

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, CALIFORNIA, 1) AMENDING CHAPTER 4.24 "ADMINISTRATIVE CITATION PROCEDURE" OF TITLE 4 "CODE ENFORCEMENT" AND 2) AMENDING SECTION 8.40.030 "INSPECTION, REGISTRATION AND FEES" OF CHAPTER 8.40 "ABANDONED RESIDENTIAL PROPERTY REGISTRATION" OF TITLE 8 "HEALTH AND SAFETY" OF THE DESERT HOT SPRINGS MUNICIPAL CODE TO REVISE THE PROCEDURES FOR THE ISSUANCE OF ADMINISTRATIVE CITATIONS

WHEREAS, the City of Desert Hot Springs ("City") is a municipal corporation and a charter city; and

WHEREAS, the Community Preservation Division (formerly called Code Enforcement) of the City of Desert Hot Springs is tasked with the enforcement of the City Municipal Code ("DHSMC"), state and local laws, and health and safety regulations; and

WHEREAS, trained and certified officers of the Community Preservation Division regularly conduct inspections of properties and investigate any conditions which potentially violate the DHSMC, state or local laws, or health and safety regulations; and

WHEREAS, if violations of any applicable law are found, Community Preservation Officers may prepare and issue an administrative citation pursuant to DHSMC Chapter 4.24; and

WHEREAS, Chapter 4.24 of the DHSMC describes the procedures for issuing administrative citations, including fine schedules and appeals of administrative citations; and

WHEREAS, current Chapter 4.24 requires a thirty days' notice of violation to be issued before an administrative citation if the violation is related to a building, plumbing, electrical, or other similar structural or zoning issue and is not an immediate danger to health or safety; and

WHEREAS, implementation of Chapter 4.24 has become cumbersome when violations related to building, plumbing, electrical, or other similar structural or zoning are recurring or continuing and violators do not risk any immediate fines or penalties; and

WHEREAS, to improve the enforcement of the DHSMC, Community Preservation Officers should be given the discretion to determine, in the first instance,

what type of notice to issue or what type of enforcement to seek, including the option to issue an administrative citation; and

WHEREAS, the issuance of administrative citations, along with fines and penalties, is an effective tool to combat violations of the municipal code; and

WHEREAS, this ordinance amends Chapter 4.24 of the municipal code to allow Community Preservation Officers to issue administrative citations whenever they have determined a violation of the DHSMC has occurred, and updates Chapter 4.24 to conform with the rest of the DHSMC; and

WHEREAS, Section 8.40.030, which references imposition of special assessment and lien procedures under Chapter 4.24, must be updated to reflect the renumbering of sections under Chapter 4.24;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Desert Hot Springs as follows:

Section 1. **RECITALS**

That the foregoing recitals are true and correct and are herein adopted by this reference.

Section 2. **AMENDMENT OF CHAPTER 4.24 “ADMINISTRATIVE CITATION PROCEDURE” OF TITLE 4 “CODE ENFORCEMENT” OF THE DESERT HOT SPRINGS MUNICIPAL CODE**

Chapter 4.24 (“Administrative Citation Procedure”) of Title 4 (“Code Enforcement”) of the Desert Hot Springs Municipal Code is hereby amended as follows:

4.24.010 Purpose.

The purpose of this chapter is to establish an administrative citation program that will permit City personnel to proceed administratively with its code enforcement efforts in an expedient, efficient and fair manner for purposes of effectively protecting the health and safety of the general public and enhancing the quality of life for the citizens of the City by preventing and discouraging violations of the City’s code and by imposing fines on persons who violate the City’s code. This chapter will permit the City to issue administrative citations for any violation of the City’s code.

4.24.020 Definitions.

A. The words and phrases included in this chapter shall employ the definitions found in ~~Section 80.02 of Chapter 80 (General Provisions) of Title VIII (Code Enforcement)~~ **Section 4.04.20 of Chapter 4.04 (General Provisions) of Title 4 (Code Enforcement)** of the Desert Hot Springs Municipal Code unless it is clearly apparent from the context that another meaning is intended.

B. In addition to those definitions set forth in ~~Section 80.02 of Chapter 80 (General Provisions) of Title VIII (Code Enforcement)~~ **Section 4.04.20 of Chapter 4.04 (General Provisions) of Title 4 (Code Enforcement)** of the Desert Hot Springs Municipal Code the following definitions shall apply to this chapter:

“Administrative Hearing Officer” means the individual who shall be responsible for conducting administrative appeal hearings and rendering decisions pursuant to the administrative appeal procedures set forth in this chapter.

“Administrative citation” means a formal notice that is issued by a ~~Code Enforcement Officer~~ **Community Preservation Officer**, issuing agent or issuing officer to a responsible party.

“City” means the City of Desert Hot Springs.

“City Clerk” means the City Clerk of the City or designee.

“City Council” means the City Council of the City.

“Code” means the municipal code of the City and all applicable statutes, rules, codes and regulations adopted and incorporated therein by reference through a duly adopted ordinance or resolution of the City Council.

“Finance Director” means the Director of Finance for the City or designee.

“Fine” means the sum of money imposed upon a person as a penalty for committing a violation of the Code, payable to the City.

“Owner” means the owner of record as shown on the last equalized assessment roll of the County or as otherwise may be known to the ~~Community Preservation Officer Code Enforcement Officer~~ **Community Preservation Officer**. If there is more than one owner, the term includes all of the owners. For purposes of providing notice to an owner of any action or proceeding under this chapter, “owner” includes the actual owner of record, or such owner’s agent, employee or other legal representative if such agent, employee or representative is authorized by the owner to receive such notice.

