

ORDINANCE NO. 2022-747

ORDINANCE OF THE CITY OF CLOVERDALE AMENDING CHAPTERS 1.10 AND 1.14 OF THE CLOVERDALE MUNICIPAL CODE AND ADDING CHAPTER 1.18 AND 1.20 TO THE CLOVERDALE MUNICIPAL CODE REGARDING CODE ENFORCEMENT

WHEREAS, the City of Cloverdale’s Municipal Codes contain many rules, standards, and regulations adopted in order to preserve, protect and enhance the public health, safety, and welfare; and

WHEREAS, the City of Cloverdale desires to update the Municipal Code to incorporate additional administrative enforcement tools for violations of the Municipal Code.

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

SECTION 1. RECITALS

The above recitals are hereby found to be true and correct and incorporated herein by this reference.

SECTION 2. AMENDMENT OF MUNICIPAL CODE

Chapters 1.10 and 1.14 of the Cloverdale Municipal Code are hereby amended, and Chapters 1.18 and 1.20 are hereby added to the Cloverdale Municipal Code, as shown in Exhibit A, attached hereto and incorporated herein by reference.

SECTION 3. CEQA

The Cloverdale City Council finds that this Ordinance is exempt from the requirements of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Section 15061(b)(3) of Title 14 of the California Environmental Code of Regulations because it can be seen with certainty that there is no possibility that this ordinance will have a significant negative effect on the environment.

SECTION 4. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed the ordinance codified in this Chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this Chapter would be subsequently declared invalid or unconstitutional.

SECTION 5. EFFECTIVE DATE

This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Council Members voting for or against the same, in a newspaper of general circulation published in the County of Sonoma, State of California.

I hereby certify that the foregoing is a true and complete copy of an ordinance duly and regularly adopted by the City at a regular meeting thereof held on April 27, 2022, by the following vote:

PASSED, APPROVED AND ADOPTED this 27th day of April, 2022 by the following vote:

(Ayes-3; Noes-0; Absent-2)

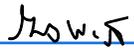
AYES: Vice Mayor Wolter, Councilmember Bagby, Councilmember Palla

NOES:

ABSENT: Mayor Lands, Councilmember Cruz

ABSTAIN:

Approved:


Gus Wolter (Jun 15, 2022 11:46 PDT)
Gus Wolter, Vice Mayor

Attested:



Mike Maloney, City Clerk

EXHIBIT A
MUNICIPAL CODE AMENDMENTS

A. MODIFICATION OF SECTION 1.10.20

Section 1.10.020, Purpose and Authority, of the Cloverdale Municipal Code is amended to read in its entirety as follows:

“1.10.020 Purpose and Authority.

The city council establishes the procedures set forth in Chapters 1.10 through 1.20 for declaring and addressing nuisance conditions and other violations of this code, pursuant to California Government Code Sections 36900 et seq., 38660, 38771 through 38775, inclusive, 53069.4, 54988, and all other statutes and laws referenced herein. The purpose of Chapters 1.10 through 1.15 is to provide criminal, civil, and administrative remedies, which shall be in addition to all other legal remedies that may be pursued by the city, to prevent, discourage, abate, or otherwise address any nuisance condition or violation of this code, as that term is defined below.”

B. MODIFICATION OF SECTION 1.10.030

Section 1.10.030, Definitions, of the Cloverdale Municipal Code is amended to read in its entirety as follows:

“1.10.030 Definitions

A. “Abatement order” and “administrative order” shall mean an order issued by a hearing officer following an appeal hearing or an order to show cause hearing.

B. “Administrative costs” shall mean that segment of costs of abatement that includes staff time expended that was reasonably related to enforcement activities under Chapters 1.10 through 1.15. Administrative costs shall include, but not be limited to, site inspections and re-inspections, third party inspections, investigations, printing, research, preparation of summaries, reports, notices, and the time and expense of preparing for and attending meetings and/or hearings related to abatement proceedings. The hourly rate for staff time shall be set by the city council and may be revised from time to time.

