

ATTACHMENT ONE: PROPOSED ORDINANCE

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE ADDING SECTIONS 08 THROUGH 10 OF CHAPTER 2 OF TITLE 1; ADDING CHAPTER 7 OF TITLE 1 OF THE EMERYVILLE MUNICIPAL CODE, “ADMINISTRATIVE CITATIONS AND SUMMARY ABATEMENT” AND AMENDING SECTION 5-37.07 OF THE EMERYVILLE MUNICIPAL CODE; CEQA DETERMINATION: EXEMPT PURSUANT TO SECTIONS 15061(b)(3) AND 15378(a)

WHEREAS, Article XI, Section 7 of the California Constitution grants cities the power to make and enforce all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

WHEREAS, pursuant to those constitutional police powers, the City of Emeryville has adopted codes to regulate and protect the public health, welfare, and safety; and

WHEREAS, the City Council of the City of Emeryville finds it necessary and desirable to implement regulations to enforce its adopted codes; and

WHEREAS, the City of Emeryville Municipal Code allows for issuance of criminal citations for code violations, but currently there is no provision for issuance of administrative citations; and

WHEREAS, the City Council of the City of Emeryville wishes to implement a system of administrative citations as a method of conducting equitable, cost-effective code enforcement; and

WHEREAS, the proposed system of administrative citation provides due process protections to violators by providing notice and opportunity and rights of appeal; and

WHEREAS, in order to protect the public health, welfare, and safety, it is in the best interest of the City of Emeryville to adopt a method of issuing administrative citations;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EMERYVILLE HEREBY ORDAINS AS FOLLOWS:

SECTION ONE. PURPOSE AND INTENT

The purpose and intent of this Ordinance is to add sections 08 through 10 of Chapter 2 of Title 1; and add Chapter 7 of Title 1, “Administrative Citations and Summary Abatement”; and amend section 5.37-07 of the Emeryville Municipal Code to provide for issuance of administrative citations, fines, and appeals relating to code enforcement matters.

SECTION TWO. ADDING SECTIONS 08 THROUGH 10 TO CHAPTER 2 OF TITLE 1 OF THE EMERYVILLE MUNICIPAL CODE

The following sections are hereby added to Chapter 2 of Title 1 of the Emeryville Municipal Code to read as follows:

1-2.08. Public Nuisance

In addition to other penalties provided by law, any condition caused or permitted to exist in violation of any provision of this code shall be deemed a public nuisance and may be summarily abated as such by the City, and each day such condition continues shall constitute a new and separate offense.

1-2.09. Continuing Violations

It shall constitute a new and separate offense for each and every day during any portion of which a violation of, or failure to comply with, any provision or requirement of this code is committed, continued or permitted by any person and shall be punished accordingly.

1-2.10 Alternate Civil Remedies

In addition to the penal provisions provided in this Chapter, and completely separate therefrom and cumulative thereto, at the sole discretion of the City, the City may institute appropriate civil actions or proceedings in a court of competent jurisdiction for the abatement, removal and enjoinder of any condition or activity declared by this code to be or found to be a public nuisance.

SECTION THREE. ADDING CHAPTER 7 TO TITLE 1 OF THE EMERYVILLE MUNICIPAL CODE

Chapter 7 is hereby added to Title 1 of the Emeryville Municipal Code to read as follows:

Chapter 7 – Administrative Citations

1-7.01. Purpose and Intent

The purpose of this Chapter is to establish an administrative citation program, as authorized under Government Code Section 53069.4, which provides the City of Emeryville with an alternative method for enforcing violations of the Emeryville Municipal Code. Enforcement of the municipal code and conditions on land use approvals is a valid exercise of the City's police power as it promotes the public health, safety, and welfare. Issuance of administrative citations encourages voluntary and complete

compliance with this code in a timely and cost-efficient manner, protecting and benefiting the entire community.

1-7.02. Application

The provisions of this Chapter apply to any violation of this code. The issuance of any administrative citation under this chapter is at the City's sole discretion. This chapter does not limit the City's discretion to utilize any other remedies, civil or criminal, to address violations of this code; multiple remedies may be used to achieve compliance with respect to persons who commit continuing violations.

