

ORDINANCE NO. 501

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAWAIIAN GARDENS AMENDING CHAPTER 1.12 [ENFORCEMENT OF CODES] AND ADDING CHAPTER 1.13 [ADMINISTRATIVE CITATIONS] TO TITLE 1 OF THE HAWAIIAN GARDENS MUNICIPAL CODE PERTAINING TO ADMINISTRATIVE CITATIONS.

THE CITY COUNCIL OF THE CITY OF HAWAIIAN GARDENS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Section 1.12.070 of Title 1, Chapter 1.12, of the Hawaiian Gardens Municipal Code is amended to read as follows:

**"Section 1.12.070 Classification of Offenses; Public Nuisances**

(a) No person shall violate any provision or fail to comply with any requirement, obligation, or condition of this Code or land use entitlement, or any duly-adopted or uncodified ordinance, or of any permit, license, approval or land use entitlement granted or issued pursuant to the Code or an ordinance, (collectively hereafter the "Code"). Such violations are punishable as follows:

(b) *Misdemeanor.* A responsible person violating or failing to comply with the Code shall be guilty of a misdemeanor unless such violation or failure to comply is expressly designated in this Code as an infraction. Any person convicted of a misdemeanor under the provisions of this Code shall be punishable by a fine as identified in the city bail schedule, not to exceed \$1,000.00, or by imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of this Code is committed, continued or permitted by such person, and shall be punished accordingly.

(c) *Infraction.* A responsible person violating or failing to comply with the Code, which offense is expressly designated therein as an infraction, shall be guilty of an infraction. Except as otherwise provided in this Code, any person convicted of an infraction shall be punishable by a fine of: (1) \$100.00 for the first violation, (2) \$200.00 for the second violation of the same provision of this Code within a 12-month period, and (3) \$500.00 for a third or more violations of the same provision of this Code within a 12-month period unless noted otherwise in the bail schedule which may be amended by resolution by the City Council. The fourth violation of the same section of the municipal code within one year may be treated as misdemeanor. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of this Code is committed, continued or permitted by such person, and shall be punished accordingly.

A person charged with an infraction shall not be entitled to have the public defender or other counsel appointed at public expense to represent him or her unless he or she is arrested and not released on his or her written promise to appear, on his or her own recognizance, or pursuant to a deposit of bail.

(d) *Reclassification of offenses.* A violation of this Code classified as a misdemeanor may be charged as an infraction when:

(1) The prosecutor files a complaint charging the offense as an infraction; or

(2) The court, on motion of the prosecutor and with the consent of the defendant, determines to treat a misdemeanor offense as an infraction, in which event the case will proceed as if the defendant had been arraigned on an infraction complaint.

(e) *Continuing Duty of Abatement.* Payment of a fine shall not excuse payment of any required fee under the Code, or the failure to correct a violation of the Code, nor shall it bar the further exercise of one or more of the City's remedies with regard to said violation.

(f) *Public Nuisances.* In addition to the penalties hereinabove provided, any condition, use or activity caused, maintained or otherwise permitted to exist in violation of the Code or a condition of approval of a land use entitlement, shall be deemed a public nuisance and may be abated by the city as such in any manner allowed by law. Each and every day that a prohibited condition, use or activity is caused, maintained or otherwise permitted, shall be regarded as a new and separate public nuisance."

**SECTION 2.** The City Council of the City of Hawaiian Gardens hereby finds:

A. Enforcement of the Hawaiian Gardens Municipal Code and adopted ordinances throughout the city is an important public service. A program for enforcement of local codes is vital to protect public health, safety, and welfare. The establishment of a comprehensive and effective code enforcement program that is able to utilize both administrative and judicial remedies against violations of the City's laws is best equipped to protect public health, safety, and welfare.

B. Government Code Section 53069.4 authorizes local jurisdictions to establish an administrative citation program. The City Council intends, pursuant to this statute, to establish an administrative citation program that:

1. Imposes a non-judicial civil fine for offenses of the Hawaiian Gardens Municipal Code;
2. Encourages prompt abatement or correction of prohibited conditions, uses or activities in the City; and,
3. Creates deterrence against future violation of the City's laws.

C. The administrative citation remedy is not intended to replace any other remedy allowed by the Hawaiian Gardens Municipal Code or state law. It is intended to provide an additional means by which the City's laws may be enforced.

**SECTION 3.** Chapter 1.13 [Administrative Citations] is hereby added to Title 1 of the Hawaiian Gardens Municipal Code, to state as follows:

**Chapter 1.13 - Administrative Citations**

1.13.010	Applicability
1.13.020	Definitions
1.13.030	Scope
1.13.040	Issuance of Notice of Violation
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**1.13.010 Applicability**

A. Use of this chapter shall be at the sole discretion of the City and is one remedy that the City has to address violations of the Hawaiian Gardens Municipal Code. By adopting this chapter, the City does not intend to limit its discretion or ability to utilize any criminal, civil or other remedies, or any combination thereof, to address any violations of the City's laws.

B. This chapter makes any violation of the provisions of the Hawaiian Gardens Municipal Code subject to civil fines.

C. This chapter establishes the administrative procedures for the imposition, enforcement, collection, and administrative review of civil fines pursuant to Government Code, Section 53069.4.

D. An administrative fine shall be imposed by means of an administrative citation issued by an Enforcement Officer, and shall be paid directly to the City of Hawaiian Gardens. Payment of a fine shall not excuse a failure to correct a violation nor shall it bar further enforcement action by the City.

### **1.13.020 Definitions**

As used in this chapter, the following words are defined as follows:

A. "Citation" means an administrative citation that is issued to a Responsible Person pursuant to this chapter.

B. "Citee" means a Responsible Person to whom a citation is issued.

C. "City" means the City of Hawaiian Gardens, California.

D. "Civil fine" is the monetary sanction established by resolution of the City Council that is imposed by a Citation.

E. "Code" shall include: (i) the entire Hawaiian Gardens Municipal Code and all Los Angeles County and state codes incorporated therein by adoption or reference, (ii) any uncodified ordinance adopted by the Hawaiian Gardens City Council, and, (iii) all other state laws applicable to the City of Hawaiian Gardens.

F. "Director" shall mean the Director of the Planning and Community Development Department of the City of Hawaiian Gardens, or his or her designee.

G. "Enforcement officer" shall mean any officer, agent or employee of the City designated by the City Administrator to have the authority and responsibility to enforce certain provisions of this Code, as identified in Section Chapter 1.12.050.C of the Municipal Code. This official may also be referred to as an "Officer."

H. "Hearing officer" shall mean a person, agency or body designated by the City to consider all timely requests for an administrative hearing upon issuance of a citation.

I. "Notice of violation" shall mean a written notice to a Responsible Person that a violation of this Code has occurred. This notice may include a warning that an administrative citation assessing fines may be issued unless the violation is terminated or abated.

J. "Owner" means and includes any person having legal title to, or who leases, rents, occupies or has charge, control or possession of, or responsibility for, any real property in the City, including all persons identified as owners on the last equalized assessment roll of the Los Angeles County Assessor's Office. An owner of personal property or animals shall be any person who has legal title, charge, control or possession of, or responsibility for, property. An owner may include an agent, manager or representative thereof.

K. "Person" means and includes any individual, partnership of any kind, a corporation of any kind, limited liability company, association, joint venture or other organization or entity, however formed, as well as fiduciaries, trustees, heirs, executors, administrators, or assigns, or any combination of such persons. "Person" also includes

any public entity or agency that acts as an owner in the City.

L. "Property" or "Premises" means any real property, or improvements thereon, or portions thereof, as the case may be. "Property" includes any parkway or unimproved public easement abutting such real property. "Property" shall also include all forms of personal property or animals, where applicable.

M. "Responsible Person" means any person, whether as an owner, or otherwise, that allows, causes, creates, maintains, or permits a violation of the Code to exist or continue, by any act or the omission of any act or duty.

N. "Violation" shall mean an act or omission of any act, or use or condition that constitutes an offense of the Code, as well as a breach or violation of any condition of a permit, approval or license issued pursuant to the Code. A "transient" violation is one that is brief or spontaneous in its commission, or that is not typically confined to a fixed location. A "Non-transient" violation is continuing in nature and generally present at one location.

#### **1.13.030 Scope**

This chapter provides for imposition of a civil fine pursuant to a Citation for any violation of the Code, as well as for a breach or violation of any condition of a permit, approval or license issued pursuant to the Code. This remedy may be utilized in place of, or in addition to, any other remedy allowed by the Code or state law. The Director or designees thereof, shall have sole discretion to utilize any remedy or remedies as authorized by law.

