

ORDINANCE NO. 50

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AMENDING CHAPTER 1.03 OF THE WILDOMAR MUNICIPAL CODE PERTAINING TO CODE VIOLATIONS

THE CITY COUNCIL OF THE CITY OF WILDOMAR ORDAINS AS FOLLOWS:

SECTION 1. Amendment of Chapter 1.03. Chapter 1.03 of the Wildomar Municipal Code is hereby amended to read in its entirety to read as shown in Exhibit "A" to this Ordinance.

SECTION 2. CEQA. The City Council finds that this Ordinance ("Ordinance") is not subject to the California Environmental Quality Act (CEQA) for the following reasons:

A. The Ordinance is exempt from CEQA because it is not a project as defined in Public Resources Code section 21065 and CEQA Guidelines section 15378. (CEQA Guidelines section 15060(c)(3).) The Ordinance does not meet the definition of a project because it does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Further, the Ordinance is not subject to CEQA under CEQA Guidelines section 15060 (c)(2) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment. The Ordinance merely supplements preexisting code enforcement authority by adding procedures for administrative abatement of public nuisances, refining existing administrative citation procedures, and ensuring the City's ability to recover costs in nuisance abatement actions. Because the City already has the authority and power to enforce the Municipal Code through misdemeanor prosecution, civil actions, and administrative citations, the Ordinance will not encourage or discourage development. Accordingly, there is no possibility of a physical change in the environment.

B. The City has analyzed the Ordinance and has determined that it is exempt from CEQA under section 15061(b)(3) of the CEQA Guidelines (the common sense exception) which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where, as here, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The Ordinance does not relate to any one physical project and will not result in any physical change to the environment because it merely supplements preexisting code enforcement authority and does not encourage or discourage any development within the City.

SECTION 2. 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 any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it

would have adopted this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

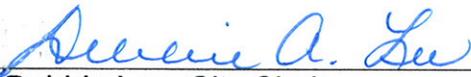
SECTION 3. Publication. The City Clerk is directed to cause this ordinance to be published or posted in accordance with Government Code section 36933.

PASSED, APPROVED, AND ENACTED this 26th day of May, 2010.



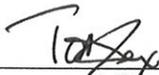
Bridgette Moore, Mayor

ATTEST:



Debbie Lee, City Clerk

APPROVED AS TO FORM:



Julie Hayward Biggs, City Attorney

Thomas D. Jex, Assistant

EXHIBIT "A"

Chapter 1.03 CODE VIOLATIONS

Sections:

- 1.03.010 Definitions
- 1.03.020 Violation of Municipal Code – Misdemeanor.
- 1.03.030 Aiding and Abetting.
- 1.03.040 Punishments.
- 1.03.050 Imprisonment in County Jail.
- 1.03.060 Violations – Public Nuisances.
- 1.03.070 Administrative Abatement.
- 1.03.080 Administrative Citations.
- 1.03.090 Civil Actions.
- 1.03.100 Attorneys' Fees.
- 1.03.110 Notice of Noncompliance.
- 1.03.120 Treble Damages.

1.03.010 Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) "Administrative citation" or "citation" shall mean a written notice to a responsible party that a violation of this code has occurred and an assessment of civil fines issued by an enforcement officer of the city.

(b) "City" shall mean the City of Wildomar.

(c) "City manager" shall mean the city manager of the city.

(d) "Code" shall mean the Wildomar Municipal Code or any ordinance adopted by the city council or other codes or regulations of the State of California or the County of Riverside or otherwise applicable to the city.

(e) "Continuing violation" shall mean either a particular violation of the code continuing for more than 24 hours without correction or abatement, or a repeated, consecutive violation of the same offense without intervening days.

(f) "Enforcement Officer" shall mean any officer, agent or employee of the city designated by the city manager to have the authority and responsibility to enforce certain provisions of this code.

(g) "Hearing Officer" shall mean an impartial individual designated by the city manager to preside over administrative abatement hearings pursuant to Section 1.03.070 and administrative citation appeal hearing pursuant to Section 1.03.080. The hearing officer shall not be a city employee. The employment, performance, evaluation, compensation and benefits of the hearing officer, if any, shall not be directly or indirectly conditioned upon the outcome of any administrative hearing and/or the amount of fines upheld. The City may contract with a qualified provider to conduct administrative hearings or to process administrative citations.