1-7.03. Definitions

As used in this Chapter, the following terms shall have the following meanings:

- a. "City Manager" means the City Manager of the City of Emeryville, or the City Manager's designee.
- b. "Code" means the Emeryville Municipal Code.
- c. "Continuing violation" means either (1) a particular violation of the code or violations of conditions imposed upon the issuance of a land use approval that continues for more than 24 hours without correction or abatement; or (2) a repeated, consecutive violation of the same offense without intervening days.
- d. "Enforcement Officer" means any officer or employee designated by the City Manager or this code to enforce provisions of this code.
- e. "Hearing Officer" means a person appointed by the City Manager, in compliance with all applicable legal requirements, to serve as the hearing officer for administrative citation hearings.
- f. "Land use approval" means any approval required for a particular use of land, including without limitation, licenses, conditional use permits, variances or subdivision maps.
- g. "Notice of Violation" means a written notice to a Responsible Person that a violation of this code has occurred and a warning that an administrative citation assessing fines shall be issued unless the violation is ceased and abated.
- h. "Owner" means the record owner of a parcel according to the County of Alameda's latest equalized property tax assessment roll.

- i. "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.
- j. "Responsible person" shall mean any of the following:
 - i. A person who, by action or inaction (whether acting alone or with one or more other persons), causes, maintains, permits, or allows a code violation.
 - ii. A person whose agent, employee, or independent contractor, by action or inaction, causes, maintains, permits, or allows a code violation.
 - iii. An owner of real property on which a code violation occurs.
 - iv. A lessee or sub-lessee with the current right of possession of real property on which a code violation occurs.
 - v. An on-site manager who regularly works on real property on which a code violation occurs and who is responsible for the business or other activities on that real property.
 - vi. The owners, majority stockholders, corporate officers, trustees, general partners and any other person with the legal authority to act for a legal entity that is a responsible person.
 - vii. If any of the above persons are minors or incompetent, the parents or guardians of those persons shall be deemed responsible persons.

1-7.04. Notice of Violation

- a. Prior to issuing an Administrative Citation, an Enforcement Officer shall issue a Notice of Violation to a Responsible Person whenever the Enforcement Officer determines that a violation of this Code exists that does not create an immediate danger to health, welfare, or safety.
- b. The Notice of Violation shall be served personally, by certified first class mail, or, if applicable, by posting on the affected property.
- c. The Notice of Violation shall include the information set forth in Section 1-7.05, and a date by which the Responsible Person shall reasonably abate and cease the violation. The Notice of violation shall provide notice to the responsible person that failure to cease or abate by the end of the correction period may result in the issuance of an administrative citation.
- d. The correction period shall be appropriate to the violation as determined

by the enforcement officer, but shall in no event be less than seven (7) days. If the correction period passes and the violation is not ceased or abated, the enforcement officer may issue an administrative citation.

- e. Any responsible person who has received a notice for a violation may petition the Enforcement Officer for an extension of the correction period so long as the petition is received before the end of the correction period. The petition shall state the additional time requested and the reasons for the requested extension. The enforcement officer may grant the petition to extend the correction period if the responsible person supplies sufficient evidence that the correction cannot be reasonably made within the extended correction period.

1-7.05. Issuance of Administrative Citation

- a. An administrative citation shall be served personally, by certified first class mail, or, if applicable, by posting on the affected property.
- b. An administrative citation shall be issued on a form approved by the City Manager and shall, at a minimum, contain the following information:
 - i. Name of the person who is charged as a responsible person for the violation;
 - ii. Date, time, and address, or definite description, of the location where the violation was observed;
 - iii. The code section(s) violated, and facts constituting the violation ;
 - iv. A description of the action required to correct the violation, including temporary corrective action when appropriate;
 - v. An order prohibiting the continuation or repeated occurrence of the violation;
 - vi. Whether the offense is a continuing violation, which shall accrue daily fines until properly ceased and abated;
 - vii. An explanation of how the abatement of the violation can be properly verified;
 - viii. The amount of the fine for the violation, including the amount due for the initial violation and any prospective daily fine for failure to abate the violation, if applicable to a continuing violation;
 - ix. An explanation of how the fine shall be paid and when it shall be paid;
 - x. Potential penalties for late payment of failure to pay the fine;
 - xi. 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;

xii. Notification that failure to either timely request an administrative appeal hearing or timely abate the nuisance may result in the City correcting the violation and collecting the charges by billing or placing a lien or a special assessment against the property;

xiii. Notification that failure to appeal shall constitute waiver of the right to an administrative hearing to contest the charge, failure to exhaust administrative remedies, and a final determination;

xiv. The name and signature of the enforcement officer; and

xv. Date the citation was issued.

c. If there is more than one responsible person for a violation of this code, each person shall be jointly and severally liable for the violation.

d. If an enforcement officer determines that an administrative citation was issued in error, and good cause exists, the enforcement officer may issue a cancellation and ensure that any fees paid by the responsible person are refunded.