#### **1.13.040 Issuance of Notice of Violation**

A. When an Enforcement Officer determines that a Responsible Person has committed a violation of the Code, the officer may first issue a notice of violation. The Officer may then issue a citation if complete abatement of the violation does not occur in a reasonable period as required by the officer in the notice. The Community Development Director, or a designee thereof, may give a Responsible Person an extension under a Notice of Violation if substantial progress, as determined by the City, is made in abating the violation in the period stated in the notice, or when the City determines that mitigating or extenuating factors are present that merit an extension of a correction period in a notice of violation.

B. The Enforcement Officer may, notwithstanding the foregoing subpart, elect to issue a Citation without a prior notice of violation if the Responsible Person is a chronic or repeat offender of the Code, or when the violation is transient in nature, or when the violation presents an immediate danger to health or safety, or is otherwise a serious or substantial detriment to public welfare.

#### **1.13.050 Issuance of Administrative Citation; Contents Thereof**

A. Whenever an Enforcement Officer determines that a violation of the Code has occurred, the Officer may issue a Citation on a form approved by the city attorney

imposing a civil fine or fines to the Responsible Person(s) in accordance with the provision of this chapter.

B. When the violation pertains to building, plumbing, electrical or other similar structural or zoning issues that creates an immediate danger to health or safety, a citation may be issued forthwith. In the absence of an immediate danger, a citation for such a violation shall not be issued pursuant to this chapter unless the Responsible Person has first been provided with a reasonable period, as determined by the Officer, in which to complete the abatement or compliance actions.

C. An Enforcement Officer may issue a Citation for a violation not committed in the Officer's presence if the Officer has determined, through investigation, that the Citee did commit, or is otherwise responsible for, the violation.

D. Each day that a prohibited condition, use or activity under the Code is committed, continued or permitted, shall be a separate violation for which a citation may be issued. A Citation may charge several violations of the Code.

E. Each Citation shall contain the following information:

1. Name and mailing address of the Responsible Person.
2. The address or description of the location of the violation.
3. The date of commission of the violation(s), or detection thereof by an Enforcement Officer.
4. The Code ordinance section(s) violated;
5. A description of the violation(s);
6. Amount of the fine for each violation, and the procedure and place to pay the fine(s), and any late charge(s), if not timely paid;
7. When appropriate, the action(s) required to correct the violation(s), and, if applicable, any deadlines or time limitations for commencing and completing such action(s).
8. A description of the Citation review process and the manner by which a hearing on a Citation may be obtained (including the form to be used and the period in which a request must be made in order to be timely).
9. The name and signature of the officer, and the signature of the Citee, if he or she is physically present and will sign the Citation at the time of its issuance. The refusal of a Citee to sign a citation shall not affect its validity or any related subsequent proceeding, nor shall signing a Citation constitute an admission that a person has committed a violation of the Code.
10. Any other information deemed necessary by the Director.

### **1.13.060 Service of Citation**

A. A Citation may be served either by personal delivery to the Citee or by first class mail through the United States Postal Service. If served by first class mail, the Citation shall be sealed in an envelope with postage prepaid and addressed to the Citee at his or her last-known business or residence address as the same appears in public records of the City. Service by mail shall be deemed to have been completed on the date of deposit with the United States Postal Service. The date of personal service or the date a Citation is deposited with the U.S. Postal Service shall constitute the issuance date of a Citation.

B. If an agent, manager or representative of a Responsible Person is personally served with a citation, a copy thereof shall also served by first class mail to the Responsible Person at his or her last-known business or residence address as the same appears in public records of the City. In such instances, the date a copy of the Citation is deposited with the U.S. Postal Service shall constitute the issuance date of a Citation.

C. If service cannot be accomplished personally or by mail for Citations involving a real property-related violation of the Code, the officer shall post the Citation on said real property in the City in which the Citee is known to have a legal interest in, or possession, dominion and control of, said property, or a portion thereof. The date of posting shall constitute the issuance date of a Citation.

D. Any notice or order given pursuant to any provision of this chapter shall be served in the manner provided for in this section, unless otherwise stated.

E. Failure of a Citee to receive a Citation or notice by mail, shall not invalidate any fine, late charge, action or proceeding, if service was given in a manner stated in this section.

### **1.13.070 Civil Fines, Late Charges; Collection of Fees and Costs**

A. The amounts of the fines imposed pursuant to this chapter shall be set forth in a schedule of fines established by resolution of the City Council. The City Council may, by resolution, also impose escalating fines in amounts it deems appropriate for repeat offenses in a twelve-month period that are classified as misdemeanors under the Code. The amounts of fines may be modified from time to time by a resolution of the City Council.

B. If a violation is classified as an infraction under the Code, the civil fine shall not exceed \$100.00 for a first offense, \$200.00 for a second offense within one year, and \$300.00 for a third offense within one year as set forth in subdivision (b) of Section 25132 and subdivision (b) of Section 36900 of the California Government Code. The amounts of such fines may be modified from time to time by a resolution of the City Council provided they do not exceed the limits allowed by state law.

C. Failure to pay a civil fine within the period required from the issuance date of a citation shall result in a late charge as established by a resolution of the City Council. The amount of a late charge may be modified from time to time by a resolution of the City Council.

D. Civil fines and any late charges due shall be paid to the City at such location or address as stated in the citation, or as may otherwise be designated by the Director.

E. The due date for the City's receipt of a civil fine shall be fifteen (15) calendar days from the issuance date of a citation. Thereafter, a late charge shall be due and owing.

F. Payment of a civil fine shall not excuse or discharge a Citee from the duty to immediately abate a violation of the Code, nor from any other responsibility or legal consequences for a continuation or repeated occurrence(s) of a violation of the Code.

G. Abatement of a violation shall not excuse the obligation of a Citee to pay a civil fine, or any late charge.

H. Unpaid civil fine and/or late charges shall constitute a debt that may be collected in any manner allowed by law. The City shall be entitled to recover its attorney fees and costs arising from an action to collect a civil fine and/or late charge if it is the prevailing party and provided it made the election to seek attorney fees at the commencement of the action. A Citee shall be entitled to recover his or her attorney fees if the City made the election to seek attorney fees at the outset of the action and the Citee prevails thereon.

**1.13.080 Right to an Administrative Hearing; Waiver of Advance Deposit of Fine**

A. Any Citee may contest the violation(s), or that he or she is a Responsible Person, by filing a request for an administrative hearing with the Office of the City Clerk, Hawaiian Gardens City Hall, 21815 Pioneer Blvd., Hawaiian Gardens, CA 90716. The request for an administrative hearing shall be made on a City approved form and filed within fifteen (15) calendar days from the issuance date of a citation. If the Office of the City Clerk does not receive the request in the required period, the Citee shall have waived the right to a hearing and the citation shall be deemed final.

B. No fee shall be charged for the filing of a request for a hearing.

C. Requests for a hearing shall be accompanied by the entire amount of the fine stated in the Citation. Failure to deposit a fine, or the tender of a non-negotiable check in the required period, shall render a request for an administrative hearing incomplete and untimely. Fines that are deposited with the City shall not accrue interest. Fines deposited shall be returned to the person tendering the fines within thirty (30) days in the event a Citation is overturned.

D. A Citee who is financially unable to deposit the civil fine with his or her request for a hearing may complete a City-approved application form for an advance deposit hardship waiver (hereafter the "Hardship Waiver"). This form and all required accompanying records, shall be tendered, along with a request for a hearing, to the Office of the City Clerk – Hawaiian Gardens City Hall, 21815 Pioneer Blvd., Hawaiian Gardens, CA 90716 within fifteen (15) calendar days from the issuance date of a Citation.

E. To be considered for a Hardship Waiver, the application form must be complete, signed, and must be accompanied by documents that enable the City to reasonably determine the Citee's present inability to deposit the fine. Documents suitable for consideration, may include, without limitation, accurate, complete and legible copies of state and federal income tax returns and all schedules for the preceding tax year; financial statements, loan applications, bank account records, income and expense records for twelve months preceding submittal of the waiver form, as well as other documentation demonstrating the Citee's financial hardship. The City may, at a time chosen in its sole discretion and after a Citation is final or confirmed, destroy or discard the documents submitted by a Citee for a Hardship Waiver without prior notice to the Citee.

