

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRENTWOOD AMENDING PROVISIONS OF THE BRENTWOOD MUNICIPAL CODE TO UPDATE OUTDATED CHAPTER AND SECTION NUMBERING REFERENCES; REVISE SECTION 1.12.010 (HEARING OFFICER); AND REVISE, IN ITS ENTIRETY, CHAPTER 1.24 (ADMINISTRATIVE CITATIONS); AND MAKING FINDINGS THAT THESE ACTIONS ARE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT BASED ON SECTIONS 15061 AND 15358 OF THE ACT'S GUIDELINES

WHEREAS, pursuant to the California Constitution, article XI, section 7 and under the City's general police powers, the City of Brentwood is empowered and charged with responsibility for the health, safety, and welfare of its citizens; and

WHEREAS, the City has a substantial interest in continually updating provisions of its Municipal Code, particularly those relating to the Code's enforcement; and

WHEREAS, with recent revisions to the method of administrative citation processing and appeal hearings, it is necessary and best practice to update specified chapters of the Brentwood Municipal Code; and

WHEREAS, in the course of updating the subject chapters of the Brentwood Municipal Code, it was determined that updates were required to outdated chapter and section references; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

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

SECTION 1. Incorporation of Recitals. The recitals above are each incorporated by reference and adopted as findings by the City Council.

SECTION 2. Chapter 1.08 to Chapter 1.24. References to "Chapter 1.08" in the following sections of the Brentwood Municipal Code will be amended, in their entirety, to "Chapter 1.24" (Administrative Citations):

- 7.07.020 Penalties
- 8.36.070 Enforcement
- 15.52.180 Fines and Penalties

SECTION 3. Chapter 1.08 or Section 1.08.010 to Section 1.16.010. References to "Chapter 1.08" or to "Section 1.08.010" in the following sections of the Brentwood Municipal Code will be amended, in their entirety, to "Section 1.16.010" (Code Enforcement General):

- 5.04.200 Enforcement
- 5.48.100 Violations and penalty
- 5.60.230 Violations
- 8.00.040 Notices of public nuisance and order to abate
- 8.16.600 Enforcement
- 9.32.100 Enforcement
- 13.04.1030 Administrative complaint
- 13.04.1050 Costs

- 14.01.1015 Violations other than for nonpayment of water service charges

SECTION 4. Chapter 1.08 to Section 1.16.060. References to “Chapter 1.08” in the following section of the Brentwood Municipal Code will be amended, in their entirety, to “Section 1.16.060” (Enforcement Authority):

- 8.44.020 Definitions

SECTION 5. Chapter 1.08 to Section 1.16.060. References to “Chapter 1.08” in the following section of the Brentwood Municipal Code will be amended, in their entirety, to “Section 1.20.010” (Criminal Penalties):

- 13.04.1040 Criminal Action

SECTION 6. Chapter 1.12 to Chapter 1.24. References to “Chapter 1.12” in the following sections of the Brentwood Municipal Code will be amended, in their entirety, to “Chapter 1.24” (Administrative Citations):

- 1.16.050 Notice of pending action
- 5.48.100 Violations and penalty
- 13.04.1000 Enforcement mechanisms
- 13.04.1030 Administrative complaint

SECTION 7. 1.12.010 Hearing officer. Section 1.12.010 (Hearing Officer) of the Brentwood Municipal Code will be amended in its entirety to read as follows:

“1.12.010 Hearing officer.

Whenever this code authorizes an appeal to the city manager, or otherwise requires a hearing officer, the city manager may designate the hearing officer. The designated hearing officer must be an impartial person, such as: (1) a city employee from a department which has no involvement in the matter being considered; ~~or~~ (2) someone selected randomly from a panel of hearing officers assembled by the city attorney’s office; ~~or~~ (3) someone hired from an organization which provides hearing officers, in which ~~case,~~ for appeals not pertaining to section 1.16.050, chapter 1.24, or chapter 8.00, the cost will be shared equally by the city and the person cited.

The employment, performance evaluation, compensation and benefits of the hearing officer ~~shall~~will not be directly or indirectly conditioned upon or affected by the hearing officer’s decision.”

SECTION 8. Chapter 1.24 (Administrative Citations). Chapter 1.24 (Administrative Citations) of the Brentwood Municipal Code will be amended in its entirety to read as detailed in the quoted section of Exhibit “A” to this Ordinance.