(h) "Notice of violation" shall mean a written notice to a responsible party that a violation of this code has occurred and a warning that an administrative citation assessing fines will be issued unless the violation is ceased and abated.

(i) "Responsible party" shall mean any individual who is the owner, tenant, lessee, or occupant of real property, or the owner, majority stockholder, general partner, or authorized agent of any business, company, or entity, or the parent or the legal guardian of any person under the age of 18 years, who causes or maintains a violation of this code.

1.03.020 Violation of Municipal Code -- Misdemeanor.

(a) It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this Code, any Code adopted by reference by this Code, or any ordinance of the City not included within this Code. Any person violating any such provision or failing to comply with any such requirements shall be guilty of a misdemeanor, unless the violation is specifically designated as an infraction.

(b) Pursuant to California Government Code Section 36900, the city attorney may prosecute any violation of this code in the name of the people of the State of California. In any such criminal prosecution, the city attorney is authorized to reduce the charge for any misdemeanor violation to an infraction.

(c) Pursuant to California Penal Code Section 836.5, Enforcement Officers are authorized to issue criminal citations following the procedures set forth in California Penal Code Sections 853.5 through 853.6a, or such other procedures as the state of California may subsequently enact.

(d) Each person convicted of a misdemeanor or infraction under the provisions of this Code shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision or failure to comply with any of the requirements of this Code, any Code adopted by reference by this Code, or any ordinance of the City not included within this Code is committed, continued or permitted by such person, and may be punished accordingly.

1.03.030 Aiding and Abetting. Whenever any act or omission is made unlawful by this Code, any Code adopted by reference by this Code, or any ordinance of the City not included within this Code, it shall include causing, permitting, aiding, abetting, suffering, or concealing the fact of such act or omission.

1.03.040 Punishments.

(a) Any conviction of a misdemeanor under the provisions of this Code shall be punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the County jail for a period not exceeding six months, or by both fine and imprisonment.

(b) Any conviction of an infraction under the provisions of this Code shall be punishable for a first conviction by a fine of not more than one hundred dollars (\$100), for a second conviction within a 12-month period by a fine of not more than two hundred dollars (\$200), and for a third or any subsequent conviction within a 12-month period by a fine of not more than five hundred dollars (\$500).

Any provision or requirement of this Code or of any Code adopted by reference by this Code or of any ordinance of the City not included within this Code, the violation of which or the failure to comply with which is designated as an infraction, shall be prosecutable as a misdemeanor upon a fourth violation within a 12-month period and upon each violation thereafter of the same provision by the same individual within a 12-month period.

1.03.050 Imprisonment in County Jail. Imprisonment for violation of this Code, any code adopted by reference by this Code, or any City ordinance not included in this Code shall be in the County Jail.

1.03.060 Violations – Public Nuisances. In addition to other penalties provided by law, any condition caused or permitted to exist in violation of any provision of this Code, any code adopted by reference by this Code, or any ordinance of the City not included within this Code, or any such threatened violation, shall be deemed a public nuisance.

1.03.070 Administrative Abatement. The Enforcement Officer, as defined in Section 1.03.010(f), may initiate proceedings to abate public nuisances as follows:

(a) First Notice of Nuisance. Upon the determination by the Enforcement Officer that a nuisance exists, a Notice of Nuisance shall be prepared with copies thereof to be served either personally or by mail, postage prepaid, certified, return receipt requested, to the owner of said affected premises as shown on the last equalized assessment role, or the tenant. If no address can be found or is known to the Enforcement Officer, then the notice shall be mailed to such person at the address of the premises affected by the proceedings. The failure of any person to receive the notice does not affect the validity of any proceedings taken hereunder. A copy of the Notice of Nuisance shall be prominently and conspicuously placed upon the premises affected by the nuisance proceedings. Where the Enforcement Officer has determined that the condition causing the nuisance is imminently dangerous to human life or limb, or to public health or safety, the Enforcement Officer may include in the first notice an order that the property, building or structure affected be vacated pending correction or abatement of the conditions causing the nuisance. The First Notice of Nuisance shall contain the following:

(1) A legal description and street address, assessor's parcel number, or other description sufficient to identify the premises affected.

(2) A description of the condition causing the nuisance. Where the Enforcement Officer has determined that the condition causing the

nuisance can be corrected or abated by repair or corrective action, the notice shall state the repairs or corrective actions that will be required and the time limit within which the nuisance must be corrected.