F. Failure to submit a completed, signed Hardship Waiver form, along with records that support a claim of financial hardship, shall render the request for hearing incomplete and untimely. In this event, the Citee shall have waived the right to a hearing and the Citation shall be deemed final.

G. The City shall issue a written decision specifying the reasons for issuing or not issuing the Hardship Waiver. This decision is final and non-appealable. The decision shall be served upon the person requesting the Hardship Waiver by first class mail.

(1) Approval of a Hardship Waiver shall result in the City setting a hearing pursuant to subpart (I) of this section.

(2) If the City determines that the Citee is not entitled to a Hardship Waiver, he or she shall tender the full amount of the civil fine to the Office of the City Clerk within seven (7) calendar days of the date the decision is deposited with the U.S. Postal Service. In the event the City Clerk does not receive the full amount of the fine in the required period: (i) a late charge shall be imposed; (ii) the request for a hearing is rendered incomplete and untimely, and, (iii) the Citee shall have waived the right to a hearing and the Citation shall be deemed final.

H. A request for a hearing shall contain the following:

- (1) The citation number.
- (2) The name, address, telephone and any facsimile numbers, of each person contesting the citation.
- (3) A statement of the reason(s) why a citation is being contested.

(4) The date and signature of the Citee(s).

I. The person filing the request for a hearing shall be notified in writing by first class mail of the date, time and place set for this proceeding which shall be conducted within thirty (30) days of the date a timely and complete request is received by the Office of the City Clerk. Such notice shall be given at least ten (10) calendar days prior to the date of the hearing. Service of this notice is deemed complete at time of mailing. The failure of a Citee to receive a properly addressed notice shall not invalidate the Citation or any hearing, City action or proceeding conducted pursuant to this chapter.

J. If the Officer submits an additional written report concerning the Citation to the Office of the City Clerk for consideration at the hearing, then a copy of this report shall also be served by first class mail on the person requesting an administrative hearing no less than three (3) calendar days prior to the date thereof. Failure to receive said report shall not invalidate the Citation or any hearing, City action or proceeding conducted pursuant to this chapter.

K. A timely request for a hearing shall not excuse a Citee from the duty to immediately abate a violation of the Code, nor from any other responsibility or legal consequences for a continuation or repeated occurrence(s) of a violation of the Code.

#### **1.13.090 Administrative Hearing – Procedures**

A. The City Administrator shall designate or appoint a hearing officer.

B. Administrative hearings are informal and rules of evidence and discovery do not apply. The City bears the burden of proof to establish a violation and responsibility thereof by a preponderance of evidence. The citation is prima-facie evidence of the violation, however, the Officer who issued the Citation is not required to attend or participate at the hearing. The Citee(s), and Officer, if present, shall have an opportunity to present evidence and to cross-examine witnesses. A Citee may bring an interpreter to the hearing provided there is no expense to the City thereof. The hearing officer may question any person who presents evidence or who testifies at any hearing.

C. A Citee may appear at the hearing in person or by written declaration executed under penalty of perjury. Said declaration and any documents in support thereof shall be tendered to and received by the Office of the City Clerk at least three (3) City business days prior to the hearing. If the Citee fails to attend the scheduled hearing, or does not submit a written declaration in a timely manner, he or she shall be deemed to have waived the right to a hearing. In such an instance, the hearing officer shall cancel the hearing and not render a decision. In such instances, the Citation shall be deemed final.

D. Hearings may be continued once at the request of a Citee or the Officer who issued the citation. The hearing officer may also continue the hearing for cause.

### **1.13.100 Hearing Officer Decision; Right of Appeal**

A. After considering all of the testimony and evidence submitted at the hearing, the Hearing officer shall issue an Administrative Order at the conclusion of the hearing or within fifteen (15) days to uphold or overturn the Citation and shall state the reasons thereof. If the Citation is upheld and the violation has not been fully corrected as of the date of the hearing, the hearing officer shall order correction thereof in the decision and state deadline(s) to complete said action(s). The decision of the hearing officer shall be final. All fines become immediately due and owing to the City in the full amount and if not paid may be collected as provided in this chapter. Failure to comply with an Administrative Order directing the abatement of a continuing violation will result in a criminal misdemeanor complaint to be filed or other legal remedy available to gain compliance with the Administrative Order.

B. The Citee(s) shall be served by first class mail with a copy of the Administrative Order. The date the decision is deposited with the U.S. Postal Service shall constitute the date of its service. The failure of a Citee to receive a properly addressed decision shall not invalidate or any hearing, City action or proceeding conducted pursuant to this chapter.

C. Decisions of the hearing officer are, in accordance with Government Code Section 53069.4(b), appealable to the superior court within twenty (20) days after the date of their service. Each decision shall contain a statement advising the Citee(s) of this appeal right and the procedures and court-filing fee for its exercise. A Citee shall serve a copy of the court filed Notice of Appeal on the Office of the City Clerk at Hawaiian Gardens City Hall, 21815 Pioneer Blvd., Hawaiian Gardens, CA 90716 by personal service or first class mail within five (5) calendar days of filing the original thereof.

D. If a hearing officer's decision is not appealed in a timely manner, the decision shall be deemed confirmed.

E. The superior court is the sole reviewing authority and an appeal from a hearing officer's decision is not appealable to the City Council. If a Responsible Person prevails on appeal, the City shall reimburse his or her filing fee, as well as the fine deposit in accordance with the court judgment. These monies shall be mailed to the Responsible Person within thirty (30) calendar days of the City's receipt of a notice of judgment or ruling from the superior court clerk.

### **1.13.110 Collection of Delinquent Fines**

The City may use all available legal means to collect past due fines and other related costs.

1. Any person who fails to pay any fine shall be liable in any action or collection procedure brought by the city for all costs incurred to obtain payment of the

delinquent amount, including, but not limited to, administrative costs, collection costs, and attorneys' fees.

2. Collection costs shall be in addition to any penalties, interest, and late charges imposed upon the delinquent obligation.

3. Commencement of an action to collect a delinquent fine shall not preclude issuance of one or more additional citations to the legally responsible party if the violation or violations persist after the date for correcting them as stated in the Administrative Order.

#### **1.13.120 Collection by Lien**

If the fine owed by a cited party is for one or more Municipal Code violations on the cited party's property, and the citation was issued to abate a nuisance as defined by the Municipal Code or City ordinance, and the amount has been delinquent 90 days or more, the delinquent amount shall become a lien on the property on which the violations occurred.

#### **1.13.130 Notice of Lien Hearing**

The City shall give written notice to the cited party of a hearing before the City Council regarding the delinquent fine amount and related costs. The notice shall be mailed by first class mail at least fourteen (14) days before the hearing. The notice shall state:

1. The citation or citations resulting in the delinquent fine amount;
2. The total of the delinquent fine amount and related costs;
3. The date the delinquent fine amount was due;
4. The street address, Assessor's parcel number, and legal description of the property upon which the violations occurred;
5. The date, hour, and place of the hearing;
6. A statement that the cited party or other legally responsible person may appear and be heard;
7. A statement that unless the fine amount is paid by the date specified in a resolution by the City Council, the total amount due will become a lien and special assessment on the property.

#### **1.13.140 Lien Hearing**

At the lien hearing the City Council shall hear and consider all competent evidence about the delinquent fine amount. If it finds the amount is delinquent, it shall make a finding of fact confirming that the delinquent fine amount and related costs are due the City as costs of nuisance abatement. If the delinquent amount are affirmed the

total amount due is to be paid to the City within five (5) days, after which the amount due will become a lien on the property.

**1.13.150 Recorded Lien**

If the amount due is not paid within five (5) days after the City Council confirms it and orders it paid, the amount due shall constitute a lien upon the real property upon which the nuisance violations existed and shall be a special assessment against the property. The lien shall continue until the amount due and interest, computed at 6% per annum from the date of the City Council's confirmation, is paid or until it is discharged of record.

If the amount due is not paid as required by the City Council's order, a notice of lien shall be recorded in the Office of the County Recorder and delivered to the County Tax Collector. The notice of lien shall substantially be in the following form:

**NOTICE OF LIEN**

**CLAIM OF THE CITY OF HAWAIIAN GARDENS**

By the authority of Hawaiian Gardens Municipal Code section 1.13.040, an administrative citation or citations were issued regarding nuisance abatement at the real property described below. Fines were assessed for the nuisance. By action of the City of Hawaiian Gardens City Council, recorded in its official minutes, the fines and related costs were confirmed as delinquent and assessed against the property as costs of nuisance abatement.