“Person” means any individual, firm, association, club or organization (including informal club or organization), partnership, business, entity, trust(ee), company or corporation, or the owner, tenant, occupant, operator, manager, employee or agent of

any such firm, association, organization, partnership, business, trust, company or corporation. Person does not include an individual acting within the scope of his or her employment or contractual obligations to the City.

“Remedies” means the enforcement options available to the City to gain compliance with a law or regulation.

“Responsible party” means any person, owner, tenant or occupant and a parent or legal guardian of any person(s) under 18 years of age, whose acts or omissions have caused or contributed to a violation of this code, and shall include any owner(s) or occupant(s) of the affected property.

“Tenant” or “occupant” means the person or persons having a right of present possession of the affected property, other than the owner, including without limitation tenant(s), subtenant(s), lessee(s), sublessee(s), or assignee(s), or any authorized agent of any such person(s) or owner(s).

4.24.030 Undefined terms.

Where terms are not specifically defined in this chapter, in the code, in any applicable statute, rule, code or regulation, or in any of the Uniform Codes adopted and incorporated by reference in the code, they shall have the meanings set forth their ordinary accepted meanings within the context with which they are used. The most current edition of Webster’s Third New International Dictionary of the English Language, unabridged, shall be construed as providing ordinary accepted meanings for any duly adopted City policy or regulation.

4.24.040 Plural.

Words used in the singular include the plural, and the plural the singular.

4.24.050 Feminine and masculine.

Words used in the masculine gender include the feminine, and the feminine the masculine.

4.24.060 Reference applies to amendments.

Whenever a reference is made to any part of the code or to any ordinance of the City, reference applies to all amendments and additions now or hereafter made.

4.24.070 Issuance of administrative citation.

Whenever a ~~Code Enforcement Officer~~ **Community Preservation Officer** determines that a violation of the code has occurred, the ~~Code Enforcement Officer~~ **Community Preservation Officer** may issue an administrative citation to any responsible party. ~~If the violation pertains to building, plumbing, electrical, or other similar structural or zoning issue that does not create an immediate danger to health or safety, a notice of violation shall be issued to the responsible party in accordance with Sections 4.24.150 through 4.24.180 prior to the issuance of an administrative citation and the imposition of an administrative fine.~~

~~4.24.080 Opportunity to correct or remedy violations.~~

~~A. Any responsible party to whom a notice of violation has been issued for violations pertaining to building, plumbing, electrical, or other similar structural or zoning issues that do not create an immediate danger to health or safety, shall be subject to the provisions of Section 4.24.150 of this chapter. For all other violations, the citation recipient shall be provided not less than ten calendar days in which to correct or otherwise remedy the violation prior to the imposition of any administrative fine.~~

~~B. The Code Enforcement Officer or other authorized agent may extend the time in which to correct or otherwise remedy a violation upon a showing that the recipient of the administrative citation requires additional time to complete repairs, or upon a showing that the recipient is awaiting issuance of a permit, provided such person offers proof that he or she has commenced taking action to correct or otherwise remedy the violation and/or that a proper application for such permit has been made.~~

~~4.24.080-4.24.090~~ Administrative fines.

A. Any responsible party to whom an administrative citation is issued shall be responsible for payment of an administrative fine. Any person issued an administrative citation under this chapter, for each separate violation, shall be subject to a fine as follows: (1) an administrative fine in an amount not to exceed \$100 for the first violation; (2) an administrative fine in an amount not to exceed

\$250 for a second violation of the same offense within a 12-month period of the date of the first offense; and (3) a fine in an amount not to exceed \$500 for a third and any subsequent violation of the same offense within a 12-month period of the date of the first offense. which shall be set from time to time by resolution of the City Council. Payment of an administrative fine shall be made in accordance with the provisions of Section **4.24.240** ~~**4.24.300**~~ of this chapter.

B. A separate offense occurs for each day a violation is continued and/or maintained.

4.24.090 ~~**4.24.100**~~ Contents of administrative citation.

An administrative citation shall include all of the following information:

- A. The name of the person(s) responsible for committing the violation(s);
- B. The date of the violation(s);
- C. The street address or a definite description of the location where the violation occurred;
- D. A description of the violation;
- E. The code section(s) violated;
- F. An order prohibiting the continuation or repeated occurrence of the described violation(s);
- G. The amount of the administrative fine for the violation(s);
- H. A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;
- I. A description of the administrative citation appeal process, including the time within which a notice of appeal must be filed and the place at which a notice of appeal must be filed;
- J. A description of the process by which the City may collect any unpaid fines;
- K. A description of the potential consequences should the responsible party continue or repeat the violation;

L. The name and signature of the ~~Code Enforcement Officer~~ **Community Preservation Officer** or other authorized person who issued the administrative citation; and

M. The number of times the violation has been cited by the City within the previous ~~36~~ **12** months.

4.24.100 ~~4.24.110~~ Form of administrative citation.

An administrative citation may be in letter form or any other form which **substantially adequately** conveys the information set forth in Section 4.24.100.

4.24.110 ~~4.24.120~~ Persons entitled to service of administrative citation.

The administrative citation, and any amended or supplemental administrative citation, **shall** ~~should~~ be served upon the responsible party(s). If the violation is related to a condition on real property, the administrative citation, and any amended or supplemental administrative citation, shall be served upon the responsible party(s) and the owner. If the violation is an act committed by an owner, operator, manager, agent and/or employee on behalf of a firm, association, organization, partnership entity, club, business, trust, company or corporation during employment activities, the administrative citation, and any amended or supplemental administrative citation, shall be served upon the owner and/or manager, operator, agent or employee of such firm, association, organization, partnership, entity, club, business, trust, company or corporation. The failure of the **Community Preservation Officer** ~~Code Enforcement Officer~~, issuing agent or issuing officer to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed by the provisions of this chapter.

