 OF THE HUNTINGTON BEACH ZONING
AND SUBDIVISION ORDINANCE RELATING TO CONDITIONAL USE PERMITS
AND VARIANCES, TEMPORARY USE PERMITS, AND
WAIVER OF DEVELOPMENT STANDARDS

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Section 241.13 of the Huntington Beach Zoning and Subdivision Ordinance is hereby added to read as follows:

241.13 Violations of Conditions

All conditions, requirements and standards, indicated graphically or in writing as part of any approved discretionary permit shall have the same force and effect as if they were a provision of the Zoning Ordinance. Any use or development permitted or established as a result of an approved discretionary permit shall remain in compliance with all such conditions, requirements, or standards. Failure to comply with any condition, requirement, or standard shall be a violation of this Zoning Ordinance and all provisions of Chapter 249 shall be applicable.

SECTION 2. This ordinance shall become effective 30 days after its adoption.

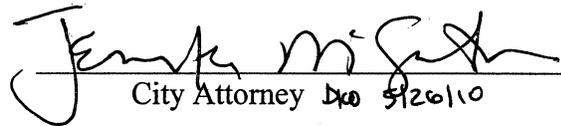
PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____, 2010.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

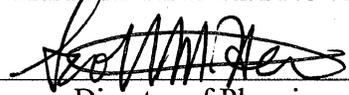


City Attorney Dec 5/2010

REVIEWED AND APPROVED:

City Administrator

INITIATED AND APPROVED:



Director of Planning and Building

ATTACHMENT NO. 2.1

DRAFT

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH
AMENDING CHAPTER 249 OF THE HUNTINGTON BEACH ZONING AND
SUBDIVISION ORDINANCE RELATING TO ENFORCEMENT OF THE CODE

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Section 249.02 of the Huntington Beach Zoning and Subdivision Ordinance is hereby amended to read as follows:

249.02 Permits, Licenses, Certificates, and Approvals

Any permit, license, certificate, or approval granted shall have the same force and effect as if it were a provision of the Zoning and Subdivision Ordinance (“ZSO”) and if in conflict with any provision of this code shall be void. All uses for which permits are issued or approvals granted shall remain in compliance with the ZSO. Failure to remain in compliance is grounds for permit revocation. The cost of issuing permits and of enforcing compliance with the requirements and conditions of zoning permits, conditional use permits, and other discretionary approvals may be recovered through charges or fees in connection with issuance of such permits, as established by resolution of the City Council.

SECTION 2. Section 249.08 of the Huntington Beach Zoning and Subdivision Ordinance is hereby amended to read as follows:

249.08 Enforcement Penalties

In addition to permit revocation, each violation and/or failure to comply with the ZSO and/or any permit, condition, requirement or standard imposed may be alternatively enforced as follows:

- A. Misdemeanor Infraction. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of the ZSO and/or conditions, requirements or standards attached to the permit(s) and/or approval(s) granted may be prosecuted for a misdemeanor or an infraction. Written citations may be issued by police officers or code enforcement officers.

All citations issued under this chapter shall be delivered to the City Attorney who shall have the discretion to file a misdemeanor or infraction complaint with the court as required by California Penal Code Section 853.6.

Any person convicted of a misdemeanor under the provisions of this chapter shall be punished by a fine not to exceed five hundred dollars (\$500.00) or imprisonment for a term not to exceed six (6) months, or both fine and

imprisonment. Any person convicted of an infraction shall be punished by a fine not to exceed five hundred dollars (\$500.00).

- B. Civil Action. The City Attorney at the request of the City Council may institute an action in any court of competent jurisdiction to restrain, enjoin or abate the condition(s) found to be in violation of the provisions of Titles 20-25 of this code, as provided by law.
- C. Payment of any fine or penalty shall not relieve a person from the responsibility of correcting the condition consisting of the violation.

Each method of enforcement described herein is not mutually exclusive and does not prevent concurrent or consecutive enforcement against multiple persons to achieve compliance for continuing violations. Each twenty-four (24) hour period any such violation exist constitutes a separate offense. For purposes of enforcement, "person" includes but is not limited to the following: a natural person or legal entity, and the owners, majority stockholders, corporate officers, trustees, and general partners of a legal entity. This Section may apply whether or not the person was the original applicant for the permit or approval, and whether or not the person is the owner, lessee, licensee, agent, or employee, if the person has notice of the terms and conditions of the permit, license, certificate or approval.