The delinquent amount was not paid, therefore the City of Hawaiian Gardens claims a lien on the real property for the costs of abatement in the amount of \$\_\_\_\_\_, which shall be a lien on the real property until it is paid, with interest at the rate of 6% per annum from the \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_ [insert the date the City Council confirmed the delinquent fines and related costs]. The lien shall continue until paid in full and discharged of record. It shall also be a personal obligation against [insert name of property owner].

The real property upon which a lien is claimed is that certain parcel of land in the City of Hawaiian Gardens, County of Los Angeles, State of California. described as follows:

[Insert legal description.]

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

City of Hawaiian Gardens

By: \_\_\_\_\_

Community Development Director

### **1.13.160 Special Assessment**

After the lien is confirmed and recorded, a certified copy of it shall be filed with the County Auditor. The description of the parcel reported to the Auditor shall be the one used by the County Assessor's map book for the current year. The County Auditor shall enter each assessment on the county tax roll for the reported parcel of land. The amount of the assessment shall be collected at the time and in the manner of ordinary municipal taxes. If delinquent, the amount is subject to the same penalties and procedure of foreclosure provided for ordinary municipal taxes. As an alternative method, the County Tax Collector, in his discretion, may collect the assessment without reference to the general taxes, by issuing separate bills and receipts for the assessment. Laws relating to the levy, collection, and enforcement of county taxes shall apply to such special assessment.

The City may receive the amount due on the abatement costs and issue receipts at any time after the confirmation of the statement, before August 1<sup>st</sup> of that current year. The City Council may order a refund of any lien or assessment paid under this section if it finds that all or part of the assessment has been erroneously levied. An assessment or part thereof shall not be refunded unless a claim is filed with the City Clerk on or before March 1<sup>st</sup> after taxes become due and pay-able. The claim shall be verified by the person who pays the tax, or his guardian, executor, or administrator.

### **1.13.170 Miscellaneous Provisions**

A. Failure of a Citee to comply with a corrective action stated in any uncontested citation, or with regard to a correction order in any hearing officer decision that is deemed confirmed, shall constitute a misdemeanor.

B. The Director may dismiss a citation at any time if a determination is made that it was issued in error, in which event any deposit of a fine shall be refunded. Notice of such action shall be given to the Citee in writing.

C. The Director is authorized to promulgate procedural rules and regulations governing the civil administrative citation and hearing process.

### **1.13.180 Severability**

If any section, subpart, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless

remain in full force and effect. The City Council hereby declares that it would have adopted each section, subpart, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subparts, sentences, clauses, phrases or portions of this Ordinance be declared invalid or unenforceable.

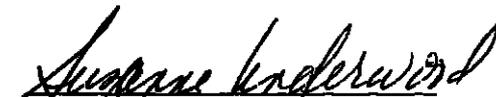
**SECTION 4.** This Ordinance shall become effective thirty (30) days after the final passage thereof.

**SECTION 5.** The City Clerk shall certify to the passage of this Ordinance and prior to the expiration of fifteen (15) days from the adoption hereof the City Clerk shall cause this Ordinance to be published in the manner described by law.

**PASSED, APPROVED, AND ADOPTED** by the Hawaiian Gardens City Council on this 9<sup>th</sup> day of November 2004.

  
\_\_\_\_\_  
LEONARD J. CHAIDEZ  
MAYOR

ATTEST:

  
\_\_\_\_\_  
SUZANNE UNDERWOOD  
CITY CLERK

**CITY OF HAWAIIAN GARDENS  
CITY CLERK'S OFFICE  
CERTIFICATION**

STATE OF CALIFORNIA            )  
COUNTY OF LOS ANGELES    ) SS  
CITY OF HAWAIIAN GARDENS   )

I, SUE UNDERWOOD, CITY CLERK, of the City of Hawaiian Gardens, do hereby certify that **Ordinance No. 501** was duly and regularly passed and adopted by the City Council of the City of Hawaiian Gardens on the 9<sup>TH</sup> day of NOVEMBER 2004, by the following votes as the same appears on file and of record in the Office of the City Clerk.

**AYES:**           SCHULTZE, OYAMA-CANADA, HECKERMAN, PRIDA, CHAIDEZ  
**NOES:**           NONE  
**ABSENT:**        NONE  
**ABSTAIN:**      NONE

  
\_\_\_\_\_  
SUE UNDERWOOD  
CITY CLERK



**CITY OF HAWAIIAN GARDENS  
CITY COUNCIL  
STAFF REPORT**

Agenda Item No. A-1-  
Meeting Date 11/9/2004  
City Administrator [Signature]

**TO:** Honorable Mayor and City Councilmembers  
**THRU:** Ernesto Marquez, Acting City Administrator  
**FROM:** Joseph Colombo, Community Development Director  
**DATE:** November 9, 2004  
**SUBJECT:** Ordinance No: 501 Second Reading/Adoption

**CITY OF HAWAIIAN GARDENS**

**ACTION:**

Approved  
 Denied  
 Amended  
 Receive & File  
 Other

**VOTE:** 5-0

**DATE:** 11-9-2004

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAWAIIAN GARDENS AMENDING CHAPTER 1.12 [ENFORCEMENT OF CODES] AND ADDING CHAPTER 1.13 [ADMINISTRATIVE CITATIONS] TO TITLE 1 OF THE HAWAIIAN GARDENS MUNICIPAL CODE PERTAINING TO ADMINISTRATIVE CITATIONS**

**I. DISCUSSION**

On October 26, 2004, the City Council of the City of Hawaiian Gardens introduced Ordinance No. 501 adopting administrative enforcement procedures, abatement, and fines for the enforcement of the municipal code and regulations.

The proposed administrative procedures will authorize specified City officials to issue administrative citations subject to fines adopted by resolution of the City Council. The Ordinance will further establish a procedure for reviewing the citations fines by a hearing officer on appeal, and for the collection of fines that have become final, that have been upheld, and that remain unpaid.

The administrative enforcement procedures do not permit the imposition of criminal penalties punishable by imprisonment, but the City retains the authority to prosecute municipal code violations through its prosecutor in criminal court. The administrative enforcement procedures provide an administrative enforcement tool subject to monetary penalties, in addition to the judicial criminal enforcement procedures available for the City to enforce its Code and regulations.

**II. RECOMMENDATION:**

Staff recommends that the City Council waive further reading, read by title only and adopt Ordinance No. 501.

**ATTACHMENT:** Ordinance No. 501

ORDINANCE NO. 501

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAWAIIAN GARDENS AMENDING CHAPTER 1.12 [ENFORCEMENT OF CODES] AND ADDING CHAPTER 1.13 [ADMINISTRATIVE CITATIONS] TO TITLE 1 OF THE HAWAIIAN GARDENS MUNICIPAL CODE PERTAINING TO ADMINISTRATIVE CITATIONS.

THE CITY COUNCIL OF THE CITY OF HAWAIIAN GARDENS DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Section 1.12.070 of Title 1, Chapter 1.12, of the Hawaiian Gardens Municipal Code is amended to read as follows:

**“Section 1.12.070 Classification of Offenses; Public Nuisances**

(a) No person shall violate any provision or fail to comply with any requirement, obligation, or condition of this Code or land use entitlement, or any duly-adopted or uncodified ordinance, or of any permit, license, approval or land use entitlement granted or issued pursuant to the Code or an ordinance (collectively hereafter the “Code”). Such violations are punishable as follows:

(b) *Misdemeanor.* A responsible person violating or failing to comply with the Code shall be guilty of a misdemeanor unless such violation or failure to comply is expressly designated in this Code as an infraction. Any person convicted of a misdemeanor under the provisions of this Code shall be punishable by a fine as identified in the city bail schedule, not to exceed \$1,000.00, or by imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of this Code is committed, continued or permitted by such person, and shall be punished accordingly.

(c) *Infraction.* A responsible person violating or failing to comply with the Code, which offense is expressly designated therein as an infraction, shall be guilty of an infraction. Except as otherwise provided in this Code, any person convicted of an infraction shall be punishable by a fine of: (1) \$100.00 for the first violation, (2) \$200.00 for the second violation of the same provision of this Code within a 12-month period, and (3) \$500.00 for a third or more violations of the same provision of this Code within a 12-month period unless noted otherwise in the bail schedule which may be amended by resolution by the City Council. The fourth violation of the same section of the municipal code within one year may be treated as misdemeanor. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of this Code is committed, continued or permitted by such person, and shall be punished accordingly.