(3) An order to complete abatement of the nuisance within a reasonable amount of time.

(4) A statement that if the nuisance is not corrected as specified, a hearing will be held before an independent Hearing Officer to consider whether to order abatement of the nuisance and that the City may levy a special assessment for the recovery of all costs, including attorneys' fees and hearing officer fees, incurred or expended by the City in the abatement of the nuisance. This special assessment shall be collected at the same time and in the same manner as is provided for the collection of ordinary taxes pursuant to Section 38773.5 of the Government Code. Special assessments shall be subject to the same penalties, interest and procedures of foreclosure and sale in the case of delinquency as is provided for ordinary taxes.

(b) Notice of Nuisance Abatement Hearing. If, upon the expiration of the period specified in the First Notice of Nuisance, action to abate the nuisance has not been commenced, or, if it has been commenced, it has not been pursued with due diligence or completed within the time specified, the Enforcement Officer shall prepare a Notice of Nuisance Abatement Hearing and serve such notice. The hearing shall be scheduled before a Hearing Officer at a stated time and place not less than 15 days after service of the notice to show cause why stated conditions should not be found to be a nuisance and why the nuisance should not be abated by the Enforcement Officer. The Notice of Nuisance Abatement shall contain the following:

(1) The heading "Notice of Nuisance Abatement Hearing."

(2) The date, time and place of the hearing.

(3) The information specified in subsection (a) of this Section.

(c) Abatement Action. A decision to abate a nuisance shall be reached through a hearing conducted in accordance with subdivision (d) below. Upon the conclusion of the hearing, the Hearing Officer may terminate the abatement proceedings or may order the owner or other affected person to abate the nuisance prescribing a reasonable time (not less than 30 days) for completion of abatement. The order may further provide that, in the event abatement is not commenced, conducted and completed in accordance with the terms set by the hearing officer, the Enforcement Officer is empowered and authorized to abate the nuisance. The order of the hearing officer shall be served by mail, postage prepaid, certified, return receipt requested to the owner of said affected premises as shown on the last equalized assessment roll. The time limits set by the hearing officer begin upon service of the notice. The order issued by the Hearing Officer will be deemed a final order and may be judicially reviewed

pursuant to Code of Civil Procedure section 1094.6. There is no right to a City Council appeal.

(d) Abatement Hearing. The Hearing Officer shall hear testimony and shall consider other evidence concerning the conditions constituting cause to revoke approval or conditional approval, to forfeit bond, or to abate a nuisance. Parties to enforcement actions may be present at such hearing, may be represented by counsel, may present testimony, and may cross-examine witnesses. The hearing need not be conducted according to technical rules relating to evidence and witnesses and may be continued from time to time. The Hearing Officer shall deliberate upon the evidence and make findings upon such evidence to support any action of the hearing body to revoke approval or conditional approval, abate a nuisance, or deny an appeal on the forfeiture of a bond. Thereafter, the hearing body shall issue its order to the respondent.

(e) Abatement Penalties and Costs. Upon expiration of the time limits established as set forth in subsection (c) of this section, the Enforcement Officer shall acquire jurisdiction to abate the nuisance. Any materials in or constituting any nuisance abated by the Enforcement Officer may be disposed of or, if directed by the hearing officer, sold in the same manner as surplus City personal property is sold.

(f) Account of Costs and Receipts and Notice of Assessment. The Enforcement Officer will keep an itemized account of the costs of enforcing the provisions of this title and of the proceeds of the sale of any materials connected therewith. Upon completion of abatement, the Enforcement Officer shall prepare a notice to be served by mail, postage prepaid, certified, return receipt requested, to the owner as shown on the last equalized assessment roll specifying:

(1) The work done.

(2) An itemized account of the expenses incurred or expended in the abatement of the nuisance, including the costs and receipts of performing any abatement work, the actual expenses and costs of the City in preparation of notices, specifications, and contracts, inspection of the work, and the cost of printing and mailings required under this chapter, and any attorney fees and costs expended in the abatement of the nuisance, through civil action or otherwise.

(3) An address, legal description, or other description sufficient to identify the premises.

(4) The amount of the assessment proposed to be levied against the premises, or the amount to be refunded, if any, due to excess proceeds over expenses.