SECTION 9. California Environmental Quality Act (CEQA) Exempt. The City Council finds that this ordinance is not subject to CEQA pursuant to Section 15358 (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Further, the City Council finds that this ordinance is exempt under CEQA pursuant to Section 15061(b)(3) (there exists no possibility that the activity will have a significant adverse effect on the environment) of the CEQA Guidelines because this ordinance will not cause a change in any of the physical conditions within the area affected by the ordinance.

SECTION 10. Entry into Municipal Code. The City Clerk is requested to cause the updating of those Municipal Code sections referenced in Sections 2 through 6 above, and to cause a clean copy of the quoted text in Sections 7 and 8 above to be entered in the Municipal Code.

SECTION 11. Publication. This ordinance will be published in accordance with Government Code Section 36933 by either posting or publishing the ordinance in accordance with that law.

SECTION 12. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, the holding will not affect the validity or enforceability of the remaining provisions, and the City Council declares that it would have adopted each provision of this ordinance irrespective of the validity of any other provision.

SECTION 13. Effective Date. This ordinance will take effect and be in force 30 days following its adoption.

THIS FOREGOING ORDINANCE was introduced with the first reading waived at a regular meeting of the Brentwood City Council on the ____ of _____, 2023, by the following vote:

Exhibit A

“Chapter 1.24 Administrative Citations

Sections:

1.24.010	Applicability
1.24.020	Administrative citation
1.24.030	Amount of fines
1.24.040	Payment of the fine
1.24.050	Hearing request
1.24.060	Advance deposit hardship waiver
1.24.070	Hearing officer
1.24.080	Hearing procedure
1.24.090	Hearing officer's decision
1.24.100	Recoverable costs
1.24.110	Recovery of administrative citation fine(s) and cost(s)
1.24.120	Notices
1.24.130	Cost of administrative citation a personal obligation

1.24.010 Applicability.

A. This chapter provides for administrative citations, which are in addition to all other legal remedies, ~~criminal or civil~~, which may be pursued by the city to address any violation of this code.

B. Use of this chapter ~~shall~~will be at the sole discretion of the city.

1.24.020 Administrative citation.

Whenever an enforcement officer charged with the enforcement of any provision of this code determines that a violation of that provision has occurred, the enforcement officer ~~shall~~will have the authority to issue an administrative citation to any person responsible for the violation. An administrative citation ~~shall~~may not be issued unless all of the following have occurred:

A. Prior written notice has been provided by the enforcement officer by: (1) personal service; or (2) by first class mail and posting a copy on the subject property; or by first class mail and certified mail. Such notice ~~shall~~will state the violation of this code, the violation location, the person(s) responsible, an order to correct or otherwise remedy the violation by a date no less than three business days from the date of the notice, and a warning that failure to timely comply with the order will result in the issuance of an administrative citation.

B. A report has been prepared by the enforcement officer detailing the instance or instances of the violation(s) of this code, including such information as photographic evidence, a chronological account of inspections made, identification of conditions noted, and witness statements, if any, all of which support the issuance of an administrative citation.

C. Notwithstanding subsections A and B of this section, an enforcement officer ~~shall~~will have the authority to issue an administrative citation to any person responsible for a violation without providing the prior written notice required in subsection A or preparing the report required in subsection B when:

1. The violation requires immediate correction, due to an immediate danger to public health or safety; or
2. The person responsible for the violation has been given prior oral or written warning or a citation for a violation of the same section of the Brentwood Municipal Code within one year of the date of the new violation: or
3. The violation is a transient, non-ongoing violation where a prior written warning is not possible or practicable.-

In instances where an enforcement officer uses the authority provided in this subsection, the officer should prepare a report pursuant to subsection B within three business days of issuing an administrative citation.

D. Each administrative citation ~~shall~~must contain the following information:

1. The date of the violation(s);
2. The address or a definite description of the location where the violation(s) occurred;
3. The section of this code violated and a description of the violation(s);
4. The amount of the fine for ~~the code~~each violation;
5. A description of the fine payment process, including a description of the time within which and the place to which the fine ~~shall~~will be paid;
6. An order prohibiting the continuation or repeated occurrence of the code violation(s) -described in the administrative citation;
7. A description of the administrative citation review process, including the requirement ~~that of~~ a written notice of appeal form be submitted.- stating, among other things, the grounds upon which the administrative citation was alleged to have been issued in error; the time within which the administrative citation may be appealed; and the ~~name and~~ email, web, or physical address to where the such an appeal form may be delivered ~~of the city clerk to whom shall be delivered any such appeal;~~
8. ~~A statement that judicial review of decisions upon an appeal hearing on the citation, must occur within the twenty-day timeframe set forth in Government Code Section 53069.4(b); and~~

~~98.~~ The name and signature of the citing enforcement officer.