A person charged with an infraction shall not be entitled to have the public defender or other counsel appointed at public expense to represent him or her unless he or she is arrested and not released on his or her written promise to appear, on his or her own recognizance, or pursuant to a deposit of bail.

(d) *Reclassification of offenses.* A violation of this Code classified as a misdemeanor may be charged as an infraction when:

(1) The prosecutor files a complaint charging the offense as an infraction; or

(2) The court, on motion of the prosecutor and with the consent of the defendant, determines to treat a misdemeanor offense as an infraction, in which event the case will proceed as if the defendant had been arraigned on an infraction complaint.

(e) *Continuing Duty of Abatement.* Payment of a fine shall not excuse payment of any required fee under the Code, or the failure to correct a violation of the Code, nor shall it bar the further exercise of one or more of the City's remedies with regard to said violation.

(f) *Public Nuisances.* In addition to the penalties hereinabove provided, any condition, use or activity caused, maintained or otherwise permitted to exist in violation of the Code or a condition of approval of a land use entitlement, shall be deemed a public nuisance and may be abated by the city as such in any manner allowed by law. Each and every day that a prohibited condition, use or activity is caused, maintained or otherwise permitted, shall be regarded as a new and separate public nuisance."

**SECTION 2.** The City Council of the City of Hawaiian Gardens hereby finds:

A. Enforcement of the Hawaiian Gardens Municipal Code and adopted ordinances throughout the city is an important public service. A program for enforcement of local codes is vital to protect public health, safety, and welfare. The establishment of a comprehensive and effective code enforcement program that is able to utilize both administrative and judicial remedies against violations of the City's laws is best equipped to protect public health, safety, and welfare.

B. Government Code Section 53069.4 authorizes local jurisdictions to establish an administrative citation program. The City Council intends, pursuant to this statute, to establish an administrative citation program that:

1. Imposes a non-judicial civil fine for offenses of the Hawaiian Gardens Municipal Code;
2. Encourages prompt abatement or correction of prohibited conditions, uses or activities in the City; and,
3. Creates deterrence against future violation of the City's laws.

C. The administrative citation remedy is not intended to replace any other remedy allowed by the Hawaiian Gardens Municipal Code or state law. It is intended to provide an additional means by which the City's laws may be enforced.

**SECTION 3.** Chapter 1.13 [Administrative Citations] is hereby added to Title 1 of the Hawaiian Gardens Municipal Code, to state as follows:

**Chapter 1.13 - Administrative Citations**

1.13.010	Applicability
1.13.020	Definitions
1.13.030	Scope
1.13.040	Issuance of Notice of Violation
1.13.050	Issuance of Administrative Citation; Contents Thereof
1.13.060	Service of Citation
1.13.070	Civil Fines, Late Charges; Collection of Fees and Costs
1.13.080	Right to an Administrative Hearing; Waiver of Advance Deposit of Fine
1.13.090	Administrative Hearing - Procedures
1.13.100	Hearing Officer Decision; Right of Appeal
1.13.110	Collection of Delinquent Fines
1.13.120	Collection by Lien
1.13.130	Notice of Lien Hearing
1.13.140	Lien Hearing
1.13.150	Recorded Lien
1.13.160	Special Assessment
1.13.170	Miscellaneous Provision
1.13.180	Severability

**1.13.010 Applicability**

A. Use of this chapter shall be at the sole discretion of the City and is one remedy that the City has to address violations of the Hawaiian Gardens Municipal Code. By adopting this chapter, the City does not intend to limit its discretion or ability to utilize any criminal, civil or other remedies, or any combination thereof, to address any violations of the City's laws.

B. This chapter makes any violation of the provisions of the Hawaiian Gardens Municipal Code subject to civil fines.

C. This chapter establishes the administrative procedures for the imposition, enforcement, collection, and administrative review of civil fines pursuant to Government Code, Section 53069.4.

D. An administrative fine shall be imposed by means of an administrative citation issued by an Enforcement Officer, and shall be paid directly to the City of Hawaiian Gardens. Payment of a fine shall not excuse a failure to correct a violation nor shall it bar further enforcement action by the City.

### **1.13.020 Definitions**

As used in this chapter, the following words are defined as follows:

A. "Citation" means an administrative citation that is issued to a Responsible Person pursuant to this chapter.

B. "Citee" means a Responsible Person to whom a citation is issued.

C. "City" means the City of Hawaiian Gardens, California.

D. "Civil fine" is the monetary sanction established by resolution of the City Council that is imposed by a Citation.

E. "Code" shall include: (i) the entire Hawaiian Gardens Municipal Code and all Los Angeles County and state codes incorporated therein by adoption or reference, (ii) any uncodified ordinance adopted by the Hawaiian Gardens City Council, and, (iii) all other state laws applicable to the City of Hawaiian Gardens.

F. "Director" shall mean the Director of the Planning and Community Development Department of the City of Hawaiian Gardens, or his or her designee.

G. "Enforcement officer" shall mean any officer, agent or employee of the City designated by the City Administrator to have the authority and responsibility to enforce certain provisions of this Code, as identified in Section Chapter 1.12.050.C of the Municipal Code. This official may also be referred to as an "Officer."

H. "Hearing officer" shall mean a person, agency or body designated by the City to consider all timely requests for an administrative hearing upon issuance of a citation.

I. "Notice of violation" shall mean a written notice to a Responsible Person that a violation of this Code has occurred. This notice may include a warning that an administrative citation assessing fines may be issued unless the violation is terminated or abated.

J. "Owner" means and includes any person having legal title to, or who leases, rents, occupies or has charge, control or possession of, or responsibility for, any real property in the City, including all persons identified as owners on the last equalized assessment roll of the Los Angeles County Assessor's Office. An owner of personal property or animals shall be any person who has legal title, charge, control or possession of, or responsibility for, property. An owner may include an agent, manager or representative thereof.

K. "Person" means and includes any individual, partnership of any kind, a corporation of any kind, limited liability company, association, joint venture or other organization or entity, however formed, as well as fiduciaries, trustees, heirs, executors, administrators, or assigns, or any combination of such persons. "Person" also includes

any public entity or agency that acts as an owner in the City.

L. "Property" or "Premises" means any real property, or improvements thereon, or portions thereof, as the case may be. "Property" includes any parkway or unimproved public easement abutting such real property. "Property" shall also include all forms of personal property or animals, where applicable.

M. "Responsible Person" means any person, whether as an owner, or otherwise, that allows, causes, creates, maintains, or permits a violation of the Code to exist or continue, by any act or the omission of any act or duty.

N. "Violation" shall mean an act or omission of any act, or use or condition that constitutes an offense of the Code, as well as a breach or violation of any condition of a permit, approval or license issued pursuant to the Code. A "transient" violation is one that is brief or spontaneous in its commission, or that is not typically confined to a fixed location. A "Non-transient" violation is continuing in nature and generally present at one location.

#### **1.13.030 Scope**

This chapter provides for imposition of a civil fine pursuant to a Citation for any violation of the Code, as well as for a breach or violation of any condition of a permit, approval or license issued pursuant to the Code. This remedy may be utilized in place of, or in addition to, any other remedy allowed by the Code or state law. The Director or designees thereof, shall have sole discretion to utilize any remedy or remedies as authorized by law.

#### **1.13.040 Issuance of Notice of Violation**

A. When an Enforcement Officer determines that a Responsible Person has committed a violation of the Code, the officer may first issue a notice of violation. The Officer may then issue a citation if complete abatement of the violation does not occur in a reasonable period as required by the officer in the notice. The Community Development Director, or a designee thereof, may give a Responsible Person an extension under a Notice of Violation if substantial progress, as determined by the City, is made in abating the violation in the period stated in the notice, or when the City determines that mitigating or extenuating factors are present that merit an extension of a correction period in a notice of violation.

B. The Enforcement Officer may, notwithstanding the foregoing subpart, elect to issue a Citation without a prior notice of violation if the Responsible Person is a chronic or repeat offender of the Code, or when the violation is transient in nature, or when the violation presents an immediate danger to health or safety, or is otherwise a serious or substantial detriment to public welfare.

#### **1.13.050 Issuance of Administrative Citation; Contents Thereof**

A. Whenever an Enforcement Officer determines that a violation of the Code has occurred, the Officer may issue a Citation on a form approved by the city attorney

imposing a civil fine or fines to the Responsible Person(s) in accordance with the provision of this chapter.