(5) The time and place where the Enforcement Officer will submit the account to the Hearing Officer for confirmation. The time and place specified shall be not less than 15 days after service of the notice.

(6) A statement that the Hearing Officer will hear and consider objections and protests to said account and proposed assessment or refund.

(7) A statement that the property may be sold after three years by the tax collector for unpaid delinquent assessments.

(g) Hearing on Account and Proposed Assessment. At the time and place fixed in the notice, the Hearing Officer will hear and consider the account and proposed assessment, together with objections and protests thereto. At the conclusion of the hearing, the Hearing Officer may make such modifications and revisions of the proposed account and assessment as it deems just and may order the account and proposed assessment confirmed or denied, in whole or in part, or as modified and revised. The determination of the Hearing Officer as to all matters contained therein is final and conclusive. The Hearing Officer shall give notice of the decision on the assessment of the costs of abatement by certified mail to the property owner and to any responsible person. The notice shall include a statement that the property may be sold after three years by the tax collector for unpaid delinquent assessments. The decision issued by the City Hearing Officer will be deemed a final order and may be judicially reviewed pursuant to Code of Civil Procedure section 1094.6. There is no right to a City Council appeal.

(h) Notice of Assessment. Upon confirmation of an assessment by the Hearing Officer, the Enforcement Officer is to prepare and have recorded in the office of the County Recorder of Riverside County a notice of assessment. The notice of assessment shall contain the following:

(1) A legal description, address and/or other description sufficient to identify the premises.

(2) A description of the proceeding under which the special assessment was made, including the decision of the Hearing Officer confirming the assessment.

(3) The amount of the assessment.

(4) A claim of assessment upon the described premises.

(i) Assessment. Upon the recordation of a notice of assessment, the amount claimed shall constitute an assessment upon the described premises, pursuant to Section 38773.5 of the Government Code. Such assessment is to be at a parity with the assessments of state and county taxes.

(j) Collection with Ordinary Property Taxes. After recordation, the Notice of Assessment is to be delivered to the County Auditor, who will enter the amount of the assessment on the assessment roll as a special assessment. Thereafter, the amount set forth is to be collected at the same time and in the same manner as ordinary municipal taxes and is subject to the same penalties and interest and to the same procedures for foreclosure 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 are made applicable to such assessment.

(k) Summary Abatement Procedure. Notwithstanding any other provision of this code, whenever the Enforcement Officer determines that a public nuisance exists within the City and that nuisance constitutes an imminent hazard or danger to public health or safety, the Enforcement Officer, without observing the provisions of this chapter with regard to abatement procedures, may take the following steps to abate the nuisance: (1) give the property owner written notice by U.S. mail of the public nuisance, the City's proposed timing and method of the abatement, and the City's intent to collect the abatement costs as lien against the property subject to collection as property taxes; (2) following notice to the property owner, take all necessary and reasonable steps to cause the abatement of such nuisance in such manner as the Enforcement Officer determines is reasonably required; (3) promptly report any such emergency abatement action to the City Council; and (4) cause to be maintained an itemized account of the costs incurred by the City in abating the imminently dangerous condition. Such costs may be recovered by the city in the same manner that abatement costs are recovered pursuant to subsections (f) through (j) of this section.

1.03.080 Administrative citations. In addition to the remedies and penalties contained in this chapter, and in accordance with Government Code Section 53069.4, an administrative citation may be issued for any violation of this Code. The following procedures shall govern the imposition, enforcement, collection and administrative review of administrative citations and penalties.

(a) Administrative Citation Authority.

(1) Any responsible party violating, causing or maintaining a violation of any provision of this Code may be issued an administrative citation by an Enforcement Officer assessing a civil fine as provided in this section. A responsible party to whom a citation is issued shall be liable for and shall pay to the City the fine or fines described in the citation when due along with correction of the violation listed by the Enforcement Officer.

(2) Any Enforcement Officer of the City, upon determining that a provision of this Code which he is charged to enforce has been violated, has the authority to issue an administrative citation to any responsible party. Pursuant to this authority, the Enforcement Officer shall determine the appropriate responsible party for each violation.

(3) Each and every day a violation of this Code exists constitutes a separate and distinct offense and will be subject to a separate fine. A single citation may charge a violation for one or more days on which a violation exists, and for violation of one or more Code sections.