1-7.06. Amount and Payment of Administrative Citation Fines; Satisfaction of Administrative Citation

a. Upon receipt of an administrative citation, the responsible person shall immediately cease and abate the violation and make timely payment of any specified fines. 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 abatement is verified to the enforcement officer's reasonable satisfaction.

b. The City Council shall establish, by separate resolution, the dollar amount for fines issued pursuant to this chapter, in accordance with California Government Code Sections 36900 and 36901.

c. The fine shall be paid and received by the Finance Department within 30 days from the date that the administrative citation was issued.

d. If the fine in any administrative citation is not paid within the time prescribed in this section, a late penalty may be charged in an amount to be established by separate resolution of the City Council.

e. Any fine for an administrative citation paid in accordance with this section shall be refunded if, after an administrative hearing, it is determined that the person charged with the administrative citation was not responsible for the violation; or that there was no violation as charged in the administrative

citation; or if the City Manager cancels the citation. 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; payment shall not bar further enforcement action by the City if the violation reoccurs or continues to exist.

- f. The abatement of a continuing violation shall be verified by an enforcement officer. The responsible person shall schedule an inspection by an enforcement officer to verify the abatement. The scheduling of an inspection shall toll the accruing fines until a determination is made. If the enforcement officer determines that the continuing violation has not been abated or is unable to make a determination because of the responsible party's conduct, any fines accrued during the tolling period shall be applied retroactively.

1-7.07 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 filed with the City Clerk within 15 days from the date that the administrative citation was issued. The request for hearing form shall be accompanied by an advance deposit for the amount of the fine stated in the administrative citation, or a request for an advance deposit hardship waiver as described in Section 1-7.08. If it is determined after a hearing that there was no violation as charged in the administrative citation, the advance deposit shall be refunded.
- b. A request for hearing shall not postpone or avoid the requirement of a responsible person to abate a violation or toll the daily fines accruing for a continuing violation until the abatement of the offense is verified to the reasonable satisfaction of the enforcement officer. In the event the hearing officer affirms the citation, the responsible person shall be liable for the total fines accrued from the issuance of the citation to the date the abatement is properly verified.
- c. The request for hearing form shall contain the following information:
 - i. The name, address, and signature of the responsible person appealing the administrative citation;
 - ii. A brief statement in ordinary and concise language of the specific item that is contested, together with any supporting facts; and
 - iii. 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.

- d. Any request for hearing form that fails to provide all of the information required by this section is incomplete. Any request for hearing form submitted without an advance deposit or a request for advance deposit is incomplete. The responsible person who filed the incomplete request for hearing form shall be notified of defects in writing and shall have an opportunity to amend the request form. The responsible person shall have 10 days after service of the notification to submit an amended request form.
- e. The City Clerk shall set a hearing date that is 15 to 45 days from the date that the request for hearing is filed with the City. Notice of the scheduled hearing shall be mailed to the responsible person at least 10 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.
- f. Failure of a responsible person to appeal the administrative citation or submit a complete appeal request within the timeframe described in this section shall constitute a waiver of any right to administrative hearing, and failure to exhaust administrative remedies. The administrative citation shall serve as a final determination and conclusive evidence of the responsible person's liability for the citation.