B. When the violation pertains to building, plumbing, electrical or other similar structural or zoning issues that creates an immediate danger to health or safety, a citation may be issued forthwith. In the absence of an immediate danger, a citation for such a violation shall not be issued pursuant to this chapter unless the Responsible Person has first been provided with a reasonable period, as determined by the Officer, in which to complete the abatement or compliance actions.

C. An Enforcement Officer may issue a Citation for a violation not committed in the Officer's presence if the Officer has determined, through investigation, that the Citee did commit, or is otherwise responsible for, the violation.

D. Each day that a prohibited condition, use or activity under the Code is committed, continued or permitted, shall be a separate violation for which a citation may be issued. A Citation may charge several violations of the Code.

E. Each Citation shall contain the following information:

1. Name and mailing address of the Responsible Person.
2. The address or description of the location of the violation.
3. The date of commission of the violation(s), or detection thereof by an Enforcement Officer.
4. The Code ordinance section(s) violated;
5. A description of the violation(s);
6. Amount of the fine for each violation, and the procedure and place to pay the fine(s), and any late charge(s), if not timely paid;
7. When appropriate, the action(s) required to correct the violation(s), and, if applicable, any deadlines or time limitations for commencing and completing such action(s).
8. A description of the Citation review process and the manner by which a hearing on a Citation may be obtained (including the form to be used and the period in which a request must be made in order to be timely).
9. The name and signature of the officer, and the signature of the Citee, if he or she is physically present and will sign the Citation at the time of its issuance. The refusal of a Citee to sign a citation shall not affect its validity or any related subsequent proceeding, nor shall signing a Citation constitute an admission that a person has committed a violation of the Code.
10. Any other information deemed necessary by the Director.

### **1.13.060 Service of Citation**

A. A Citation may be served either by personal delivery to the Citee or by first class mail through the United States Postal Service. If served by first class mail, the Citation shall be sealed in an envelope with postage prepaid and addressed to the Citee at his or her last-known business or residence address as the same appears in public records of the City. Service by mail shall be deemed to have been completed on the date of deposit with the United States Postal Service. The date of personal service or the date a Citation is deposited with the U.S. Postal Service shall constitute the issuance date of a Citation.

B. If an agent, manager or representative of a Responsible Person is personally served with a citation, a copy thereof shall also served by first class mail to the Responsible Person at his or her last-known business or residence address as the same appears in public records of the City. In such instances, the date a copy of the Citation is deposited with the U.S. Postal Service shall constitute the issuance date of a Citation.

C. If service cannot be accomplished personally or by mail for Citations involving a real property-related violation of the Code, the officer shall post the Citation on said real property in the City in which the Citee is known to have a legal interest in, or possession, dominion and control of, said property, or a portion thereof. The date of posting shall constitute the issuance date of a Citation.

D. Any notice or order given pursuant to any provision of this chapter shall be served in the manner provided for in this section, unless otherwise stated.

E. Failure of a Citee to receive a Citation or notice by mail, shall not invalidate any fine, late charge, action or proceeding, if service was given in a manner stated in this section.

### **1.13.070 Civil Fines, Late Charges; Collection of Fees and Costs**

A. The amounts of the fines imposed pursuant to this chapter shall be set forth in a schedule of fines established by resolution of the City Council. The City Council may, by resolution, also impose escalating fines in amounts it deems appropriate for repeat offenses in a twelve-month period that are classified as misdemeanors under the Code. The amounts of fines may be modified from time to time by a resolution of the City Council.

B. If a violation is classified as an infraction under the Code, the civil fine shall not exceed \$100.00 for a first offense, \$200.00 for a second offense within one year, and \$300.00 for a third offense within one year as set forth in subdivision (b) of Section 25132 and subdivision (b) of Section 36900 of the California Government Code. The amounts of such fines may be modified from time to time by a resolution of the City Council provided they do not exceed the limits allowed by state law.

C. Failure to pay a civil fine within the period required from the issuance date of a citation shall result in a late charge as established by a resolution of the City Council. The amount of a late charge may be modified from time to time by a resolution of the City Council.

D. Civil fines and any late charges due shall be paid to the City at such location or address as stated in the citation, or as may otherwise be designated by the Director.

E. The due date for the City's receipt of a civil fine shall be fifteen (15) calendar days from the issuance date of a citation. Thereafter, a late charge shall be due and owing.

F. Payment of a civil fine shall not excuse or discharge a Citee from the duty to immediately abate a violation of the Code, nor from any other responsibility or legal consequences for a continuation or repeated occurrence(s) of a violation of the Code.

G. Abatement of a violation shall not excuse the obligation of a Citee to pay a civil fine, or any late charge.

H. Unpaid civil fine and/or late charges shall constitute a debt that may be collected in any manner allowed by law. The City shall be entitled to recover its attorney fees and costs arising from an action to collect a civil fine and/or late charge if it is the prevailing party and provided it made the election to seek attorney fees at the commencement of the action. A Citee shall be entitled to recover his or her attorney fees if the City made the election to seek attorney fees at the outset of the action and the Citee prevails thereon.

**1.13.080 Right to an Administrative Hearing; Waiver of Advance Deposit of Fine**

A. Any Citee may contest the violation(s), or that he or she is a Responsible Person, by filing a request for an administrative hearing with the Office of the City Clerk, Hawaiian Gardens City Hall, 21815 Pioneer Blvd., Hawaiian Gardens, CA 90716. The request for an administrative hearing shall be made on a City approved form and filed within fifteen (15) calendar days from the issuance date of a citation. If the Office of the City Clerk does not receive the request in the required period, the Citee shall have waived the right to a hearing and the citation shall be deemed final.

B. No fee shall be charged for the filing of a request for a hearing.

C. Requests for a hearing shall be accompanied by the entire amount of the fine stated in the Citation. Failure to deposit a fine, or the tender of a non-negotiable check in the required period, shall render a request for an administrative hearing incomplete and untimely. Fines that are deposited with the City shall not accrue interest. Fines deposited shall be returned to the person tendering the fines within thirty (30) days in the event a Citation is overturned.

D. A Citee who is financially unable to deposit the civil fine with his or her request for a hearing may complete a City-approved application form for an advance deposit hardship waiver (hereafter the "Hardship Waiver"). This form and all required accompanying records, shall be tendered, along with a request for a hearing, to the Office of the City Clerk – Hawaiian Gardens City Hall, 21815 Pioneer Blvd., Hawaiian Gardens, CA 90716 within fifteen (15) calendar days from the issuance date of a Citation.

E. To be considered for a Hardship Waiver, the application form must be complete, signed, and must be accompanied by documents that enable the City to reasonably determine the Citee's present inability to deposit the fine. Documents suitable for consideration, may include, without limitation, accurate, complete and legible copies of state and federal income tax returns and all schedules for the preceding tax year; financial statements, loan applications, bank account records, income and expense records for twelve months preceding submittal of the waiver form, as well as other documentation demonstrating the Citee's financial hardship. The City may, at a time chosen in its sole discretion and after a Citation is final or confirmed, destroy or discard the documents submitted by a Citee for a Hardship Waiver without prior notice to the Citee.

F. Failure to submit a completed, signed Hardship Waiver form, along with records that support a claim of financial hardship, shall render the request for hearing incomplete and untimely. In this event, the Citee shall have waived the right to a hearing and the Citation shall be deemed final.

G. The City shall issue a written decision specifying the reasons for issuing or not issuing the Hardship Waiver. This decision is final and non-appealable. The decision shall be served upon the person requesting the Hardship Waiver by first class mail.

(1) Approval of a Hardship Waiver shall result in the City setting a hearing pursuant to subpart (I) of this section.

(2) If the City determines that the Citee is not entitled to a Hardship Waiver, he or she shall tender the full amount of the civil fine to the Office of the City Clerk within seven (7) calendar days of the date the decision is deposited with the U.S. Postal Service. In the event the City Clerk does not receive the full amount of the fine in the required period: (i) a late charge shall be imposed; (ii) the request for a hearing is rendered incomplete and untimely, and, (iii) the Citee shall have waived the right to a hearing and the Citation shall be deemed final.

H. A request for a hearing shall contain the following:

- (1) The citation number.
- (2) The name, address, telephone and any facsimile numbers, of each person contesting the citation.
- (3) A statement of the reason(s) why a citation is being contested.

(4) The date and signature of the Citee(s).