(4) The owner of any premises within the City has the responsibility for keeping such premises free of violations related to the use or condition of the property. The owner of such premises is a responsible party and shall be separately liable for violations committed by tenants or occupants relative to the use or condition of the property.

(b) Notice of Violation.

(1) Whenever an Enforcement Officer determines that a violation of this Code exists, the Enforcement Officer may issue a notice of violation to a responsible party prior to issuing an administrative citation. The notice of violation serves as a written warning of responsibility and requires immediate action by the responsible party to cease and abate the violation. The notice of violation must include the information set forth in subsection (c) of this section and a date by which the violation can reasonably be ceased and abated. If the violation is not ceased or abated by the end of the correction period stated in the notice, the Enforcement Officer may issue an administrative citation.

(2) In accordance with Government Code section 53069.4, no responsible party will be assessed an administrative fine under this section for a continuing violation pertaining to a building, plumbing, electrical or similar structural or zoning issue that does not create an immediate danger to the public health or safety without first receiving a notice of violation and a reasonable opportunity to correct or otherwise remedy the violation. In such circumstance, the stated period available to correct the violation prior to the assessment of a fine must be appropriate to the violation as determined by the Enforcement Officer, but in no event less than 7 days. If, after the correction period stated in the notice, the violation is not ceased or abated, the Enforcement Officer may issue an administrative citation.

(3) Any responsible party cited for a continuing violation may petition the Enforcement Officer for an extension of time to correct the violation so long as the petition is received before the end of the correction period. The Enforcement Officer may at his or her discretion grant an extension of time to correct the violation if the responsible party has supplied sufficient evidence showing that the correction cannot reasonably be made within the stated period.

(4) The procedures of this section shall not apply in the instance of a violation that poses immediate danger to public health or safety. The City shall maintain a list generally describing those violations that pose an immediate danger to public health or safety.

(c) Content of Citation. The administrative citation shall be issued on a form approved by the city attorney and shall contain the following information:

- (1) Name of the person who is charged as a responsible party for the violation;
- (2) Date, location and approximate time the violation was observed;
- (3) Date on which citation is issued;
- (4) The ordinance violated and a brief description of the violation;

- (5) An order to the responsible party to correct the violation within the time specified in the citation and an explanation of the consequences of failure to correct the violation;
- (6) The amount of the administrative penalty imposed for the violation;
- (7) Instructions for the payment of the penalty, and the time period by which it shall be paid and the consequences of failure to pay the penalty within this time period;
- (8) Instructions on how to appeal the citation;
- (9) The signature of the Enforcement Officer;
- (10) Notice that the violation is a nuisance and that collection of unpaid fines and/or nuisance abatement costs can be enforced as an assessment or lien against the property where the violation occurs and that unpaid assessments can result in the property being sold after three years by the county assessor.

The failure of the citation to set forth all required contents shall not affect the validity of the proceedings.

(d) Service of Citation.

- (1) If the responsible party is present at the scene of the violation, the enforcement officer shall deliver a copy of the administrative citation to them.
- (2) If the responsible party is a business, and the business owner is on the premises, the enforcement officer shall attempt to deliver the administrative citation to them. If the Enforcement Officer is unable to serve the business owner on the premises, the administrative citation may be left with the manager or employee of the business. If left with the manager or employee of the business, a copy of the administrative citation shall also be mailed to the business owner by certified mail, return receipt requested.
- (3) If no one can be located at the property, then the administrative citation shall be posted in a conspicuous place on or near the property and a copy mailed by certified mail, return receipt requested to the responsible party. The citation shall be mailed to the property address and/or the address listed for the owner on the last county equalized assessment roll.
- (4) The failure of any interested person to receive the citation shall not affect the validity of the proceedings.

(e) Administrative Penalties.

(1) The penalties assessed for each violation shall not exceed the following amounts:

- a. One hundred dollars (\$100.00) for a first violation;
- b. Two hundred dollars (\$200.00) for a second violation of the same ordinance within one year; and
- c. Five hundred dollars (\$500.00) for each additional violation of the same ordinance within one year.

(2) If the violation is not corrected, additional administrative citations may be issued for the same violation. The amount of the penalty shall increase at the rate specified above.

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

(4) The penalties assessed shall be payable to the City.

(f) Satisfaction of Administrative Citation.

(1) Upon receipt of a citation, the responsible party must pay the fine to the City within 30 days from the issuance date of the administrative citation. All fines assessed shall be payable to the City. Payment of a fine shall not excuse or discharge the failure to correct the violation nor shall it bar further enforcement action by the City.