1-7.08. Request for 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 advance deposit of the fine may request an advance deposit hardship waiver.
- b. The request shall be submitted to the City Clerk, and shall be processed by the City Manager's Office. The requirement of depositing the full amount of the fine shall be stayed unless or until the City Manager makes a determination to grant or deny the advance deposit hardship waiver.
- c. The City Manager may waive the requirement of an advance deposit and issue the advance deposit hardship waiver only if the responsible person has submitted a sworn affidavit, together with any supporting documents or materials that demonstrate proof of enrollment in a State of California public assistance program, such as Medi-Cal, to the satisfaction of the City Manager.
- d. The City Manager shall issue a written determination to issue or not issue the advance deposit hardship waiver. The written determination shall be final and shall be served by regular mail upon the person who applied for the advance deposit hardship waiver.
- e. If the advance deposit hardship waiver is not issued, an advance deposit of the fine specified in the administrative citation shall be remitted to the

City within 10 days of the date of the City Manager's determination, or 30 days from the date of the administrative citation, whichever is later. If the deposit is not paid within this time, the responsible person shall be deemed to have failed to timely appeal the administrative citation.

1-7.09. Administrative Hearing Procedure

- a. A hearing to contest an administrative citation before a hearing officer shall be granted only if: 1) a request for hearing form has been completed and returned to the City Clerk in compliance with the provisions of this Chapter; and 2) the fine has been deposited or an advance deposit hardship waiver obtained.
- b. The hearing officer may only consider evidence that is relevant to whether the violation occurred and whether the responsible person caused and/or maintained the violation.
- c. At least seven days prior to 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; failure to satisfy this requirement shall cause that evidence to be inadmissible.
- d. At least seven days prior to the hearing, the enforcement officer shall be provided with copies of any and all documents to be submitted by the responsible person to the hearing officer; failure to satisfy this requirement shall cause that evidence to be inadmissible.
- e. 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.
- f. The administrative citation and any additional documents submitted by the enforcement officer shall constitute prime facie evidence of the respective facts contained in those documents.
- g. 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 designed by the responsible party.
- h. The City shall be given the opportunity to: (1) present witnesses; (2) introduce relevant evidence; (3) cross-examine and/or rebut any witness testifying in opposition to the administrative citation.
- i. The City shall bear the burden of proving by a preponderance of the evidence that a violation of the code exists.

- j. 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 the City Manager.
- k. 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.
- l. The failure of any responsible person contesting an administrative citation to appear at the administrative citation hearing shall constitute a forfeiture of the advance deposit and failure to exhaust administrative remedies. Further, the order of the citation shall become the final determination.

1-7.10. Hearing Officer's Decision

- a. After considering all of the relevant, admissible testimony and evidence, the hearing officer shall issue a written decision to uphold or dismiss all or part of the administrative citation, listing the reasons for the decision. The hearing officer's decision shall be supported by a preponderance of the evidence. The decision shall be final and issued within 30 days of the conclusion of the hearing.
- b. If the hearing officer determines that the administrative citation shall be upheld, the City shall retain the deposited fine amount in satisfaction. If the fine deposit has not been made because the responsible person obtained an advance deposit hardship waiver, the hearing officer shall set forth a reasonable payment schedule. The hearing officer may also impose conditions and deadlines to correct the violation, or require payment of any outstanding fines, penalties, and interest.
- c. If the hearing officer determines that the administrative citation should be dismissed in whole or in part, the City shall refund the applicable amount of the deposited fine within 15 days from the date of issuance of the hearing officer's decision.
- d. Within five days of issuance of the hearing officer's decision, the City shall serve a copy of the written decision on the recipient of the administrative citation by U.S. certified mail. Service of the hearing officer's decision shall be deemed completed on the date of mailing.

1-7.11. Right to Judicial Review

Any person aggrieved by an administrative decision of the hearing officer may obtain judicial review of the administrative decision.

1-7.12. Abatement by the City

- a. In the event the owner shall neglect or refuse to comply with a final determination, where all rights to appeal are either exhausted or waived, the City may abate the nuisance or correct the violation.
- b. The abatement or correction shall be pursued by City personnel or private contractor. The City's authority to abate shall include but not be limited to injunctive relief, the power to condemn, destroy, or demolish any property constituting the nuisance if the nuisance cannot feasibly be abated without destruction of the property. The City shall keep an itemized account of the expenses, including incidental expenses, incurred by the City in the abatement. Upon completion of the abatement, the City shall prepare a report specifying the work done, the itemized and total cost of the work, a description of the real property upon which the abatement was located, and the names and addresses of the owner and responsible person. The itemized report shall be billed to the owner and responsible person, and shall be due and payable within 30 days after service. The City may make the expense of the summary abatement of the nuisance a debt collectible in the same manner as any other property- related civil debt owing to the City and thus may be made a special assessment or lien upon the property as provided in this Chapter.
- c. In the event that the owner or responsible person fails to consent to the City entering the subject property for the purpose of inspecting and/or abating a nuisance or correcting a violation under this chapter, the City shall apply and be granted the warrant from a judge of a court of record if cause exists pursuant to Code of Civil Procedure Section 1822.50.