I. The person filing the request for a hearing shall be notified in writing by first class mail of the date, time and place set for this proceeding which shall be conducted within thirty (30) days of the date a timely and complete request is received by the Office of the City Clerk. Such notice shall be given at least ten (10) calendar days prior to the date of the hearing. Service of this notice is deemed complete at time of mailing. The failure of a Citee to receive a properly addressed notice shall not invalidate the Citation or any hearing, City action or proceeding conducted pursuant to this chapter.

J. If the Officer submits an additional written report concerning the Citation to the Office of the City Clerk for consideration at the hearing, then a copy of this report shall also be served by first class mail on the person requesting an administrative hearing no less than three (3) calendar days prior to the date thereof. Failure to receive said report shall not invalidate the Citation or any hearing, City action or proceeding conducted pursuant to this chapter.

K. A timely request for a hearing shall not excuse a Citee from the duty to immediately abate a violation of the Code, nor from any other responsibility or legal consequences for a continuation or repeated occurrence(s) of a violation of the Code.

#### **1.13.090 Administrative Hearing – Procedures**

A. The City Administrator shall designate or appoint a hearing officer.

B. Administrative hearings are informal and rules of evidence and discovery do not apply. The City bears the burden of proof to establish a violation and responsibility thereof by a preponderance of evidence. The citation is prima-facie evidence of the violation, however, the Officer who issued the Citation is not required to attend or participate at the hearing. The Citee(s), and Officer, if present, shall have an opportunity to present evidence and to cross-examine witnesses. A Citee may bring an interpreter to the hearing provided there is no expense to the City thereof. The hearing officer may question any person who presents evidence or who testifies at any hearing.

C. A Citee may appear at the hearing in person or by written declaration executed under penalty of perjury. Said declaration and any documents in support thereof shall be tendered to and received by the Office of the City Clerk at least three (3) City business days prior to the hearing. If the Citee fails to attend the scheduled hearing, or does not submit a written declaration in a timely manner, he or she shall be deemed to have waived the right to a hearing. In such an instance, the hearing officer shall cancel the hearing and not render a decision. In such instances, the Citation shall be deemed final.

D. Hearings may be continued once at the request of a Citee or the Officer who issued the citation. The hearing officer may also continue the hearing for cause.

### **1.13.100 Hearing Officer Decision; Right of Appeal**

A. After considering all of the testimony and evidence submitted at the hearing, the Hearing officer shall issue an Administrative Order at the conclusion of the hearing or within fifteen (15) days to uphold or overturn the Citation and shall state the reasons thereof. If the Citation is upheld and the violation has not been fully corrected as of the date of the hearing, the hearing officer shall order correction thereof in the decision and state deadline(s) to complete said action(s). The decision of the hearing officer shall be final. All fines become immediately due and owing to the City in the full amount and if not paid may be collected as provided in this chapter. Failure to comply with an Administrative Order directing the abatement of a continuing violation will result in a criminal misdemeanor complaint to be filed or other legal remedy available to gain compliance with the Administrative Order.

B. The Citee(s) shall be served by first class mail with a copy of the Administrative Order. The date the decision is deposited with the U.S. Postal Service shall constitute the date of its service. The failure of a Citee to receive a properly addressed decision shall not invalidate or any hearing, City action or proceeding conducted pursuant to this chapter.

C. Decisions of the hearing officer are, in accordance with Government Code Section 53069.4(b), appealable to the superior court within twenty (20) days after the date of their service. Each decision shall contain a statement advising the Citee(s) of this appeal right and the procedures and court-filing fee for its exercise. A Citee shall serve a copy of the court filed Notice of Appeal on the Office of the City Clerk at Hawaiian Gardens City Hall, 21815 Pioneer Blvd., Hawaiian Gardens, CA 90716 by personal service or first class mail within five (5) calendar days of filing the original thereof.

D. If a hearing officer's decision is not appealed in a timely manner, the decision shall be deemed confirmed.

E. The superior court is the sole reviewing authority and an appeal from a hearing officer's decision is not appealable to the City Council. If a Responsible Person prevails on appeal, the City shall reimburse his or her filing fee, as well as the fine deposit in accordance with the court judgment. These monies shall be mailed to the Responsible Person within thirty (30) calendar days of the City's receipt of a notice of judgment or ruling from the superior court clerk.

### **1.13.110 Collection of Delinquent Fines**

The City may use all available legal means to collect past due fines and other related costs.

1. Any person who fails to pay any fine shall be liable in any action or collection procedure brought by the city for all costs incurred to obtain payment of the

delinquent amount, including, but not limited to, administrative costs, collection costs, and attorneys' fees.

2. Collection costs shall be in addition to any penalties, interest, and late charges imposed upon the delinquent obligation.

3. Commencement of an action to collect a delinquent fine shall not preclude issuance of one or more additional citations to the legally responsible party if the violation or violations persist after the date for correcting them as stated in the Administrative Order.

#### **1.13.120 Collection by Lien**

If the fine owed by a cited party is for one or more Municipal Code violations on the cited party's property, and the citation was issued to abate a nuisance as defined by the Municipal Code or City ordinance, and the amount has been delinquent 90 days or more, the delinquent amount shall become a lien on the property on which the violations occurred.

#### **1.13.130 Notice of Lien Hearing**

The City shall give written notice to the cited party of a hearing before the City Council regarding the delinquent fine amount and related costs. The notice shall be mailed by first class mail at least fourteen (14) days before the hearing. The notice shall state:

1. The citation or citations resulting in the delinquent fine amount;
2. The total of the delinquent fine amount and related costs;
3. The date the delinquent fine amount was due;
4. The street address, Assessor's parcel number, and legal description of the property upon which the violations occurred;
5. The date, hour, and place of the hearing;
6. A statement that the cited party or other legally responsible person may appear and be heard;
7. A statement that unless the fine amount is paid by the date specified in a resolution by the City Council, the total amount due will become a lien and special assessment on the property.

#### **1.13.140 Lien Hearing**

At the lien hearing the City Council shall hear and consider all competent evidence about the delinquent fine amount. If it finds the amount is delinquent, it shall make a finding of fact confirming that the delinquent fine amount and related costs are due the City as costs of nuisance abatement. If the delinquent amount are affirmed the

total amount due is to be paid to the City within five (5) days, after which the amount due will become a lien on the property.

**1.13.150 Recorded Lien**

If the amount due is not paid within five (5) days after the City Council confirms it and orders it paid, the amount due shall constitute a lien upon the real property upon which the nuisance violations existed and shall be a special assessment against the property. The lien shall continue until the amount due and interest, computed at 6% per annum from the date of the City Council's confirmation, is paid or until it is discharged of record.

If the amount due is not paid as required by the City Council's order, a notice of lien shall be recorded in the Office of the County Recorder and delivered to the County Tax Collector. The notice of lien shall substantially be in the following form:

**NOTICE OF LIEN**

**CLAIM OF THE CITY OF HAWAIIAN GARDENS**

By the authority of Hawaiian Gardens Municipal Code section 1.13.040, an administrative citation or citations were issued regarding nuisance abatement at the real property described below. Fines were assessed for the nuisance. By action of the City of Hawaiian Gardens City Council, recorded in its official minutes, the fines and related costs were confirmed as delinquent and assessed against the property as costs of nuisance abatement.

The delinquent amount was not paid, therefore the City of Hawaiian Gardens claims a lien on the real property for the costs of abatement in the amount of \$\_\_\_\_\_, which shall be a lien on the real property until it is paid, with interest at the rate of 6% per annum from the \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_ [insert the date the City Council confirmed the delinquent fines and related costs]. The lien shall continue until paid in full and discharged of record. It shall also be a personal obligation against [insert name of property owner].

The real property upon which a lien is claimed is that certain parcel of land in the City of Hawaiian Gardens, County of Los Angeles, State of California. described as follows:

[Insert legal description.]

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

City of Hawaiian Gardens

By: \_\_\_\_\_

Community Development Director

### **1.13.160 Special Assessment**

After the lien is confirmed and recorded, a certified copy of it shall be filed with the County Auditor. The description of the parcel reported to the Auditor shall be the one used by the County Assessor's map book for the current year. The County Auditor shall enter each assessment on the county tax roll for the reported parcel of land. The amount of the assessment shall be collected at the time and in the manner of ordinary municipal taxes. If delinquent, the amount is subject to the same penalties and procedure of foreclosure provided for ordinary municipal taxes. As an alternative method, the County Tax Collector, in his discretion, may collect the assessment without reference to the general taxes, by issuing separate bills and receipts for the assessment. Laws relating to the levy, collection, and enforcement of county taxes shall apply to such special assessment.