E. Administrative citations may include multiple violations, with each violation constituting a separate offense with separate fine amounts.

F. An administrative citation must substantially comply with the content requirements in subsection D of this section, the purpose of which is to provide fair notice of a violation, with the goal of securing code compliance. The City's failure to comply strictly with these requirements is not a basis to overturn an administrative citation.

1.24.030 Amount of fines.

A. The amounts of the fines for code violations imposed pursuant to this chapter ~~shall~~may be set forth in the schedule of fines established by resolution of the city council, which may be amended from time to time.

B. The schedule of fines may specify any increased fines for repeat violations of the same code provision by the same person within a specified ~~monthly~~ period from the date of an administrative citation.

C. The schedule of fines ~~shall~~may specify the amount of any late payment charges imposed for the payment of a fine after its due date.

1.24.040 Payment of the fine.

A. The fine ~~shall~~must be paid to the city within thirty days from the date of the administrative citation.

B. Any administrative citation fine paid pursuant to subsection A, ~~shall~~will be refunded in accordance with Section 1.24.090(D) if it is determined, after a hearing, that the person charged in the administrative citation was not responsible for the violation~~(s)~~ or that there was no violation~~(s)~~ as charged in the administrative citation.

C. Payment of a fine under this chapter ~~shall~~does not excuse or discharge any continuation or repeated occurrence of the code violation that is the subject of the administrative citation.

1.24.050 Hearing request.

A. Enforcement Officer Hearing Request.

1. Within thirty days of issuance of an administrative citation, an enforcement officer, with the concurrence of his or her department director, may request a review by ~~the a~~ hearing officer, if the officer believes the administrative citation, or a portion thereof, was issued in error.

2. After considering information provided by the enforcement officer, the hearing officer will determine if the administrative citation, or a portion thereof, should be voided.

3. The decision of the hearing officer is final.

B. Recipient of Administrative Citation Hearing Request.

1. By completing and submitting a city appeal form, Anya recipient of an administrative citation may contest that there was a violation of the code or that ~~he or she is~~they are the responsible party, ~~by submitting a written letter requesting an appeal hearing and stating the specific grounds for the appeal. The appeal form may be obtained from the web or email address on the administrative citation, or from the city clerk. Within seven days from the date of the administrative citation, T~~ the letter appeal form shall will be delivered either sent electronically to the city clerk web or email address provided on the citation appeal form, or a hard copy delivered to the city clerk at the address on the appeal form. -within seven days from the date of the administrative citation, The submitted appeal form will include together with an advance deposit of the fine or a request and supporting documentation for an advance deposit hardship waiver pursuant to Section 1.24.060. In the case of multiple violations listed on a single administrative citation, the recipient may contest any or all of the violations. A failure to file a timely

request for hearing is a waiver of the right to appeal the administrative citation and to seek judicial review.

2. The person requesting the hearing ~~shall~~will be notified of the time and place set for the hearing at least seven days prior to the date of the hearing. A hearing before the hearing officer must be set for a date that is not less than 15 and not more than 60 days from the date a proper and timely appeal is filed. An appellant may request one continuance of no more than 30 days. Further continuances may be granted at the discretion of the hearing officer and only for good cause.

3. Reports of the enforcement officer concerning the administrative citation, if intended to be submitted to the hearing officer for consideration at the hearing, ~~shall~~will be copied and served, pursuant to section 1.24.020, on the person requesting the hearing at least seven days before the date of the hearing.

1.24.060 Advance deposit hardship waiver.

A. Any person who intends to request a hearing to contest that there was a violation of the code or that ~~they are~~he or she is the responsible party, and who is financially unable to make the advance deposit of the fine as required in Section 1.24.050(B), may request an advance deposit hardship waiver within seven days from the date of the administrative citation.

B. The request ~~shall~~will be sent to the web, email, or physical address provided on the administrative citation and processed by the department of finance and information systems. Once the hardship waiver is submitted, ~~t~~The requirement of depositing the full amount of the fine being appealed as described in Section 1.24.050(B) ~~shall~~will be stayed, unless or until the director of finance and information systems makes a determination not to issue the advance deposit hardship waiver.