SECTION 3. This ordinance shall become effective 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____, 2010.

Mayor

ATTEST:

INITIATED AND APPROVED:

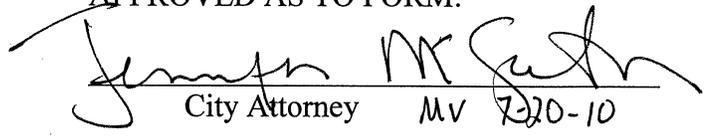
City Clerk

Director of Planning and Building

REVIEWED AND APPROVED:

APPROVED AS TO FORM:

City Administrator


City Attorney MV 720-10

DRAFT

**Chapter 241 Conditional Use Permits and Variances;
Temporary Use Permits; Waiver of Development Standards**

(3334-6/97, 3410-3/99, 3528B-2/02, 3712-6/05)

Sections:

- 241.02 Procedures Established
- 241.04 Authority of Planning Commission and Zoning Administrator
- 241.06 Initiation
- 241.08 Notice and Public Hearing
- 241.10 Required Findings
- 241.12 Conditions of Approval
- 241.13 Violations of Conditions**
- 241.14 Effective Date; Appeals
- 241.16 Time Limit; Transferability; Discontinuance; Revocation
- 241.18 Changed Plans; New Application
- 241.20 Temporary Use Permits
- 241.22 Waiver of Development Standards
- 241.24 Neighborhood Notification

241.02 Procedures Established

This chapter establishes procedures for approval, conditional approval, or disapproval of applications for conditional use permits, and variances, temporary use permits, and waivers of development standards, and neighborhood notification. (3712-6/05)

- A. Conditional use permits are required for use classifications typically having unusual site development features or operating characteristics requiring special consideration so that they may be designed, located, and operated compatibly with uses on adjoining properties and in the surrounding area.
- B. Variances may be granted to resolve practical difficulties or unnecessary physical hardships that may result from the size, shape, or dimensions of a site or the location of existing structures thereon; from geographic, topographic, or other physical conditions on the site or in the immediate vicinity; or from street locations or traffic conditions in the immediate vicinity of the site.

Variances may be granted with respect to fences, walls, landscaping, screening, site area, site dimensions, yards, height of structures, distances between structures, open space, off-street parking and off-street loading, and performance standards.

- C. Temporary use permits may be granted for temporary use classifications and for other uses of temporary nature.
- D. Waivers of certain development standards may be granted to improve project design, subject to limitations.
- E. Neighborhood Notification is a procedure that shall notify property owners and tenants within a 300 foot radius when no entitlement is required. (3712-6/05)

241.04 Authority of Planning Commission and Zoning Administrator

The Planning Commission or the Zoning Administrator, as the case may be, shall approve or conditionally approve applications for conditional use permits or variances upon finding that the proposed conditional use permit or variance is consistent with the General Plan, and all applicable requirements of the Municipal Code, consistent with the requirements of Section 241.10. The Planning Commission shall act on all variances except the Zoning Administrator may act on variances not exceeding twenty percent deviation from site coverage, separation between buildings, height, setback, parking, and landscape requirements. (3334-6/97, 3410-3/99, 3712-6/05)

241.06 Initiation

Applications for conditional use permits and variances shall be initiated by submitting an application and necessary accompanying data as prescribed by the Director and the required fee.

241.08 Notice and Public Hearing

- A. Public Hearing and Notice Required. The Planning Commission or Zoning Administrator shall hold a duly-noticed public hearing on an application for a conditional use permit or variance consistent with the requirements of Chapter 248.
- B. Multiple Applications. When applications for multiple conditional use permits or variances on a single site are filed at the same time, the Director may schedule a combined public hearing.

241.10 Required Findings

An application for a conditional use permit or variance may be approved or conditionally approved if, on the basis of the application, plans, materials, and testimony submitted, the Planning Commission or Zoning Administrator finds that:

- A. For All Conditional Use Permits.
 - 1. The establishment, maintenance and operation of the use will not be detrimental to the general welfare of persons working or residing in the vicinity nor detrimental to the value of the property and improvements in the neighborhood;
 - 2. The granting of the conditional use permit will not adversely affect the General Plan;
 - 3. The proposed use will comply with the provisions of the base district and other applicable provisions in Titles 20-25 and any specific condition required for the proposed use in the district in which it would be located.