4.24.120 ~~4.24.130~~ Service of administrative citation ~~and notice of violation~~.

A. The administrative citation ~~or notice of violation, when applicable pursuant to Section 4.24.150,~~ shall be served upon the responsible party or owner personally, or by United States mail, first-class postage prepaid, and if by such mail, it shall be sent to the last known address listed on the most recent tax assessor's records or as may otherwise be known to the **Community Preservation Officer** ~~Code Enforcement Officer~~, issuing officer or issuing agent.

B. In the case of personal service, service shall be deemed complete at the time of such delivery. In the case of service by first-class mail, service shall be deemed complete at the time of deposit into the United States mail. ~~Where service is by first-class mail, a copy of the administrative citation or notice of violation, when applicable pursuant to Section 4.24.150, shall also be conspicuously posted at the affected property when reasonably practicable for a period of not less than three calendar days prior to the first date that commencement of corrective action or abatement is to be undertaken.~~ The failure to receive the administrative citation or the notice of violation, sent via first-class mail shall not affect the validity of any enforcement proceedings under this chapter.

C. The failure of an administrative citation or notice of violation to satisfy all of the requirements of this provision shall not affect the validity of any other enforcement proceedings under this code.

4.24.130 4.24.140 Proof of service of administrative citation ~~and notice of violation.~~

~~When service of the administrative citation or notice of violation pursuant to Section 4.24.150 is accomplished through mail, proof~~ **Proof** of service of the administrative citation shall be certified at the time of service by a written declaration under penalty of perjury executed by the person(s) effecting service, declaring the date and manner in which service was made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail shall be affixed to a copy of the administrative citation and retained by the **Community Preservation Officer Code Enforcement Officer** or authorized agent.

4.24.150 ~~Issuance of administrative citation for violation that pertains to building, plumbing, electrical, or other similar structural or zoning issues.~~

~~When a violation is a continuing violation that pertains to building, plumbing, electrical, or other similar structural or zoning issues that does not create an immediate danger to health or safety, the Code Enforcement Officer, issuing agent or issuing officer shall first issue a notice of violation to the responsible party. The notice of violation shall provide the person responsible for the violation with not less than 30 calendar days in which to correct or otherwise remedy the violation prior to the issuance of an administrative citation and the imposition of an administrative fine pursuant to Section 4.24.070. The Code Enforcement Officer, issuing officer or authorized agent may extend the time in which to correct or otherwise remedy a violation upon a showing by the recipient that the recipient of the notice of violation requires additional time to complete repairs or that the recipient of the notice of violation is awaiting issuance of a~~

~~permit, provided such person offers proof that he or she has commenced taking action to correct or otherwise remedy the violation and/or that a proper application for such permit has been made.~~

~~4.24.160 Contents of notice of violation.~~

~~The notice of violation issued pursuant to Section 4.24.150 shall include all of the following information:~~

~~A. The name of the property's record owner, the occupant, if any, and/or the agent, if any, having charge or control of the property on which the violation exists;~~

~~B. The date of inspection;~~

~~C. The date of the violation(s);~~

~~D. The street address or a definite description of the location where the violation(s) occurred;~~

~~E. The code section(s) violated;~~

~~F. A description of the property's condition which violated the applicable codes;~~

~~G. A list of necessary corrections to bring the property into compliance;~~

~~H. The deadline or specific date by which to correct the violation(s) listed in the notice of violation;~~

~~I. A reference to the potential consequences should the property remain in violation after the expiration of the compliance deadline including the issuance of an administrative citation;~~

~~J. The amount of the administrative fine for the violation(s); and~~

~~K. The name and signature of the Code Enforcement Officer or other authorized enforcement agent who issued the notice of violation.~~

~~4.24.170 Form of notice of violation.~~

~~The notice of violation may be in letter form or any other form which adequately conveys the information set forth in Section 4.24.160.~~

~~4.24.180 Persons entitled to service of notice of violation.~~

~~The notice of violation required by Section 4.24.150, and any amended or supplemental notice of violation, should be served upon the responsible party(s). If the violation is related to a condition on real property, the notice of violation, and any amended or supplemental notice of violation, shall be served upon the responsible party(s) and the owner. If the violation is an act committed by an owner, operator, manager, agent and/or employee on behalf of a firm, association, organization, partnership entity, club, business, trust, company or corporation during employment activities, the notice of violation, and any amended or supplemental notice of violation, shall be served upon the owner and/or manager, operator, agent or employee of such firm, association, organization, partnership, entity, club, business, trust, company or corporation. The failure of the Code Enforcement Officer, issuing officer or issuing agent to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed by the provisions of this chapter.~~

~~4.24.190 Failure to comply with notice of violation.~~

~~Failure to comply with a notice of violation shall result in the issuance of an administrative citation and imposition of an administrative fine.~~

~~4.24.140-4.24.200~~ Recordation of notice of pendency of administrative action.

Upon the issuance of an administrative citation, the Community Preservation Officer ~~a notice of violation for a violation that pertains to building, plumbing, electrical, or other similar structural or zoning issues, the Code Enforcement Officer~~, issuing officer or issuing agent may cause a notice of pendency of administrative action to be recorded with the County Recorder's office against the parcel of real property on which the violation exists. Upon the remedy or otherwise correction of the violation ~~and/or the payment of the administrative fine imposed pursuant to Section 4.24.070~~, the Community Preservation Officer Code Enforcement Officer, issuing officer or issuing agent shall, within a reasonable time, cause a withdrawal of

notice of pendency of administrative action to be recorded with the Riverside County Recorder's office against the parcel of real property on which the violation occurred.