C. The director of finance and information systems may waive the requirement of an advance deposit set forth in Section 1.24.050(B) and issue the advance deposit hardship waiver only if the cited party has submitted a sworn affidavit, ~~together with any supporting documents or materials,~~ demonstrating to the satisfaction of the director of finance and information systems, the person's ~~actual~~ financial ~~inability~~hardship ~~into~~ depositing with the city the full amount of the fine in advance of the hearing.

D. If the director of finance and information systems determines not to issue an advance deposit hardship waiver, the person ~~shall~~will remit the deposit to the city within ten days of the date of that decision or thirty days from the date of the administrative citation, whichever is later.

E. The director of finance and information systems ~~shall~~will issue a written determination ~~listing the reasons for his or her determination~~ to issue ~~or not issue~~ the advance deposit hardship waiver. The written determination of the director of finance and information systems ~~shall~~will be final, and ~~shall~~will, pursuant to section 1.24.020, be served ~~up~~ upon the person who applied for the advance deposit hardship waiver.

1.24.070 Hearing officer.

The city manager will appoint a hearing officer as set forth in section 1.12.010.

1.24.080 Hearing procedure.

A. No hearing to contest an administrative citation, or violations thereon, before a hearing officer ~~shall~~will be held unless the fine has been deposited in advance in accordance with Section 1.24.050(B), or an advance deposit hardship waiver has been issued in accordance with Section 1.24.060.

B. The hearing date ~~shall~~will be no sooner than seven days from when the notice of the hearing is given to the party contesting the administrative citation, or violations thereon, and the enforcement officer.

C. Hearings are informal, and formal rules of evidence and discovery do not apply. The hearing officer may only consider evidence that is relevant to whether the violation occurred, and whether the responsible person has caused or maintained a violation of the municipal code on the date(s) specified in the administrative citation. At the hearing, the party contesting the administrative citation or violations thereon ~~shall~~will be given the opportunity to testify and to present evidence concerning the administrative citation, or violations thereon.

D. Unless a continuance is granted by the hearing officer, ~~t~~The failure of any recipient of an administrative citation to appear at the administrative citation hearing ~~shall~~will constitute a forfeiture of the fine and a failure to exhaust their administrative remedies.

E. The administrative citation and any additional report submitted by the enforcement officer ~~shall~~will constitute prima facie evidence of the respective facts contained in those documents. The person requesting a hearing is entitled to a copy of the ~~code~~-enforcement officer's report to the hearing officer at least seven days before the hearing.

F. The hearing officer may continue the hearing and request additional information from the enforcement officer or the recipient of the administrative citation prior to issuing a written decision.

1.24.090 Hearing officer's decision.

A. After considering all of the testimony and evidence submitted at the hearing, the hearing officer ~~shall~~will, within thirty-fourteen days, issue a written decision to uphold or cancel any or all of the administrative citation and/or, if applicable, to suspend or refund all or a portion of the fine(s), and ~~shall~~will list in the decision the reasons for that decision. The hearing officer may suspend to facilitate compliance, reduce, or refund -the amount of the fine(s) based on these factors: duration of the violation, frequency and number of violations, seriousness of the offense, good faith efforts to comply, impact on the community, and such other factors that are just. The hearing officer will have mailed a copy of the written decision to the person who requested the hearing. The decision of the hearing officer is final, with no further administrative right of appeal to any city employee, city official, city appointed body, or the city council.

B. If the hearing officer determines that the administrative citation, or any violations thereon, should be upheld, then the applicable fine amount on deposit with the city ~~shall~~will be retained by the city, unless the hearing officer, in his or her decision, refunds, reduces, or suspends all or a portion of the payment of the fine. ~~Those portions not refunded, reduced, or suspended in which case, the portion not suspended shall~~will be retained by the city.

C. If the hearing officer determines that the administrative citation should be upheld and the fine has not been deposited pursuant to an advance deposit

hardship waiver, the hearing officer ~~shall~~will set forth in the decision a payment schedule for the fine, unless the hearing officer, in his or her decision, suspends all or a portion of the payment of the fine, in which case the portion not suspended ~~shall~~will be subject to a payment schedule.

D. If the hearing officer determines that the administrative citation or any violations thereon should be canceled and the fine was deposited with the city, the city ~~shall~~will promptly refund the amount of the deposited fine for the cancelled administrative citation, or any violations thereon.

E. Upon issuance, ~~The~~ recipient of the administrative citation ~~shall~~will be ~~served with~~sent a copy of the hearing officer's written decision ~~by U.S. mail pursuant to section 1.24.120~~upon issuance.