B. For Variances.

1. The granting of a variance will not constitute a grant of special privilege inconsistent with limitations upon other properties in the vicinity and under an identical zone classification.
2. Because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification.
3. The granting of a variance is necessary to preserve the enjoyment of one or more substantial property rights.
4. The granting of the variance will not be materially detrimental to the public welfare or injurious to property in the same zone classification and is consistent with the General Plan.

C. Mandatory Denial. Failure to make all the required findings under (A) or (B) shall require denial of the application.

241.12 Conditions of Approval

In approving a conditional use permit or variance, conditions may be imposed as necessary to:

- A. To make it consistent with the General Plan;
- B. Protect the public health, safety, and general welfare; or
- C. Ensure operation and maintenance of the use in a manner compatible with existing and potential uses on adjoining properties or in the surrounding area.

241.13 Violations of Conditions

All conditions, requirements and standards, indicated graphically or in writing as part of any approved discretionary permit shall have the same force and effect as if they were a provision of the Zoning Ordinance.

Any use or development permitted or established as a result of an approved discretionary permit shall remain in compliance with all such conditions, requirements, or standards. Failure to comply with any condition, requirement, or standard shall be a violation of this Zoning Ordinance and all provisions of Chapter 249 shall be applicable.

241.14 Effective Date; Appeals

A conditional use permit or variance shall become effective ten days after action by the Planning Commission or Zoning Administrator, unless appealed in accord with Chapter 248.

241.16 Time Limit; Transferability, Discontinuance; Revocation

- A. Time Limit. A conditional use permit or variance shall become null and void one year after its date of approval or at an alternative time specified as a condition of approval after its date of approval unless:
 - 1. Construction has commenced or a Certificate of Occupancy has been issued, whichever comes first; or
 - 2. The use is established; or
 - 3. The conditional use permit or variance is extended.
- B. Transferability. The validity of a conditional use permit shall not be affected by changes in ownership or proprietorship provided that the new owner or proprietor applies to the Director for a transfer. No notice or public hearing on a transfer shall be required.
- C. Discontinuance. A conditional use permit shall lapse if the exercise of rights granted by it is discontinued for 12 consecutive months.
- D. Revocation. A conditional use permit that is exercised in violation of a condition of approval or a provision of this ordinance may be revoked, as provided in Section 249.06.
- E. Extension of Time. A conditional use permit or variance may be extended by the Director for a one year period without notice or public hearing, if the findings required by Section 241.10 remain valid.

241.18 Changed Plans; New Application

- A. Changed Plans. A request for changes in conditions of approval of a conditional use permit or variance, or a change to development plans that would affect a condition of approval shall be treated as a new application. A request for changes to plans which will not affect a condition of approval may be approved by the Director if the change is not substantial, use of property remains the same, the revision results in an improved development, and the density remains the same. Notice of the Director's approval shall be posted and distributed to the Planning Commission and the City Council within 48 hours of such decision.
- B. New Application. If an application for a conditional use permit or variance is disapproved, no new application for the same, or substantially the same, conditional use permit or variance shall be filed within one year of the date of denial of the initial application, unless the denial is made without prejudice.

241.20 Temporary Use Permits

A temporary use permit authorizing certain temporary use classifications, as defined in Chapter 204 and as listed in the land-use controls for the base districts in which the use will be located, and use of manufactured homes for temporary construction offices, shall be subject to the following provisions:

- A. Application and Fee. A completed application form and the required fee shall be submitted to the Director. The Director may request any other plans and materials necessary to assess the potential impacts of the proposed temporary use.
- B. Director. The Director shall act on temporary uses held for four or fewer consecutive days that do not include live entertainment. The Director shall approve, approve with conditions, or deny a complete application within a reasonable time. No notice or public hearing shall be required for uses which are held for 4 or fewer consecutive days. Such uses shall be approved with a temporary activity permit. (3528B-2/02, 3712-6/05)
- C. Duties of the Zoning Administrator. The Zoning Administrator shall act on temporary uses held for more than four days or that include live entertainment. The Zoning Administrator shall approve, approve with conditions, or deny a complete application within a reasonable time. (3528B-2/02, 3712-6/05)
- D. Required Findings. The application shall be approved as submitted, or in modified form, if the Director or Zoning Administrator finds: (3528B-2/02)
1. That the proposed temporary use will be located, operated and maintained in a manner consistent with the policies of the General Plan, and if located within the coastal zone, consistent with the policies of the Local Coastal Program, and the provisions of this chapter; and (3334-6/97)
 2. That approval of the application will not be detrimental to property or improvements in the surrounding area or to the public health, safety or general welfare.
- E. Conditions of Approval. In approving a temporary use permit, the Director or the Zoning Administrator may impose reasonable conditions necessary to: (3528B-2/02)
1. To be consistent with the General Plan and in the coastal zone to be consistent with the Local Coastal Program; (3334-6/97)
 2. Protect the public health, safety, and general welfare; or
 3. Ensure operation and maintenance of the temporary use in a manner compatible with existing uses on adjoining properties and in the surrounding area.
- F. Bond for Temporary Uses. A \$500 cash bond shall be required to guarantee removal of any structure, clean up of site upon termination of the temporary use, and to guarantee maintenance of the property. A \$1,000 cash bond shall be required for a subdivision sales office and each model home to guarantee compliance with all provisions of Titles 17 and 20 through 25. (3528B-2/02)
- G. Effective Date; Duration; Appeals. An approved temporary (conditional) use permit shall be effective 10 days after the date of its approval, unless appealed in accord with Chapter 248. The permit shall be valid for a specified time period not to exceed 30 days unless a longer period is granted by the Zoning Administrator. A temporary use permit shall lapse if not used within the dates approved and may be revoked by the Zoning Administrator effective immediately upon verbal or written notice for violation of the terms of the permit. Verbal notice shall be confirmed by written notice mailed to the

permit holder within 48 hours. The Zoning Administrator may approve changes in a temporary use permit. (3528B-2/02)

241.22 Waiver of Development Standards

- A. Standards Which Can be Waived. The Director may waive development standards for setbacks, open space, separation between buildings, height of buildings or fences, site coverage and landscaping without a conditional use permit or a variance, only if he finds that such a waiver improves project design and does not exceed 10 percent deviation. No other standards shall be subject to this waiver provision. (3528B-2/02)
- B. Time Limit. A waiver shall become null and void six months after date of approval.
- C. Extensions. A waiver shall not be extended for more than one year unless the applicant demonstrates that no circumstances relevant to the approval of the waiver, including other development in the neighborhood, have changed from the time of approval.
- D. Limitations. A waiver may not be granted if the waiver would in any way degrade the environment or result in any changes to classification of land use or density. Also, projects not otherwise subject to discretionary review (i.e., conditional use permit, variance, coastal development permit, or subdivision approval) may not apply for waiver. (3712-6/05)
- E. Decisions and Appeals. The Director's decision may be appealed in accord with Chapter 248. The Director's decision shall be distributed to the City Council, Planning Commission, and Zoning Administrator within 48 hours of such decision.

241.24 Neighborhood Notification

When no entitlement is required and the use requires such notification as stated in the Zoning and Subdivision Ordinance or Downtown Specific Plan, the review and approval process shall include an Administrative Permit and notification to property owners and tenants within a 300 foot radius of the subject property. (3712-6/05)

Notification requirements are as follows: (3712-6/05)

- A. Notification. Ten (10) working days prior to submittal for a building permit or certificate of occupancy or approval for initial establishment of the use, the applicant shall notice property owners and tenants by first class mail. (3712-6/05)
- B. Notice of Application shall include the following: (3712-6/05)
 - 1. Name of Applicant. (3712-6/05)
 - 2. Location of planned development or use, including address. (map is optional) (3712-6/05)
 - 3. Complete description of the proposed development or use such that there is full disclosure in the notice. (3712-6/05)
 - 4. Planning Department phone number and address of City Hall where plans may be reviewed. (3712-6/05)
 - 5. The date by which any comments must be received in writing by the Planning Department and City appeal procedures. (3712-6/05)

6. Planning Department shall receive entire list including name and address of those receiving the mailing. (3712-6/05)
- C. Notice of Action. The Director's decision shall be made in writing with information regarding the appeal process and sent to the applicant and the City Council on the next business day and posted on the City's website. (3712-6/05)
- D. Appeals. The Director's decision may be appealed in accord with Chapter 248. (3712-6/05)

ATTACHMENT NO. 3.7

ORDINANCE NO. _____

LEGISLATIVE DRAFT

DRAFT

Chapter 249 Enforcement

Sections:

- 249.02 Permits, Licenses, Certificates, and Approvals
- 249.04 Enforcement Responsibilities
- 249.06 Revocation of Discretionary Permits
- 249.08 Enforcement Penalties
- 249.10 Abatement Procedure
- 249.12 Lien Procedure

249.02 Permits, Licenses, Certificates, and Approvals

Any permit, license, certificate, or approval granted shall have the same force and effect as if it were a provision of the Zoning and Subdivision Ordinance (“ZSO”) and if in conflict with any provision of this code shall be void. All uses for which permits are issued or approvals granted shall remain in compliance with the ordinance code ZSO and evidence of ~~failure~~ Failure to remain in compliance shall be deemed is grounds for permit revocation. The cost of issuing permits and of enforcing compliance with the requirements and conditions of zoning permits, conditional use permits, and other discretionary approvals may be recovered through charges or fees in connection with issuance of such permits, as established by resolution of the City Council.

249.04 Enforcement Responsibilities

The Director shall enforce all provisions of this ordinance code and shall have responsibility for revocation of discretionary permits, as provided in Section 249.06.

249.06 Revocation of Discretionary Permits

- A. Duties of Director. Upon determination by the Director that there are reasonable grounds for revocation of conditional use permits, variance, development plan approval, or other discretionary approval authorized by this code, a revocation hearing shall be set before the original hearing body.
- B. Notice and Public Hearing. Notice shall be given in the same manner required for a public hearing to consider approval. If no notice is required for the permit, none shall be required for the revocation hearing.
- C. Hearing. The Planning Commission or Zoning Administrator shall hear testimony of City staff and the owner of the use or structure for which the permit was granted, if present. At a public hearing, the testimony of any other

interested person shall also be heard. A public hearing may be continued to a specific date, time, and place without additional public notice.

- D. Required Findings. The Planning Commission or Zoning Administrator shall revoke the permit upon making one or more of the following findings:
 1. That the permit was issued on the basis of erroneous or misleading information or misrepresentation;
 2. That the terms or conditions of approval of the permit have been violated or that other laws or provisions have been violated;
 3. That there has been a discontinuance of the exercise of the entitlement granted by the permit for twelve consecutive months.

- E. Decision and Notice. Within ten days of the conclusion of the hearing, the Planning Commission or Zoning Administrator shall render a decision and the Director shall mail notice of the decision to the owner of the use or structure for which the permit was issued and to any other person who has filed a written request for such notice.

- F. Effective Date; Appeals. A decision to revoke a discretionary permit shall become final ten days after the date of the decision, unless appealed.

- G. Rights Cumulative. The City's right to revoke a discretionary permit, as provided in this section, shall be cumulative to any other remedy allowed by law.

249.08 Enforcement Penalties

~~In addition to permit revocation, Each each violation and/or failure to comply with of the zoning and subdivision ordinances the ZSO and/or any permit, condition, requirement or standard imposed may be alternatively enforced as follows:- Each method set forth herein is not intended to be mutually exclusive and does not prevent concurrent or consecutive methods being used to achieve compliance against continuing violations. Each and every twenty-four (24) hour period any such violations exist constitutes a separate offense.~~

- A. Misdemeanor Infraction. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of Titles 20-25 of this code ~~or the ZSO and/or conditions, requirements or standards attached to the permit(s) and/or approval(s) granted~~ may be prosecuted for a misdemeanor or an infraction. Written citations ~~for misdemeanors~~ may be issued by police officers or code enforcement officers.

All citations issued under this chapter shall be delivered to the City Attorney who shall have the prosecutory discretion as to the filing file of a misdemeanor or infraction complaint with the court as required by California Penal Code Section 853.6.

Any person convicted of a misdemeanor under the provisions of this chapter shall be punished by a fine not to exceed five hundred dollars (\$500.00) or imprisonment for a term not to exceed six (6) months, or both fine and

imprisonment. Any person convicted of an infraction shall be punished by a fine not to exceed five hundred dollars (\$500.00).

- B. Civil Action. The City Attorney at the request of the City Council may institute an action in any court of competent jurisdiction to restrain, enjoin or abate the condition(s) found to be in violation of the provisions of Titles 20-25 of this code, as provided by law.
- C. Payment of any fine or penalty shall not relieve a person, ~~firm, or corporation~~ from the responsibility of correcting the condition consisting of the violation.