4.24.150-4.24.210 Appeal of administrative citation ~~and notice of violation.~~

A person or entity named as the responsible party in an administrative citation ~~or a notice of violation~~ may appeal the determination that there is/are violation(s) as alleged in the ~~notice of violation or~~ the administrative citation, that the person or entity served with the ~~notice of violation or~~ administrative citation is the responsible party, that a penalty or the penalty amount is warranted, or **any other relevant grounds. any other terms of the notice of violation.**

4.24.160-4.24.220 Form for filing of appeal.

A. All appeals from any administrative citation ~~or notice of violation~~ shall be in writing and shall contain the following information:

1. Name(s) of each appellant;
2. A brief statement in ordinary and concise language of the specific items protested, together with any material facts claimed to support the contentions of the appellant;
3. A brief statement in ordinary and concise language of the relief sought and the reasons why the administrative citation should be rescinded, modified or otherwise set aside; and
4. The signatures of all parties named as appellants and their mailing addresses.

B. Any appeal filed that fails to provide all of the information required by this section shall be deemed incomplete.

4.24.170-4.24.230 Time in which to file appeal.

A complete and proper appeal of an administrative citation ~~or notice of violation as described in Section 4.24.220~~ shall be filed with the City Clerk within **twenty-one (21)** calendar days from the date of the service of the administrative citation ~~or notice of violation~~, as provided by this chapter. Any appeal not timely filed shall be rejected. Failure to timely submit a completed request for an appeal hearing or to pay the appeal

processing fee and advance deposit of any penalty constitutes a waiver of the right to appeal and a failure to exhaust administrative remedies.

4.24.180 4.24.240 Fee for filing of appeal.

A filing fee as established by City Council resolution or any amendments thereto for an appeal of an administrative citation ~~or notice of violation~~ must be paid to the City at or prior to the time of the filing of such appeal. Any appeal of the administrative citation ~~or notice of violation~~ filed without payment of the filing fee shall be deemed incomplete.

4.24.190 4.24.250 Incomplete filing.

Not later than five calendar days from the date the appeal is filed, the City Clerk shall determine whether the appeal is complete. If the appeal is determined to be incomplete, the City Clerk shall immediately mail to the appellant a notice of incomplete filing which shall provide a written explanation of each reason why the appeal has been determined to be incomplete. If service of the notice of incomplete filing is completed within five calendar days from the date the appeal is filed, the 21-calendar-day time period within which to file a completed appeal of an administrative citation or notice of violation shall not be extended.

4.24.200 4.24.260 Processing of appeal.

The City Clerk shall present any appeal filed pursuant to this chapter to the Administrative Hearing Officer upon receipt of such appeal.

4.24.210 4.24.270 Stay pending appeal.

Enforcement of any administrative citation ~~or notice of violation~~ shall be stayed during the pendency of an appeal therefrom which is properly and timely filed pursuant to this chapter. **The appeal of any administrative citation shall not prevent the issuance of additional administrative citations for the same continuing violation or for other code violations not previously cited against the same responsible party.**

4.24.220 4.24.280 Failure to file proper appeal.

Failure to timely and properly file an appeal from an administrative citation ~~or notice of violation~~ shall constitute a waiver of all rights to an administrative appeal hearing and adjudication of the administrative citation ~~notice of violation~~ or any portion thereof. The determination that the violation occurred and that the person to whom the administrative citation ~~and/or notice of violation~~ was issued was responsible for the violation shall be deemed final on the date that service of the administrative citation ~~notice of violation~~ is deemed completed pursuant to Section 4.24.130.

4.24.230 4.24.290 Fee waiver.

The City may waive the fee required for filing an appeal if the person in receipt of the administrative citation or notice of violation meets the requirements of this subsection.

A. The request for a waiver of the appeal filing fee shall be filed with the appeal of the administrative citation. ~~or notice of violation.~~

B. Waiver of the fee shall be granted by the Finance Director if the person requesting the fee waiver submits documentation demonstrating that he/she is receiving benefits pursuant to the Supplemental Security Income (SSI) program (42 U.S.C. 1381), the State of California Supplemental Payments (SSP) program (Welfare and Institutions Code Section 12200 et seq.), the Temporary Aid to Needy Families (TANF) program (42 U.S.C. 601 et seq.), the Food Stamp program (7 U.S.C. 2011 et seq.), or if the person requesting the fee waiver submits documentation that his or her monthly income is less than the current monthly poverty threshold established annually by the Community Services Administration pursuant to Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), or if the Finance Director determines that the person requesting the fee waiver is experiencing financial hardship and is unable to deposit with the City the full amount of the fee in advance of the hearing.

C. The Finance Director shall make a determination either accepting or denying the request within seven calendar days after the request has been filed.

D. If the Finance Director determines that the person requesting the waiver is not eligible for such waiver, the appeal filing fee shall be remitted to the City within ten calendar days of the date of the decision issued by the Finance Director, or 21 calendar days from the date service of the administrative citation ~~or notice of violation~~ is completed, whichever is later.

4.24.240 4.24.300 Time in which to pay fine.