1-7.13. Summary Abatement

Whenever any condition on or use of property causes or constitutes or reasonably appears to cause or constitute an imminent or immediate danger to the health, welfare, or safety of the public, or when immediate action is required to prevent or mitigate the loss or impairment of life, health, property or essential public services, any enforcement officer shall have the authority to institute the following procedures:

- a. The enforcement officer shall attempt to make contact through a personal interview, or by telephone, with the owner or the responsible person, if any, occupying or otherwise in real or apparent charge and control thereof. In the even contact is made, the enforcement officer shall notify such person or persons of the danger involved and require that the condition be immediately removed, repaired, or isolated so as to preclude harm to any

- person or property.
- b. If the enforcement officer is unable to make contact as described above, or if the appropriate persons, after notification by the enforcement officer, do not take action as specified by the enforcement officer, then the enforcement officer may, within 72 hours or less if reasonably necessary, take all steps deemed necessary to remove or isolate the dangerous condition, or conditions, so long as the enforcement officer is acting with the City Manager's authorization.
 - c. Summary abatement actions shall not be subject to the same citation requirements of this chapter, and an enforcement officer shall not be prohibited from summary abatement actions after initiation of proceedings pursuant to this Chapter if immediate action at any time becomes necessary to preserve or protect the public health, welfare, or safety. Summary abatement is to be limited to those actions which are reasonably necessary to immediately remove the threat.
 - d. The expense of summarily abating a nuisance shall be a charge against the persons creating, causing, or committing or maintaining it. The city may make the expense of the summary abatement of the nuisance a debt collectible in the same manner as any other property-related civil debt owing to the city and thus may be made a special assessment or lien upon the property.

1-7.14. Recovery of Costs and Attorneys' Fees

To the extent allowed by law, the City may elect to recover its costs to abate nuisance conditions or other code violations, including without limitation the costs of any administrative hearings, staff time necessary to prepare for and attend an administrative hearing, any re-inspections required to determine or confirm compliance has been achieved, production of all staff reports, third-party inspections or consultant services as deemed necessary by the City and any attorney's fees incurred in pursuing enforcement. If the City elects at the initiation of an administrative enforcement action or other proceeding to seek recovery of attorneys' fees, pursuant to Government Code section 38773.5(b), then the prevailing party shall be entitled to recover attorneys' fees in an amount not to exceed the amount of reasonable attorneys' fees incurred by the city in such action. Recovery by the city of the costs of enforcement shall be in addition to any penalty imposed on the responsible party.

1-7.15. Collection of Unpaid Fines and Costs

To recover any past due administrative citation fine(s), penalties, and recoverable costs:

- a. The enforcement officer shall cause a copy of the citation(s) to be filed with the Building Division of the Community Development Department.
- b. An invoice for the citation fine(s) and recoverable costs shall be mailed to the owner and/or responsible party. The invoice for property-related citations shall include notification that if not paid within 45 days of the due date, a nuisance abatement lien or a special assessment lien may be recorded against the property. The invoice for non-property related citations shall include notification that if not paid within 30 days of the due date, the account may be referred to a collection agency.
- c. If the responsible party does not pay the non-property related citation fine and recoverable costs within 30 days from the due date, the account may be forwarded to a collection agency.
- d. If the property-related citation fine and/or recoverable costs remain unpaid beyond 45 days from the due date, the City Manager may submit the matter as a report to the City Council for a lien-attachment hearing, either as to attaching a nuisance abatement lien or a special assessment lien. The report shall include: the names and address of the record owner of the property and all persons having a recorded interest in the property; a description of the real property subject to the lien; and the total costs.

At least 10 days prior to the lien-attachment hearing, the City Clerk shall give notice, by certified mail or by posting on the property, 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.