F. To the extent applicable, the employment, performance evaluation, compensation and benefits of the hearing officer ~~shall~~will not be directly or indirectly conditioned upon the amount of administrative citation fines upheld by the hearing officer.

G. Decisions of the hearing officer are final. Any further ~~Legal~~ action must be commenced in accordance with Government Code Section 53069.4(b) by filing a petition with the Superior Court within 20 days of the date of the mailing of the hearing officer's decision.

1.24.100 Recoverable costs.

Recoverable costs ~~shall~~will include, but not be limited to, the following:

A. Any person who fails to pay to the city any administrative citation costs imposed pursuant to the provisions of this chapter on or before the due date also ~~shall~~will be liable for the payment of any applicable late payment charges, administrative costs, cost of compliance re-inspections, and collection costs.

B. In administrative proceedings, the prevailing party is entitled to recover its reasonable attorneys' fees, but only if the city elects in writing, at the initiation of an administrative proceeding, to seek recovery of its own attorneys' fees. (Gov't. Code §38773.5(c).) In no event ~~shall~~will an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the city in the administrative proceedings. The city may recover its attorneys' fees in the same manner as other costs pursuant to this chapter.

1.24.110 Recovery of administrative citation fine(s) and costs.

A. The procedures set forth in this section for the recovery of administrative citation fine(s) and recoverable costs are adopted under Government Code Section 53069.4, which allows the city council to establish a procedure to govern the collection of administrative fines and recoverable costs.

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

1. The enforcement officer will cause a copy of the administrative citation(s) to be filed ~~with the finance and administrative information systems department for~~ citation fine recovery purposes.

2. An invoice for the administrative citation fine(s) and recoverable costs will be mailed to the property owner and/or responsible party.

a. The invoice for property related administrative citations will include notification that if not paid within thirty days of the citation date, a lien and/or assessment on the property may be recorded, or other collection methods employed.

b. The invoice for non-property related administrative citations will include notification that if not paid within 30 days of the administrative citation date, the account may be referred to a collection agency, or other collection methods employed.

3. If the property owner and/or responsible party does not pay the non-property related administrative citation fine and recoverable costs within thirty calendar days from the administrative citation date, the account may be forwarded to a collection agency.

4. If the property owner and/or responsible party does not pay a property related administrative citation fine and recoverable costs within thirty calendar days from the administrative citation date, the director of finance and administrative information systems may authorize that a lien on the property be recorded.

5. If the property related administrative citation fine and recoverable costs remains unpaid after 30 days from the administrative citation date, the director of finance and administrative information systems may authorize a special assessment upon the respective parcels of land as they are shown on the last equalized assessment roll or the supplemental roll, whichever is more current.

6. The assessment shall will continue until it is paid, ~~together with interest at the legal maximum rate computed from the date of confirmation of the statement until payment.~~

7. The county assessor ~~shall is to~~ enter each assessment on the county tax roll upon the parcel of land. The assessment ~~shall is to~~ be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall will 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 will be applicable to the special assessment. However, if any real property to which the administrative 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 administrative citation and recoverable costs shall will not result in a lien against the real property but instead shall will be transferred to the unsecured roll for collection. The tax collector's power of sale shall will not be affected by the failure of the property owner to receive notice.

C. On behalf of the city, the city manager ~~or designee~~ may collect any administrative citation fines and recoverable costs by use of all available legal means, and the choice of one remedy does not affect the city's ability to use alternative remedies.

~~D. The city will not collect the citation fine(s) and recoverable costs more than once.~~

1.24.120 Notices.

A. The administrative citation shall will, at a minimum, be served on the responsible person by one of the following: (1) personal service; ~~or~~ (2) by first class

mail and posting a copy of the subject property; or (3) first class mail and certified mail. Unless the parties otherwise agree to an alternate means, ~~A~~all other notices ~~shall~~will be served as noted in this chapter, or if not provided herein, by personal service or by U.S. mail.

B. Failure to receive any notice, besides the administrative citation, specified in this chapter does not affect the validity of proceedings conducted hereunder. Service is deemed effective on the date it is personally delivered, deposited in the mail, or otherwise sent.

1.24.130 Cost of administrative citation a personal obligation.

Along with placing a lien or assessment upon the real property pursuant to the procedures set forth in this chapter, the city may make all fines and recoverable costs the personal obligation of the property owner, tenant or other person creating, causing, committing, or maintaining the nuisance. In such a case, all of the procedures of this chapter apply except those specifically related to liens and assessments.”