(2) At any time following 30 days after the issuance of the citation, the City may deliver a collection bill to the responsible party requiring payment for all outstanding amounts owed for the violation, including the amount due for the initial violation plus any appropriate late payment charge, less any amount remitted pursuant to subsection A of this section.

(3) Verification of abatement. The abatement of a continuing violation must be verified by an Enforcement Officer of the City. The responsible party shall contact the phone number designated on the citation and schedule an inspection by an Enforcement Officer.

(g) Administrative Appeal.

(1) *Notice of Appeal.* The recipient of an administrative citation may appeal the citation by filing a written notice of appeal with the director. The written notice of appeal must be filed within 20 days of the service of the administrative citation as set forth in subsection (d) of this section. Failure to file a written notice of appeal within this time period shall constitute a waiver of the right to appeal the administrative citation. The notice of

appeal shall be submitted on city forms and shall contain the following information:

- a. A brief statement setting forth the appellant's interest in the proceedings;
- b. A brief statement of the material facts which the appellant claims supports their contention that no administrative penalty should be imposed or that an administrative penalty of a different amount is warranted;
- c. An address at which the appellant agrees notice of any additional proceeding or an order relating to the imposition of the administrative penalty may be received by mail;
- d. The notice of appeal must be signed by the appellant.

(2) *Administrative Hearing.* Upon a timely written request by the recipient of the administrative citation, an administrative hearing shall be held as follows:

- a. *Notice of Hearing.* Notice of the administrative hearing shall be given at least 10 days before the hearing to the person requesting the hearing. The notice may be delivered to the person or may be mailed to the address listed in the notice of appeal.
- b. *Hearing Officer.* The administrative hearing shall be held before a Hearing Officer selected in the manner permitted by Section 1.03.010(g).
- c. *Conduct of the Hearing.* The Enforcement Officer who issued the administrative citation shall not be required to participate in the administrative hearing. The contents of the Enforcement Officer's file in the case shall be admitted as prima facie evidence of the facts stated therein. The Hearing Officer shall not be limited by the technical rules of evidence. If the person requesting the appeal fails to appear at the administrative hearing, the Hearing Officer shall make their determination based on the information contained in the notice of appeal.

(3) *Hearing Officer's Decision.* The Hearing Officer's decision following the administrative hearing may be personally delivered to the person requesting the hearing or sent by mail. The Hearing Officer may allow payment of the administrative penalty in installments, if the person provides evidence satisfactory to the hearing officer of an inability to pay the penalty in full. The Hearing Officer's decision shall contain instructions for obtaining review of the decision by the superior court.

(h) Review of Administrative Hearing Officer's Decision.

(1) *Notice of Appeal.* Within 20 days of the date of the delivery or mailing of the Hearing Officer's decision, a person may contest that decision by filing an appeal to be heard by the superior court. The filing fee for the appeal shall be in the amount provided for in Government Code section 70615. The failure to file the written appeal and to pay the filing fee within this period shall constitute a waiver of the right to an appeal and the decision shall be deemed confirmed. A copy of the notice of appeal shall be served in person or by first class mail upon the issuing agency by the contestant.

(2) *Conduct of Hearing.* The conduct of the appeal is a subordinate judicial duty and may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court. The appeal shall be heard de novo, except that the contents of the issuing agency's file in the case shall be received in evidence. A copy of the document or instrument of the issuing agency providing notice of the violation and imposition of the administrative penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. The court shall request that the issuing agency's file on the case be forwarded to the court, to be received within 15 days of the request.

(3) *Judgment.* The court shall retain the filing fee regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the local agency. Any deposit of the fine or penalty shall be refunded by the issuing agency in accordance with the judgment of the court. If the fine or penalty has not been deposited and the decision of the court is against the contestant, the issuing agency may proceed to collect the penalty pursuant to the procedures set forth in this chapter, or in any other manner provided by law.

(i) Collection of Unpaid Fines.

(1) The failure of any person to pay a fine or penalty assessed by administrative citation within the time specified on the citation constitutes a debt to the City. To enforce that debt, the City may file a civil action, lien or assess the subject property as set forth below, or pursue any other legal remedy to collect such debt. A person who fails to pay any fine or other charge owed to the city under this chapter is liable in any action brought by the City for all costs incurred in securing payment of the delinquent amount, including, but not limited to, administrative costs and attorneys' fees. Such collection costs are in addition to any fines, interest, and late charges.