The City may receive the amount due on the abatement costs and issue receipts at any time after the confirmation of the statement, before August 1<sup>st</sup> of that current year. The City Council may order a refund of any lien or assessment paid under this section if it finds that all or part of the assessment has been erroneously levied. An assessment or part thereof shall not be refunded unless a claim is filed with the City Clerk on or before March 1<sup>st</sup> after taxes become due and pay-able. The claim shall be verified by the person who pays the tax, or his guardian, executor, or administrator.

### **1.13.170 Miscellaneous Provisions**

A. Failure of a Citee to comply with a corrective action stated in any uncontested citation, or with regard to a correction order in any hearing officer decision that is deemed confirmed, shall constitute a misdemeanor.

B. The Director may dismiss a citation at any time if a determination is made that it was issued in error, in which event any deposit of a fine shall be refunded. Notice of such action shall be given to the Citee in writing.

C. The Director is authorized to promulgate procedural rules and regulations governing the civil administrative citation and hearing process.

### **1.13.180 Severability**

If any section, subpart, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless

remain in full force and effect. The City Council hereby declares that it would have adopted each section, subpart, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subparts, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

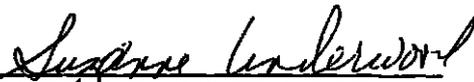
**SECTION 4.** This Ordinance shall become effective thirty (30) days after the final passage thereof.

**SECTION 5.** The City Clerk shall certify to the passage of this Ordinance and prior to the expiration of fifteen (15) days from the adoption hereof the City Clerk shall cause this Ordinance to be published in the manner described by law.

**PASSED, APPROVED, AND ADOPTED** by the Hawaiian Gardens City Council on this 26th day of October 2004.

  
BETTY SCHULTZE  
MAYOR

ATTEST:

  
SUZANNE UNDERWOOD  
CITY CLERK

**CITY OF HAWAIIAN GARDENS  
CITY CLERK'S OFFICE  
CERTIFICATION**

STATE OF CALIFORNIA            )  
COUNTY OF LOS ANGELES    ) SS  
CITY OF HAWAIIAN GARDENS )

I, SUE UNDERWOOD, CITY CLERK, of the City of Hawaiian Gardens, do hereby certify that **Ordinance No. 501** was duly and regularly passed and adopted by the City Council of the City of Hawaiian Gardens on the **26TH day of OCTOBER 2004**, by the following votes as the same appears on file and of record in the Office of the City Clerk.

**AYES:**           OYAMA-CANADA, HECKERMAN, PRIDA, CHAIDEZ, SCHULTZE,  
**NOES:**           NONE  
**ABSENT:**       NONE  
**ABSTAIN:**      NONE

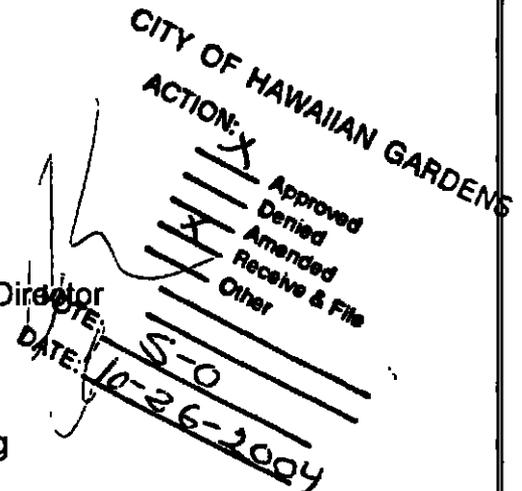
  
\_\_\_\_\_  
SUE UNDERWOOD  
CITY CLERK



**CITY OF HAWAIIAN GARDENS  
CITY COUNCIL  
STAFF REPORT**

Agenda Item No B-1-  
Meeting Date 10/26/2004  
City Administrator 

**TO:** Honorable Mayor and City Councilmembers  
**THRU:** Ernesto Marquez, Acting City Administrator  
**FROM:** Joseph Colombo, Community Development Director  
**DATE:** October 26, 2004  
**SUBJECT:** Ordinance No: 501 Introduction/First Reading



**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAWAIIAN GARDENS AMENDING CHAPTER 1.12 [ENFORCEMENT OF CODES] AND ADDING CHAPTER 1.13 [ADMINISTRATIVE CITATIONS] TO TITLE 1 OF THE HAWAIIAN GARDENS MUNICIPAL CODE PERTAINING TO ADMINISTRATIVE CITATIONS**

**I. SUMMARY**

Currently, violations of the City of Hawaiian Gardens Municipal Code are processed as criminal violations which may require judicial proceedings. The proposed Administrative Citation program would give staff another "tool" which can be used in conjunction with current enforcement practices to gain compliance, and expedite the code enforcement process. This program will basically fill the "gap" between issuing a warning notice and criminal prosecution. Staff has been exploring methods to more efficiently and effectively provide Code Enforcement services. Staff has found that several California Cities have successfully utilized an Administrative Citation process to address certain code enforcement issues. This process has proven effective and less time consuming than traditional criminal and civil actions in obtaining code compliance. The structure of the Administrative Citation process is intended to closely mirror the parking citation program.

**II. DISCUSSION**

In 1995, SB 814 added section 53069.4 to the California Government Code which authorizes the legislative body of a local agency to pass an ordinance that would make any violation enacted by the City subject to administrative fines or

penalties. The Community Development Department is proposing an Administrative Citation Program which will assist in the City's efforts to preserve its community by targeting those properties that do not comply with the Municipal Code. The Ordinance provides for an administrative fine or penalty as an alternative to criminal prosecution. This should assist staff to minimize blight in the community, preserve property values and promote preservation of the public health, safety and welfare. The Administrative Citation Ordinance will also provide an efficient and cost-effective means of enforcing the Code by saving costs on attorney fees, court appearances and enormous amount of staff spent on writing letters and clerical support.

The ordinance was drafted by staff and reviewed by the City Prosecutor and the City Attorney in accordance with Section 53069.4 of the Government Code. Once the City adopts the ordinance, a violator of a Municipal Code provision subject to the administrative penalty will be required to pay a fine to the City rather than to the court. Violators will not be subject to a jail or probation term for violation of a Code provision, which would otherwise have been an infraction or a misdemeanor offense. This process will eliminate the need for court appearances for arraignments, pre-trials and trials for violations of the Municipal Code section. Responsible parties who violate Code sections subject to administrative penalty will be assessed by means of an administrative citation issued by an Enforcement Officer. If an Enforcement Officer is not able to make contact with a responsible person, the Citation will be mailed first class mail. Upon receipt of the citation, the responsible party must (1) remedy the violation within the time indicated on the citation or pay the fine, or (2) request an administrative hearing within fifteen (15) days. The amount of the fine must be deposited in advance of the hearing, but there is a procedure for waiver of that deposit, if making the deposit causes a hardship. Upon request for an administrative hearing, a Hearing Officer, appointed by the City Administrator, shall conduct a hearing within thirty (30) days of a completed request. At the conclusion of the hearing, the Hearing Officer will issue a written decision. The violator may also file a notice of appeal with the Superior Court if they do not agree with the hearing officer's decision. If the responsible party fails to timely file a notice of appeal, the Hearing Officer's decision will be deemed final. Unless an Administrative Hearing finds that there is no violation, it is important to note that compliance is mandatory even upon the paying of the fine and subsequent administrative citations may be issued with increased fine amounts for continued non-compliance.

Basically, the administrative procedures are similar to the parking citation system which was created by state Legislation in 1992 and enacted on July 1, 1993. Under the parking citation statute, parking violations constitute *prima facie* evidence of the facts of a violation on the citation and are made subject to civil penalties, enforceable through civil administrative procedures, including a provision for *de novo* review of appeals in court.

Staff believes that these proposed new regulations and procedures will prove to be a vital tool to allow the City a time-effective and cost-effective way to deal with neglected property and maintain the integrity of the community. Staff anticipates on implementing the program by January 1, 2005. Staff will bring back a resolution at the December 14, 2004 meeting establishing an Administrative fine schedule.

**III. RECOMMENDATION:**

*Staff recommends that the City Council waive further reading, and introduce Ordinance No. 501.*

**ATTACHMENT:** Ordinance No. 501