At the lien-attachment hearing, 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 for the cost of conducting the lien-attachment hearing, and may make modifications in the report as it deems necessary, after which, the City Council may order the report as confirmed. The order and modified report shall be filed with the City Clerk, deemed as final and conclusive. The confirmed amounts and costs contained in the report shall constitute either a nuisance abatement lien or a special assessment lien against the property, and are a lien on the property for the respective amount.

- e. 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 complete payment.
- f. For special assessment liens, 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 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 the special assessment; however, if any real property to which the cost of abatement 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 cost of abatement 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.

1-7.16. Time to Perform Actions

If the last day for the performance of any act provided or required by this Chapter is a City holiday or a weekend, then the last day for performance is extended to and includes the next day that is not a holiday or weekend.

SECTION FOUR. AMENDING SECTION 5-37.07 “ENFORCEMENT” OF THE EMERYVILLE MUNICIPAL CODE

Section 5-37.07 of the Emeryville Municipal Code is hereby amended as follows. Additions are in **bold underline** text. Deletions are in ~~strikeout~~ text. Those portions not specifically amended remain unchanged:

(a) Enforcement by City. Where compliance with the provisions of this chapter is not forthcoming, the City may take any appropriate enforcement action to ensure compliance, including but not limited to the following:

(1) The City may issue an administrative citation **and fine** pursuant to provisions of the Emeryville Municipal Code. ~~The amount of this fine shall vary based on the provision of this chapter violated, as specified below:~~

~~(i) A fine may be assessed for retaliation by an employer against an employee for exercising rights protected under this chapter. The fine shall be one thousand dollars (\$1,000.00) for each employee retaliated against.~~

~~(ii) A fine of five hundred dollars (\$500.00) may be assessed for any of the following violations of this chapter:~~

~~(A) Failure to post notice of the minimum wage rate.~~

~~(B) Failure to provide notice of right to designate person in lieu of spouse or registered domestic partner to use paid sick leave to aid or care for that person.~~

~~(C) Failure to maintain payroll records for the minimum period of time as provided in this chapter.~~

~~(D) Failure to allow the City access to payroll records.~~

~~(iii) A fine equal to the total amount of appropriate remedies, pursuant to subsection (c) of this section. Any and all money collected in this way that is the rightful property of an employee, such as back wages, interest, and civil penalty payments, shall be disbursed by the City in a prompt manner.~~

~~(2) Alternatively, the City may pursue administrative remedies in accordance with the following procedures:~~

~~(i) Whenever the City determines that a violation of any provision of this chapter is occurring or has occurred, the City may issue a written compliance order to the employer responsible for the violation. The compliance order may include an order for payment of fines as described in this subsection (a).~~

~~(ii) A compliance order issued pursuant to this chapter shall contain the following information:~~

~~(A) The date and location of the violation;~~

~~(B) A description of the violation;~~

~~(C) The actions required to correct the violation;~~

~~(D) Either a copy of this chapter or an explanation of the consequences of noncompliance with this chapter, including payment of any fines, and a description of the hearing procedure and appeal process;~~

~~(E) A warning that the compliance order shall become final unless a complete written request for a hearing before the City is received within fourteen (14) days of service of the compliance order. The request for a hearing shall be submitted on a form provided by the City. Failure of an employer to submit a complete written request within the time frame described in this section shall result in a waiver of any right to an administrative hearing, and failure to exhaust administrative remedies. Service of the compliance order shall be deemed complete on the date of mailing.~~

~~(iii) Following receipt of a timely request for a hearing, the City shall provide the employer responsible for the violation with a hearing before a Hearing Officer designated by the City that affords the employer due process. The City Clerk shall set a hearing date that is fifteen (15) to forty-five (45) days from the date that the request for hearing is filed with the City. Notice of the scheduled hearing shall be mailed to the employer and the affected employee(s) at least ten (10) days before the date of the hearing. If multiple compliance orders are being appealed, the City Clerk and Hearing Officer may consolidate the appeals into one (1) hearing. During the pendency of the hearing and any subsequent appellate process, the City will not enforce any aspect of the compliance order. The decision of the Hearing Officer shall be final with no further right of administrative review. The Hearing Officer may affirm or dismiss the compliance order in whole or in part, including the assessment of fines as provided by this subsection (a).~~

~~(32) The City may initiate a civil action for injunctive relief and damages and civil penalties in a court of competent jurisdiction.~~

(b) Private Rights of Action. An employee claiming harm from a violation of this chapter may bring an action against the employer in court to enforce the provisions of this chapter and shall be entitled to all remedies available to remedy any violation of this chapter, including but not limited to back pay, reinstatement, injunctive relief, and/or civil penalties as provided herein. The prevailing party in an action to enforce this chapter is entitled to an award of reasonable attorney's fees, witness fees and costs.