Where no proper appeal of the administrative citation is filed, the recipient of an administrative citation shall pay the administrative fine no later than 30 calendar days from the date the administrative citation was issued. Where a timely and complete appeal of the administrative citation is filed pursuant to this chapter and where the administrative citation was upheld by the Administrative Hearing Officer, the administrative fine shall be paid no later than ten days from the effective date of the notice of decision. If the amount of any fine or penalty imposed **under this chapter for a violation relating to an affected property** has not been satisfied as provided in this section and has not been successfully challenged by appeal or in court, the penalty amount may become a special assessment or lien against the affected property, as provided in Sections ~~4.24.470 and 4.24.480~~ **4.24.420 and 4.24.430**. The amount of the fine for which the recipient shall be responsible shall be as set forth in the administrative citation. Payment of the administrative fine shall be made to the issuing department or division of the City unless otherwise indicated in the citation.

4.24.250 4.24.310 Duties of Administrative Hearing Officer.

The City Manager, or his/her designee, shall select the Administrative Hearing Officer to conduct administrative hearings pursuant to this chapter. All Administrative Hearing Officers shall be impartial third parties and shall not have any pecuniary interest in the proceeding over which he or she is presiding, nor any pecuniary interest in the outcome thereof. The Administrative Hearing Officer shall conduct all administrative appeal hearings of any timely and properly filed appeal from an administrative citation pursuant to the procedures set forth in this chapter. The Administrative Hearing Officer shall review all evidence and hear all oral testimony submitted by, for, and against the appellant. The Administrative Hearing Officer may decide to uphold the administrative citation, notice of violation, rescind the administrative citation, notice of violation, in part or in its entirety, and/or reduce the amount or waive payment of the administrative fine.

4.24.260 4.24.320 Limitations on authority of Administrative Hearing Officer.

The Administrative Hearing Officer's authority to hear and consider appeals shall be limited to passing on only those appeals pertaining to matters within his or her subject matter jurisdiction. The Administrative Hearing Officer shall consider at the hearing on the appeal only those matters or issues which were specifically raised by the appellant in his or her appeal and which are relevant to the issues of the hearing. The Administrative Hearing Officer shall not have the authority to waive any requirements of the code and/or any applicable statutes, rules, codes or regulations, except as otherwise provided in this chapter.

4.24.270 4.24.330 Scheduling of administrative appeals hearing.

As soon as practicable after receiving the written appeal, the Administrative Hearing Officer shall fix a date, time and place for the hearing of the appeal. Such date shall be not less than ten calendar days and not more than 30 calendar days from the date the appeal was filed with the City Clerk, unless the ~~Code Enforcement Officer~~ **Community Preservation Officer** determines that the matter is urgent or that good cause exists for an extension of time, in which case the hearing date may be shortened or extended, as warranted by the circumstances.

4.24.280 4.24.340 Preparation and form of notice of appeals hearing.

As soon as practicable after scheduling the administrative appeals hearing, the Administrative Hearing Officer shall prepare a hearing notice which shall be in substantially the same form as follows:

You are hereby notified that a hearing will be held before the Administrative Hearing Officer at _____ on the _____ day of _____, _____, at the hour of _____ to hear your appeal of the administrative citation issued (or notice of violation, when applicable) or otherwise served upon you on _____. You may be present at the hearing. You may be, but need not be, represented by an attorney. You may present any relevant evidence at the hearing and you will be given a full opportunity to cross-examine all witnesses testifying against you.

4.24.290 4.24.350 Time for and method of service of notice of administrative appeals hearing.

The Administrative Hearing Officer shall provide a copy of the hearing notice to the City Clerk who shall cause a copy of the notice to be provided to the appellant either by causing a copy of the notice to be delivered to each appellant personally or by causing a copy of the notice to be delivered by first class mail, postage prepaid, and addressed to each appellant at the address shown on the appeal form. The City Clerk shall also cause a copy of the hearing notice to be provided to the ~~Code Enforcement Officer~~ **Community Preservation Officer**, issuing officer or issuing agent.

4.24.300 ~~4.24.360~~ Proof of service of hearing notice.

Proof of service of the hearing notice shall be certified at the time of service by a written declaration under penalty of perjury executed by the person(s) effecting service, declaring the date and manner in which service was made. The declaration shall be affixed to a copy of the hearing notice and retained by the issuing officer or authorized agent.

4.24.310 ~~4.24.370~~ Report and recommendation.

The **Community Preservation Officer** ~~Code Enforcement Officer~~, issuing officer or issuing agent may prepare written report concerning the administrative citation or the notice of violation for the Administrative Hearing Officer for consideration at the hearing. If the **Community Preservation Officer** ~~Code Enforcement Officer~~, issuing agent or issuing officer submits the said written report, then a copy of the report shall be served on the appellant(s) at least five days before the hearing.

4.24.320 ~~4.24.380~~ Admissibility of evidence at appeals hearing.

At the appeals hearing, the Administrative Hearing Officer shall consider written or oral testimony or other evidence offered either in support of appellant's claim or in support of the administrative citation ~~or notice of violation~~. Evidence offered during the hearing must be credible and relevant in the estimation of the Administrative Hearing Officer, but formal rules governing the presentation and consideration of evidence shall not apply. The Administrative Hearing Officer has the authority to determine the relevance and credibility of any evidence to the hearing. The Administrative Hearing Officer also has the authority to exclude unduly repetitious and cumulative evidence, regardless of its relevancy. Evidence presented by the **Community Preservation Officer** ~~Code Enforcement Officer~~, issuing officer or issuing agent tending to show that the responsible party violated the City's code and was the person responsible for committing the violation, shall establish a prima facie case that issuance of the administrative citation ~~or notice of violation~~ was warranted. The burden of proof shall then be on the responsible party to refute such evidence. The standard to be applied for meeting such burden shall be a preponderance of the evidence.

4.24.330 ~~4.24.390~~ Failure to attend administrative appeals hearing.