C. “Affected property” shall mean any real property or portions thereof within city boundaries, including any buildings or other improvements located on such property, where nuisance conditions or other code violations allegedly exist or have previously existed.

D. “City” shall mean the city of Cloverdale.

E. “Code” or “this code” shall mean the city’s municipal code, all uniform codes that have been incorporated into the city’s municipal code, and any applicable local, state or federal laws and regulations that are or may be enforced by the city, including, without limitation, the State Housing Law (Health and Safety Code Section [17910](#) et seq.).

F. “Code enforcement officer” means any person authorized or directed by the city manager to enforce any provision of this code, including any peace officer. In addition to any other powers conferred upon him or her by this code or by any other law, a code enforcement officer shall have the authority to issue a notice to appear, or issue a notice of violation, as described in Section [1.14.020](#), if the code enforcement officer has cause to believe that a violation of this code was, or is being, committed or that any nuisance conditions exist.

G. “Compliance” shall mean all actions required to remove, alleviate, eliminate, halt, or mitigate a nuisance condition or other violation of this code in the manner and in the time frame prescribed by a code enforcement officer, hearing officer, or city council.

H. “Costs of abatement” shall mean all costs incurred by the city in connection with achieving compliance with an abatement order, including, but not limited to, any cost incurred by the city in performing or contracting for work required to achieve compliance with an abatement order, administrative costs, and costs of prosecuting any nuisance condition or other violation of this code, including attorneys’ fees and costs, all as permitted by law.

I. “Day” or “days” shall mean calendar days.

J. “Enforcement action” shall mean any notice of violation, hearing, citation, investigation, complaint or petition, or any administrative or judicial order under authority of Chapters 1.10 through 1.20 or pursuant to any other legal authority.

K. “Hearing officer” shall mean any person or persons appointed by the city council, or by any person designated by the city council to make the appointment, to conduct a hearing pursuant to Chapters 1.10 through 1.20.

L. “Nuisance condition” shall mean any condition described in California Civil Code Section 3479 or Section [1.10.060](#) of this code, and shall also include, but not be limited to, any violation of this code.

M. “Occupant” shall mean the person or persons having a right of present possession of the affected property, if 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).

N. “OSC” or “order to show cause” shall mean an order issued with an NOV as specified in Section [1.14.030](#) requesting the responsible party to appear at a hearing to show cause why the city should not abate the nuisance condition described in the NOV at the responsible party’s expense.

O. “Owner” shall mean the owner(s) of record of the affected property, and shall include any authorized agent(s) of the owner(s) of record.

P. “Penalty” shall mean an administrative fine or penalty imposed on the responsible party, pursuant to Section [1.14.050](#).

Q. “Responsible party” shall mean any person, firm, association, club or organization (including informal clubs or organizations), corporation, partnership, trust(ee), or entity, and a parent or legal guardian of any person(s) under eighteen 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.”

C. MODIFICATION OF CHAPTER 1.14

Chapter 1.14, Administrative Enforcement, of the Cloverdale Municipal Code is amended to read in its entirety as follows:

“1.14 Administrative Enforcement

- 1.14.010 Authority of code enforcement officer.
- 1.14.020 Imposition of penalties.
- 1.14.030 Payment and collection of penalty.
- 1.14.040 Judicial review.
- 1.14.050 Recovery of costs of abatement.
- 1.14.060 Cost accounts.
- 1.14.070 Imposition of liens or special assessments.

1.14.010 Authority of Code Enforcement Officer.

A code enforcement officer shall have the authority to gain compliance with this code, including the power to issue a notice of violation (“NOV”) or an administrative citation as described in this Title 1, the power to inspect public and private property, the power to record a notice of violation against any affected property, and the power to carry out the provisions of an abatement order.