(c) Remedies.

(1) The remedies for violation of this chapter include but are not limited to:

(i) Reinstatement, the payment of back wages unlawfully withheld, and the payment of an additional sum as a civil penalty in the amount of fifty dollars (\$50.00) to each employee whose rights under this chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this chapter or State law.

(ii) Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date the wages are paid in full.

~~(iii) Reimbursement of the City's administrative costs of enforcement and reasonable attorney's fees.~~

~~(iv) If a repeated violation of this chapter has been finally determined in a period from July 1 to June 30 of the following year, the City may require the employer to pay an additional sum as a civil penalty in the amount of fifty dollars (\$50.00) to the City for each employee or person whose rights under this chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this Code or State law.~~

(2) The remedies, penalties and procedures provided under this chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties and procedures established by law which may be pursued to address violations of this chapter. Actions taken pursuant to this chapter shall not prejudice or adversely affect any other action, administrative or judicial, that may be brought to abate a violation or to seek compensation for damages suffered.

(3) No criminal penalties shall attach for any violation of this chapter, nor shall this chapter give rise to any cause of action for damages against the City.

(d) Retaliation Barred.

(1) An employer shall not discharge, reduce the compensation of nor otherwise discriminate against any employee for making a complaint to the City, participating in any of the City's proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this chapter. Within one hundred twenty (120) days of an employer being notified of such activity, it shall be unlawful for the employer to discharge

any employee who engaged in such activity unless the employer has clear and convincing evidence of just cause for such discharge.

(2) No employer may fund increases in compensation required by this chapter, nor otherwise respond to the requirements of this chapter, by reducing the wage rate paid to any nonexempt employee, nor by increasing charges to them for parking, meals, uniforms or other items, nor by reducing the vacation or other nonwage benefits of any such employee, except to the extent such prohibition would be preempted by the Federal Employee Retirement Income Security Act. For purposes of this subsection, “nonexempt employee” means an employee who is nonexempt under Federal or State wage and hour laws.

(e) Waiver.

(1) Waiver Through Collective Bargaining. Except to the extent required by law, all or any portion of the applicable requirements of this chapter may be waived in a bona fide collective bargaining agreement; provided, that such waiver is explicitly set forth in such agreement in clear and unambiguous terms that the parties thereto intend to and do thereby waive all of or a specific portion(s) of this chapter.

(f) Retention of Records. Each employer shall maintain for at least three (3) years for each employee a record of his or her name, hours worked, pay rate, paid sick leave accrual and usage, and service charge collection and distribution. Each employer shall provide each employee a copy of the records relating to such employee upon the employee’s reasonable request.

(g) City Access. Each employer shall permit access to work sites and relevant records for authorized City representatives for the purpose of monitoring compliance with this chapter and investigating employee complaints of noncompliance, including production for inspection and copying of its employment records, but without allowing social security numbers to become a matter of public record.

SECTION FIVE. CEQA DETERMINATION

The City Council finds, pursuant to Title 14 of the California Administrative Code, section 15061(b)(3) and section 15378(a), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project that has the potential for causing a significant effect on the environment. This action is further exempt from the definition of a Project in section 15378(b)(3) in that it concerns general policy and procedure making.

SECTION SIX. SEVERABILITY

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared severable. If, for any reason, any section, paragraph, clause, or phrase

is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining section, paragraphs, clauses, or phrases.

SECTION SEVEN. EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code section 33693.

SECTION EIGHT. CODIFICATION

Sections Two, Three and Four of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Five, Six, Seven and Eight shall not be so codified.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting held on Tuesday, September 20, 2016, and **PASSED AND ADOPTED** by the City Council at a regular meeting held on Tuesday, October 18, 2016.

AYES:
NAYES:
ABSTAIN:
ABSENT:

MAYOR

ATTEST:

APPROVED AS TO FORM:



CITY CLERK

CITY ATTORNEY