The failure of the responsible party, appellant or other interested party to appear at the hearing following proper notice shall constitute a waiver of the right to be heard and a failure by such party to exhaust his or her administrative remedies.

4.24.340 4.24.400 Duty to prepare and serve notice of decision and compliance order.

The Administrative Hearing Officer shall prepare and serve a written notice of decision and compliance order upon the appellant and the **Community Preservation Officer** ~~Code Enforcement Officer~~, issuing officer or issuing agent following the appeals hearing. The notice of decision or the compliance order shall include a statement of the right to have the order judicially reviewed in the manner and in the time frames specified in Section **4.24.400 4.24.450**. Unless otherwise ordered by a court of competent jurisdiction, enforcement of the compliance order shall not be stayed pending judicial review thereof. The decision of the Administrative Hearing Appeals Officer shall be final.

4.24.350 4.24.410 Time in which to serve notice of decision and compliance order.

The Appeals Officer shall serve the written notice of decision and compliance order to each appellant within 30 calendar days from the date the hearing is deemed closed.

4.24.360 4.24.420 Form of notice of decision and compliance order.

The notice of decision and compliance order shall state whether the administrative citation or notice of violation has been either upheld, in full or in part, or rescinded, in full or in part. The notice of the decision shall also contain a brief summary of the evidence considered, findings of fact, and the effective date of the decision. If the Administrative Hearing Officer finds that no violation occurred, that the violation was corrected within the specified time period, or that the person cited is not the responsible party, the Administrative Hearing Officer shall issue an administrative order to reflect those facts, and the City will promptly refund the amount of any penalty deposited.

4.24.370 4.24.430 Service of notice of decision and compliance order.

A. The Administrative Hearing Officer shall cause a copy of the notice of decision and compliance order to be provided to each appellant either by causing a copy of the notice to be delivered to each appellant personally or by causing a copy of the notice to be delivered to each appellant by first class mail, postage prepaid, and addressed to appellant at the address shown on the appeal.

B. Proof of service of the notice of decision and compliance order shall be certified at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the date and manner in which service was made. The declaration shall be affixed to a copy of the notice and retained by the issuing officer or authorized agent.

4.24.380 4.24.440 Effective date of notice of decision.

The effective date of the Administrative Hearing Officer's notice of decision and compliance order shall be as stated therein.

4.24.390 4.24.450 Appeal of imposition of administrative fines.

Any party contesting the final decision of the Administrative Hearing Officer concerning the imposition of an administrative fine under this chapter may seek judicial review of the imposition of the fine by filing an appeal pursuant to California Government Code Section 53069.4(b)(1) after the party has exhausted all available administrative remedies relating to the underlying violation.

4.24.400 4.24.460 Collection procedures of the administrative fine and other fees, penalties.

The amount of any administrative fine imposed by this chapter, as well as any fine, civil penalty or fee imposed by Title 4 (Code Enforcement) or Title 8, 9 or 12 of the code, including, but not limited to, the fee and the civil penalty imposed by Chapter 8.40 of this code, together with any applicable interests shall be deemed a civil debt owing to the City. An action may be commenced in the name of the City in any court of competent jurisdiction for the collection of the amount of any such delinquent or unpaid fine, fee or civil penalty with any penalties applicable thereto as otherwise provided by law. The remedy prescribed by this section shall be cumulative and the use of an action to collect such delinquent and unpaid fine, fee or civil penalty as a debt by civil action shall not bar the use of any other remedy as otherwise provided by law. ~~If the violation is in connection with real property, a penalty, fine or a fee~~ **Any fine, penalty, or fee**

imposed under this code may also be enforced by imposition of a lien or special assessment upon real property, pursuant to Sections ~~4.24.470 and 4.24.480~~ 4.24.410 and 4.24.420 of this chapter. Any lien or special assessment imposed upon real property shall remain in effect until the penalty, fine or fee is paid in full.

4.24.410 ~~4.24.470~~ Special assessment.

A. Any administrative fine, penalty or fee imposed for violations of this code, including but not limited to the administrative fines authorized by this chapter and any fine, civil penalty or fee imposed by Title 4 (Code Enforcement) or Title 8, 9 or 12 of the code, including, but not limited to, the fee and the civil penalty imposed by Chapter 8.40 of this code, together with any applicable interests ~~civil penalties issued under Chapter 8.40, any administrative costs or other expenses of enforcement, and the cost or expenses associated with the abatement of nuisance condition that are levied in accordance with Chapter 4.16~~, whether imposed or levied judicially or administratively, may be enforced by imposing a special assessment on the property pursuant to the provisions of this section. Any special assessment imposed on real property pursuant to this section may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as is provided for ordinary municipal taxes. To commence the special assessment process, the City shall serve the property owner with a notice of special assessment in the manner provided under Section 4.24.130. ~~hearing. The notice shall be sent via certified mail to the owner pursuant to the provisions of Government Code Section 38773.5(c), not less than ten days prior to time fixed by the City Clerk for the hearing. The notice of special assessment shall include the following information:~~

1. The date the administrative fine, fee, or penalty was imposed;
2. The amount of the administrative fine, fee, or penalty;
3. Statement that failure to pay the administrative fine, fee, or penalty has caused the City to consider commence imposing a special assessment on the property;

~~4. The time and date on which the City Council will consider the special assessment; and~~

4. 5. That if a special assessment is imposed, the property may be sold after three years by the tax collector for unpaid delinquent assessments.

5. That the property owner may appeal the imposition of the special assessment within ten calendar days after service of the notice of special assessment.

B. Appeals. Any appeal of a notice of special assessment shall be processed under the appeals procedures of this chapter.