(2) In addition to any other legal remedy, any violation of this chapter by failure to pay administrative fines or abate a continuing violation shall

constitute a nuisance. To compel compliance, the City may seek to abate the nuisance and collect the costs incurred by means of a nuisance abatement lien and/or special assessment against the property where the violation occurred. Any unpaid delinquent civil fines and penalties may be recovered as part of any such lien or special assessment against the property of the responsible party where pursuant to Government Code §§ 38773.1 and 38773.5.

(3) To pursue an abatement of a code violation as a nuisance and recover the costs, including any delinquent civil fines and penalties, as an abatement lien or special assessment, the city manager may at his discretion request the county recorder to record notice of the lien and take any other necessary action to enforce collection of this lien. The city manager may pursue these remedies whether or not the City is pursuing any other action to terminate an ongoing code violation that was the basis for the fine.

(4) Before recording the lien, the city manager shall cause a notice and a report stating the amounts due and owing to be provided to the responsible party by personal service. In the event that personal service is not available, the notice and report shall be served as per the requirements of subsection (d) of this section. The report may include a fee, as established by city council resolution, for the administrative costs associated with the preparation and recordation of the lien.

(5) Following service of the notice and report, the city manager shall cause the lien to be filed in the County Recorder's Office.

(6) After confirmation and recordation, the City shall present a copy of the lien to the County tax collector to add the amount of the lien to the next regular property tax bills levied against the parcel for municipal purposes. This amount will be collected at the same time and in the same manner as ordinary property taxes are collected, and will be subject to the same penalties and procedures under foreclosure and sale as provided for with ordinary municipal taxes. After recording, the lien may be foreclosed by judicial or other sale in the manner and means provided by law.

(7) Once the City receives full payment for outstanding principal, penalties, and costs related to a lien, the city manager will cause to be recorded a notice of satisfaction or provide the property owner with a notice of satisfaction for recordation at the County Recorder's Office. This notice of satisfaction will cancel the City's lien.

1.03.090 Civil Actions. The city attorney, by and at the request of the City council or City staff, 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 this Code, as provided by law. In any civil action commenced by the City to abate a public nuisance, to enjoin violation of any provision of this Code, or to collect a civil debt owing to the City, the City shall be entitled to recover from the defendant in any such action all costs incurred therein, including reasonable attorneys' fees and costs of suit, subject to Section 1.03.100 of this Code.

1.03.100 Attorneys' Fees. In any action, administrative proceeding, or special proceeding brought to abate a public nuisance, the prevailing party will be entitled to recover attorneys' fees, provided that attorneys' fees will only be available in those actions or proceedings in which the City has provided notice at the commencement of such action or proceeding that it intends to seek and recover its own attorneys' fees. In no action or proceeding will an award of attorneys' fees exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

1.03.110 Notice of Noncompliance. Whenever a written notice of violation has been given, the enforcement officer may record a notice of noncompliance with the office of the County Recorder and shall notify the owner of the property of such action. The notice of noncompliance shall describe the property, shall set forth the violations, and shall state that any costs incurred by the county, including, but not limited to investigative, administrative and abatement costs and attorneys' fees as a result of the violation of the Code may become a lien on the property and that the owner has been so notified.

1.03.120 Treble Damages. Upon a second or subsequent civil or criminal judgment within a two-year period for a violation of this Code, codes adopted by reference in this Code, or any other City ordinance, the violator shall be liable to the City for treble the abatement costs, in accordance with Government Code Section 38773.7, except in cases of substandard residential buildings that are prosecuted under Health and Safety Code section 17980.

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, Debbie A. Lee, CMC, City Clerk of the City of Wildomar, California, do hereby certify that the foregoing Ordinance No. 50 was introduced at a regular meeting of the City Council of the City of Wildomar, California, on May 12, 2010, and was duly adopted at a regular meeting held on May 26, 2010, by the City Council of the City of Wildomar, California, by the following vote:

AYES: Mayor Moore, Mayor Pro Tem Swanson, Council Members Ade, Farnam

NOES: Council Member Cashman

ABSTAIN: None

ABSENT: None


Debbie A. Lee, CMC
City Clerk
City of Wildomar