Each method of enforcement described herein is not mutually exclusive and does not prevent concurrent or consecutive enforcement against multiple persons to achieve compliance for continuing violations. Each twenty-four (24) hour period any such violation exist constitutes a separate offense. For purposes of enforcement, "person" includes but is not limited to the following: a natural person or legal entity, and the owners, majority stockholders, corporate officers, trustees, and general partners of a legal entity. This Section may apply whether or not the person was the original applicant for the permit or approval, and whether or not the person is the owner, lessee, licensee, agent, or employee, if the person has notice of the terms and conditions of the permit, license, certificate or approval.

249.10 Abatement Procedure

- A. Notification of Violations. Whenever the Director determines that any property within the City is being maintained contrary to the provisions of this ordinance code, the Director shall give written notice ("Notice to Abate") to the owner, sent by certified mail to his last known address, stating the section(s) or standards being violated. Such notice shall set forth a reasonable time limit, in no event less than seven days, for correcting the violation(s).
- B. Administrative Hearing to Correct Violations. In the event said owner shall fail, neglect or refuse to comply with the "Notice to Abate," the Director shall require the Zoning Administrator to conduct an administrative hearing to ascertain whether abatement should be required.
- C. Notice of Hearing. Notice of said hearing shall be mailed to the owner not less than ten days before the time fixed for hearing. Failure of any person to receive notice shall not affect the validity of the abatement proceedings hereunder.
- D. Administrative Hearing. At the time stated in the notice, the Zoning Administrator shall hear and consider all relevant evidence, objections or protests and shall receive testimony relative to such alleged zoning violation and to the proposed eviction or relocation of an illegal use or the rehabilitation, repair, removal or demolition of an illegal structures. Said hearing may be continued from time to time. If the Zoning Administrator finds that a zoning violation does exist and there is sufficient cause to evict or relocate an illegal use or rehabilitate, demolish, remove or repair an illegal structure, the Zoning Administrator shall prepare findings and an order specifying the nature of the violation, the method(s) of abatement and the time within which the work shall be commenced and completed. The order shall include reference to the right of

appeal set forth in subsection (F) below. A copy of the findings and order shall be mailed to the property owner by certified mail. In addition, a copy of the findings and order shall be forthwith conspicuously posted on the property.

- E. Procedure, No Appeal. In the absence of any appeal, the illegal use shall be discontinued or property shall be rehabilitated, repaired, removed, or demolished in the manner and means specifically set forth in the order of abatement. In the event the owner fails to abate the violation as ordered, the Zoning Administrator shall cause the same to be abated by city employees or private contract. The costs shall be billed to the owner. The Zoning Administrator is expressly authorized to enter upon said property for such procedure.
- F. Appeal Procedure, Hearing by City Council. The owner may appeal the Zoning Administrator's findings and order to the City Council by filing an appeal with the City Clerk within seven days of the date of the Zoning Administrator's decision. The appeal shall contain:

1. A specific identification of the subject property;
2. The names and addresses of the appellants;
3. A statement of appellant's legal interest in the subject property;
4. A statement in ordinary and concise language of the specific order or action protested and the grounds for appeal, together with all material facts in support thereof;
5. The date and signature of all appellants; and
6. The verification of at least one appellant as to the truth of the matters stated in the appeal.

As soon as practicable after receiving the appeal, the City Clerk shall set a date for the Council to hear the appeal, which date shall be not less than seven days nor more than 30 days from the date the appeal was filed. The City Clerk shall mail each appellant written notice of the time and the place of the hearing at least five days prior to the date of the hearing. Continuances of the hearing may be granted by the Council on request of the owner for good cause shown, or on the Council's own motion.

- G. Decision by Council. Upon the conclusion of the hearing, the Council shall determine whether any use or structure on the property or any part thereof, as maintained, constitutes a zoning violation. If the Council so finds, the Council shall adopt a resolution declaring such a violation, setting forth its findings and ordering the abatement of the same by having the illegal use evicted or relocated or the illegal structure rehabilitated, repaired, removed, or demolished in the manner and means specifically set forth in the resolution. The resolution shall set forth the time within which such work shall be completed by the owner, in no event less than 30 days. The decision and order of the Council shall be final.
- H. Notice of Order to Abate. A copy of the resolution of the Council ordering the abatement of such violation shall be sent by certified mail to the property

owner(s). Upon abatement in full by the owner, the proceedings hereunder shall terminate.