~~B. Protests. The owner may file a written protest with the City Clerk at any time prior to the time set for the hearing on the special assessment. Each such protest shall contain a description of the property in which the person signing the protest is interested and the grounds of such protest. The City Clerk shall endorse on every such protest the date and time of filing, and shall present such protest to the City Council at the time set for hearing.~~

~~C. Hearing. Upon the day and hour fixed for the hearing, the City Council shall consider whether or not to impose a special assessment against the property for any unpaid fines, fees and/or penalties, together with any protests which have been filed with the City Clerk. The City Council may reduce the total amount of any unpaid fines, fees, or penalties as it may deem just. The City Council may continue the hearing from time to time as it deems necessary.~~

~~D. At the conclusion of the hearing, the City Council may order that the total amount of the unpaid fines, fees and/or penalties, together with any applicable interest, or as such amount may be reduced pursuant to this section, be imposed as a special assessment against the property.~~

C. ~~E.~~ Notice of Assessment. If the administrative fine, fee, or penalty is upheld on appeal, or if no appeal was filed, ~~The the~~ Finance Director shall execute and file in the office of the Riverside County Auditor-Controller and shall send a copy via certified mail to the owner a certificate which contains the following information:

1. The amount of the special assessment;
2. That the special assessment is being imposed by the City;
3. The date the administrative citation was issued;
4. The street address, legal description and assessor's parcel number of the parcel on which the special assessment is imposed;
5. The name and address of the record owner of the parcel; and
6. That the property may be sold after three years by the tax collector for unpaid delinquent assessments.

D. F. Assessment Book. The Riverside County Auditor-Controller shall enter the amount of the special assessment in the County's assessment book opposite the description of the particular property, and the amount shall be collected together with all other taxes against the property.

E. G. Collection. The amount set forth in the notice of assessment shall thereafter be collected at the same time and in the same manner as ordinary City taxes are collected, and shall be subject to the same penalties and interest and to the same procedure and sale in the case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of City taxes shall apply to the special assessment.

F. H. Refunds. The City Council may order a refund of all or part of the assessment paid pursuant to this chapter if it finds that all or part of the assessment was erroneously made. An assessment or part thereof shall not be refunded unless a claim is filed with the City Clerk within six months after the assessment became due and payable. The claim shall be verified by the person who paid the assessment or the legal representative of such person.

4.24.420 4.24.480 Lien procedure.

A. As an alternative to making a special assessment pursuant to Section **4.24.410 4.24.470**, any administrative fine, penalty or fee imposed for violations of this code, including, but not limited to, **any fine, civil penalty or fee imposed by Title 4 (Code Enforcement) or Title 8, 9 or 12 of the code, including, but not limited to, the fee and the civil penalty imposed by Chapter 8.40 of this code, together with any applicable interests the administrative fines authorized by this chapter and civil penalties issued under Chapter 8.40, any administrative costs or other expenses of enforcement, and the cost or expenses associated with the abatement of nuisance condition that are levied in accordance with Chapter 4.16,** whether imposed or levied judicially or administratively, may be enforced by recording a lien against the property pursuant to the provisions of this section. Prior to the recordation of a lien, the City shall serve the owner with a notice of **imposition of lien hearing**. The notice shall include the following:

1. The date the administrative fine, **fee, or penalty** was imposed;
2. The amount of the administrative fine, **fee, or penalty**;
3. Statement that failure to pay the administrative fine, **fee, or penalty** has caused the City to consider imposing a lien on the property; and

~~**4. The time and date on which the City Council will consider the lien.**~~

4. That the property owner may appeal the notice of imposition of lien within ten calendar days after service of the notice.

B. Appeals. Any appeal of a notice of imposition of lien shall be processed under the appeals procedures of this chapter.

~~B. Notice of the hearing shall be served on the owner or in the same manner as summons in a civil action in accordance with Code of Civil Procedure Section 415.10 et seq. Such notice shall be served not less than ten days prior to the date fixed by the City Clerk for the hearing. If after diligent search, the owner cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten days and publication thereof in a newspaper of general circulation published in the County of Riverside pursuant to Government Code Section 6062. The notice shall contain a description of the property sufficient to enable the persons served to identify it and shall specify the day, hour, and place when the City Council will hold the hearing.~~

~~C. Protests. The owner may file a written protest with the City Clerk at any time prior to the time set for the hearing on the lien. Each such protest shall contain a description of the property in which the person signing the protest is interested and the grounds of such protest. The City Clerk shall endorse on every such protest the date and time of filing, and shall present such to City Council at the time set for hearing.~~

~~D. Hearing. Upon the day and hour fixed for the hearing, the City Council shall consider whether or not to impose a lien against the property for any unpaid fines, fees and/or penalties, together with any protests which have been filed with the City Clerk. The City Council may reduce the total amount of any unpaid fines, fees, or penalties as it may deem just. The City Council may continue the hearing from time to time as it deems necessary.~~

~~E. At the conclusion of the hearing, the City Council may order that the total amount of the unpaid fines, fees or penalties, together with any applicable interest or as such amount may be reduced pursuant to this section, be imposed as a lien against the property.~~

CF. Notice of Lien. **If the administrative fine, fee, or penalty is upheld on appeal, or if no appeal was filed, The** the Finance Director shall execute and file in the office of the Riverside County Recorder, a certificate which contains the following information:

1. The amount of the lien;
2. That the lien is being imposed by the City of Desert Hot Springs;

3. The date the administrative citation was issued;
4. The street address, legal description and assessor's parcel number of the parcel on which the lien is imposed;
5. The name and address of the record owner of the parcel.