1.14.020 Imposition of Penalties

Any nuisance condition or violation of any provision of this code, including a failure to comply with a term or condition imposed by any agreement, entitlement, permit, license or environmental document issued or approved by or on behalf of the city, or a failure to comply with any county, state or federal law, may subject the responsible party to a penalty imposed pursuant to the city’s general police powers, and/or Government Code Sections [36901](#) and [53069.4](#). Whether to impose a penalty shall be within the discretion of the city manager.

A. The amount of any penalty that may be imposed for a violation that would otherwise be an infraction shall not exceed one hundred dollars (\$100) for a first violation, two hundred dollars (\$200) for a second violation of the same ordinance within one year, and five hundred dollars (\$500) for each additional violation of the same ordinance within one year.

In determining the amount of a penalty, the following factors should be taken into consideration:

1. Duration of the violation;
2. Frequency, re-occurrence, or number of violations by the same person;
3. Seriousness of the violation and/or its impact on the community and/or the degree of culpability of the responsible party;
4. Justification, if any, for the existence, or continuance, of the violation;
5. Whether the violation is susceptible to restoration or other mitigation;
6. Good faith efforts to mitigate the violation or to come into compliance, pursuant to the terms of the NOV or abatement order;
7. Sensitivity of any affected resource;
8. Any profits or other economic benefit realized by the responsible party resulting, directly or indirectly, from the violation;
9. The city's schedule of administrative penalties currently existing or subsequently enacted; and
10. Such other factors as justice may require.

B. Each and every day during any portion of which a nuisance condition exists or continues may be deemed a separate and distinct violation for purposes of setting the amount of penalty to be imposed. Any penalty imposed will accrue on a daily basis from the date the penalty becomes effective until the violation is corrected.

C. Any penalty amount is a debt owed to the city. In addition to all other means of enforcement, a penalty may be enforced as a personal obligation of the responsible party. If the violation is in connection with real property, a penalty may also be enforced by imposition of a lien or special assessment upon the real property, as described in this chapter. Any lien or special assessment imposed upon real property shall remain in effect until the penalty is paid in full.

D. The hearing officer, in his or her discretion, may suspend the imposition of any applicable penalty for a period of time not to exceed sixty days during which the responsible party has demonstrated a willingness to correct the violations listed in the NOV or comply with an abatement order, or has applied for permits required to achieve compliance and such permit applications are actively pending before, or have already been issued by, the city, state, or other appropriate governmental agency, or under any other circumstances that would justify a suspension of the penalty.

1.14.030 Payment and Collection of Penalty

A. If a penalty is imposed and the responsible party fails to appeal the penalty as specified in Section [1.14.070](#), the responsible party shall pay the amount of the penalty within thirty days of the effective date of the penalty, unless an extension of time is requested by the party against whom the penalty is imposed and the request is granted by the city manager. Any penalty imposed shall be payable to the city, or to a collection agency if the penalty has been assigned to a collection agency pursuant to subsection C of this section.

B. If the amount of any penalty imposed for a violation relating to an affected property has not been satisfied in full within sixty days of the date due 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 Section [1.14.140](#). If the city elects to make any penalty a special assessment or lien against the affected property, a statement of the amount due, and any additional costs or expenses that may be recoverable as part of the enforcement action, shall be prepared and submitted to the city council for confirmation in accordance with the procedures described in Section [1.14.130](#).

C. Notwithstanding subsection B of this section, the amount of any unpaid penalty may be collected by commencement of a civil action to collect such penalty, or in any other manner provided by law for the collection of debts, including assignment of the debt to a collection agency. Subject to the requirements of Chapters 1.10 through 1.15 and other applicable law, amounts assigned for collection are subject to collection agency rules, regulations and policies. The city shall be entitled to recover any and all costs associated with collection of any such penalty.

D. The payment of a penalty by or on behalf of any responsible party shall not relieve such party from the responsibility of correcting, removing or abating the nuisance condition, or performing restoration where required, nor prevent further proceedings under Chapters 1.10 through 1.15 or any other authority to achieve the correction, removal or abatement of the nuisance, or any required restoration.