- I. Abatement by City. If such nuisance is not abated as ordered within the prescribed abatement period, the Director shall cause the same to be abated by City employees or private contract. The Director is expressly authorized to enter upon said property for such purposes. The cost, including incidental expenses, of abating the violation shall be billed to the owner and shall become due and payable 30 days thereafter. The term "incidental expenses" shall include, but not be limited to, personnel costs, both direct and indirect; costs incurred in documenting the violation; the actual expenses and costs of the City in the preparation of notices, specifications and contracts, and in inspecting the work; and the costs of printing and mailing required hereunder.
- J. Limitation of Filing Judicial Action. Any action appealing the Council's decision and order shall be commenced within 30 days of the date of mailing the decision.
- K. Demolition. No illegal structure shall be found to be a zoning violation and ordered demolished unless the order is based on competent sworn testimony and it is found that in fairness and in justice there is no way other than demolition reasonable to correct such violation.
- L. Recorded Notice of Intent to Demolish Required. A copy of any order or resolution requiring abatement by demolition shall be recorded with the County Recorder.

249.12 Lien Procedure

- A. Record of Cost of Abatement. The Director shall keep an account of the cost, including incidental expenses, of abating zoning violation on each separate lot or parcel of land where the work is done by the City and shall render an itemized report in writing to the City Council showing the cost of abatement, including the cost of eviction or relocation of illegal uses or rehabilitation, demolition, or repair of illegal structures, including any salvage value relating thereto; provided that before said report is submitted to the City Council, a copy of the same shall be posted for at least five days upon the lot or parcel where the violation occurs, together with a notice of the time when said report shall be heard by the City Council for confirmation. A copy of said report and notice shall be served upon the property owner(s) at least five days prior to submitting it to the City Council. Proof of posting and service shall be made by affidavit filed with the City Clerk.
- B. Assessment Lien. The total cost for abating a zoning violation, as so confirmed by the City Council, shall constitute a special assessment against the respective lot or parcel of land to which it relates, and upon recordation in the Office of the County Recorder of a Notice of Lien, as so made and confirmed, shall constitute a lien on said property for the amount of such assessment.

After such confirmation and recordation, a certified copy of the Council's decision shall be filed with the County Auditor-Controller on or before August 1 of each year, whereupon it shall be the duty of said Auditor-Controller to add the amounts of the respective assessments to the next regular tax bills levied

against said respective lots and parcels of land for municipal purposes and thereafter said amount 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 the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to such special assessment.

In the alternative, after recordation, such lien may be foreclosed by judicial or other sale in the manner and means provided by law.

CODE ENFORCEMENT VIOLATION MATRIX
(July 15, 2010)

<u>Level</u>	<u>Description</u>
<u>NOTICE OF VIOLATION</u>	<ul style="list-style-type: none"> • Initial Contact after Violation Confirmed. • Issued to Violating Party(s). • Standard Compliance Window 1-30 Days.
<u>FINAL NOTICE OF VIOLATION</u>	<ul style="list-style-type: none"> • Failure to Comply with initial Notice of Violation. • Compliance Window Reduced (CEO's Discretion) • Violating Party Assessed \$135.00 Re-Inspection Fee.
<u>LEVEL 1 ADMINISTRATIVE (CIVIL) CITATION</u>	<ul style="list-style-type: none"> • Failure to Comply with Final Notice of Violation. • Violating Party(s) Assessed \$250.00 Fine per Violation. • 30 Day Compliance Window to allow Violating Party(s) to Appeal Citation.
<u>LEVEL 2 ADMINISTRATIVE (CIVIL) CITATION</u>	<ul style="list-style-type: none"> • Failure to Comply with Level 1 Citation. • Violating Party(s) Assessed \$500.00 Fine per Violation. • Compliance Window Reduced Based on Violation Type.
<u>LEVEL 3 ADMINISTRATIVE (CIVIL) CITATION</u>	<ul style="list-style-type: none"> • Failure to Comply with Level 2 Citation. • Violating Party(s) Assessed \$1,000.00 Fine per Violation. • Level 3 Citation can be issued Daily. • Compliance Window Reduced to One Day.
<u>CRIMINAL/CIVIL PROSECUTION</u>	<ul style="list-style-type: none"> • Failure to Comply with Level 3 Citation(s). • Policy is to issue 3 Level 3 Citations. • Case File Forwarded to City Attorney's Office