A copy of said notice shall be served on the owner in the manner specified in subsection B of this section.

D G. Discharge, Release or Satisfaction of Lien. In the event the lien is discharged, released or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in subsection F of this section shall be recorded by the City. The lien and release of lien shall be indexed in the grantor-grantee index.

4.24.430 Attorney's Fees

The prevailing party in any proceeding conducted pursuant to this chapter and associated with the abatement of a public nuisance shall be entitled to recovery of attorneys' fees incurred in any such proceeding. In no action, administrative proceeding, or special proceeding shall an award of attorney's fees to a prevailing party exceed the amount of reasonable attorney's fees incurred by the city in the action or proceeding.

Section 3.

AMENDMENT OF SECTION 8.40.030 "INSPECTION, REGISTRATION AND FEES" OF CHAPTER 8.40 "ABANDONED RESIDENTIAL PROPERTY REGISTRATION PUBLIC NUISANCES" OF TITLE 8 "HEALTH AND SAFETY" OF THE DESERT HOT SPRINGS MUNICIPAL CODE

Section 8.40.030 of the Desert Hot Springs Municipal Code is hereby amended as follows:

8.40.030 Inspection, registration and fees.

A. Inspection and Registration. Any beneficiary or trustee, who holds a deed of trust on a property located within the City of Desert Hot Springs, shall perform an inspection of the property that is the security for the deed of trust, upon default by the trustor and prior to recording a notice of default with the Riverside County Recorder's office.

1. If the property is found to be vacant or shows evidence of vacancy, it is, by this chapter, deemed abandoned and the beneficiary or trustee shall, within ten days of the inspection or the date of vacancy, whichever is earliest, register the property with the City Manager or designee on forms provided by the City.

2. If the property is occupied but remains in default, it shall be deemed distressed, and it shall be inspected by the beneficiary or trustee, on a monthly basis until either: (a) the trustor or another party remedies the default; or (b) it is found to be vacant or shows evidence of vacancy, at which time it is deemed abandoned, and the trustee shall, within ten days of that inspection or the date of vacancy, register the property with the City Manager or designee on forms provided by the City.

B. Contents of Registration. The registration required under this chapter shall contain: (1) the name of the beneficiary/trustee (co-partnership, partnership, association, fiduciary, corporation, any legal entity or an individual); (2) the direct street/office mailing address of the beneficiary/trustee, excluding P.O. boxes; (3) a direct contact name and phone number for the beneficiary/trustee; and (4) in the case of a corporation or out-of-area beneficiary/trustee, the local property management company responsible for the security, maintenance and marketing of the property. Any change of the information in the registration required under this subsection shall be reported within ten days of the change.

C. Registration Fee. The fee for registering an abandoned residential property shall be as set by resolution of the City Council. An annual registration fee shall accompany the registration form. The abandoned residential properties registration fee will be used to finance the cost of inspection, administering and enforcement under this chapter. The fee and registration shall be valid for the calendar year, or remaining portion of the calendar year, in which the registration was initially required. Subsequent registrations are due January 1st of each year and must be received no later than January 31st of the year due. Properties subject to this chapter shall remain under the annual registration requirement, security and maintenance standards of this chapter as long as the properties remain vacant.

D. Out-of-Area Trustee/Beneficiary. An out-of-area beneficiary or trustee shall retain a local management property, which shall inspect the property as required by this chapter to determine whether the abandoned property is in compliance with the requirements of this chapter.

E. If any beneficiary or trustee fails to register the residential property, as required by this chapter, the City may register the residential property and impose the annual registration fee. Notice shall be provided pursuant to pertinent sections of Chapter 4.20, as they apply to violations related to real property, except that notice shall be provided to: (1) beneficiary or trustee, prior to completion of foreclosure or deed in lieu of foreclosure/sale transaction; or (2) to owner or owner of record after completion of foreclosure or deed in lieu of foreclosure sale transaction, as the address appears on

the last equalized assessment roll or as known to the City Manager or designee. The notice shall provide the amount due for the registration fee, shall state that the property has not been registered as required by this chapter and shall constitute enrollment in the City's abandoned residences registration program. Any unpaid registration fee shall be deemed a civil debt owing to the City, and shall be collected in any manner authorized by law, including but not limited to, imposing a lien on the property pursuant to Section 4.24.420 ~~4.24.470~~, and imposing a special assessment pursuant to Section 4.24.410 ~~4.24.480~~ of the City's municipal code, or as these sections may from time to time be amended.

Section 4. SEVERABILITY

That, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

Section 5. REPEAL OF CONFLICTING PROVISIONS

That all the provisions of the Municipal Code as heretofore adopted by the City of Desert Hot Springs that are in conflict with the provisions of this ordinance are hereby repealed.

Section 6. AMENDING OF BAIL SCHEDULE

That the City Attorney's Office is hereby directed to determine whether this ordinance necessitates amendment of the City's Bail Schedule and to cause such necessary amendments to be made and filed with the local branches of the Superior Court of the County of Riverside.

Section 7. EFFECTIVE DATE

That this ordinance shall take effect thirty (30) days after its adoption.

Section 8.

CERTIFICATION

That the City Clerk shall certify to the passage of this ordinance and shall cause the same to be published according to law.

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draft

PASSED AND ADOPTED by the City Council of the City of Desert Hot Springs at a regular meeting held on the ____ day of _____, 2018 by the following vote:

Ayes:

Noes:

Abstain:

Absent:

Scott Matas, Mayor

ATTEST:

Jerryl Soriano, City Clerk

APPROVED AS TO FORM:

Jennifer A. Mizrahi, City Attorney