1.14.040 Judicial Review

A. Any responsible party who is aggrieved by a decision of a hearing officer, or of a board, commission, department, agency, or person authorized to render such a decision on behalf of the city pursuant to Chapters 1.10 through 1.20, and who has exhausted the administrative remedies provided in this code, or any other applicable law, shall have the right to seek judicial review of such decision by filing a petition for writ of mandate in accordance with Code of Civil Procedure Section 1094.5. A petition for writ of mandate must be filed within ninety days after the administrative decision becomes final (as determined in Code of Civil Procedure Section 1094.6). Notwithstanding these time limits, where a shorter time limitation is provided by any other law, including that set forth in Government Code Section [53069.4](#) (see subsection E of this section), such shorter time limit shall apply.

B. Written notice of the time limitation in which a party may seek judicial review of an abatement order shall be given to all responsible parties in the matter by the city in substantially the following form:

Judicial review of this decision may be sought by following the procedure outlined in Code of Civil Procedure section 1094.5. Judicial review must be sought not later than the 90th day following the date on which this decision becomes final, except that where a shorter time is provided by any state or federal law, such shorter time limit shall apply.

C. This section shall not be deemed to revive any cause of action or grounds for relief through a special proceeding that is barred by law or equity.

D. All costs of preparing an administrative record that may be recovered by a local agency pursuant to Code of Civil Procedure Section 1094.5(a) or successor statute shall be paid by the petitioner prior to delivery of the record to petitioner.

E. Any responsible party against whom a penalty has been imposed and who has exhausted the administrative remedies provided in this code or other applicable law may obtain judicial review of said penalty pursuant to Government Code Section [53069.4](#) by filing an appeal with the Sonoma County superior court, subject to the time limits described therein. Any such appeal shall be filed as a limited civil case. Written notice of the subject time limits shall be given to all responsible parties against whom a penalty is imposed in substantially the following form:

The time within which judicial review of the penalty imposed by this order must be sought is governed by Government Code section [53069.4](#). Judicial review must be sought not later than 20 days after service of the order imposing or confirming such penalty.

1.14.050 Recovery of Costs of Abatement

The city may elect to recover its costs to abate nuisance conditions or other code violations, including, without limitation, the costs of any appeal hearing or OSC hearing (including staff time necessary to prepare for and attend an appeal hearing or OSC hearing), any re-inspections required to determine or confirm that compliance has been achieved, production of all staff reports, environmental tests or measurements that are deemed necessary or appropriate by the code enforcement officer, third party inspection(s) or consultant services as deemed necessary by the city and any attorneys' fees incurred in pursuing enforcement. If the city elects at the initiation of an administrative enforcement action or proceeding to seek recovery of attorneys' fees, pursuant to Government Code Section [38773.5](#)(b), then the prevailing party shall be entitled to recover attorneys' fees in an amount not to exceed the amount of attorneys' fees incurred by the city in such action. Recovery by the city of the costs of enforcement shall be in addition to any penalty imposed on the responsible party.

1.14.060 Cost Accounts

A. If any order authorizes the city to abate a nuisance condition or other code violations, the city official responsible for such abatement shall keep an accounting of the cost of abatement along with any other recoverable costs, and shall render a written report (“the cost report”) to the city council showing the cost of removing and/or abating the nuisance condition and describing the work performed. The cost report shall be agendaized as a “public hearing” item by the city clerk at a subsequent city council meeting following the required notice periods.

B. At least ten days prior to the submission of the cost report to the city council, the city clerk shall cause a copy of the cost report to be mailed to the responsible party and/or to the owner of the property where the nuisance condition existed. If the nuisance concerns real property, a copy of the cost report shall be mailed to the owner(s) at the address shown for such owner(s) in the most recent tax assessor’s records. The city clerk shall also cause a notice of hearing to be mailed to the same person(s) or entity receiving a copy of the cost report. The notice of hearing shall set forth the date, time and location of the city council meeting at which the cost report shall be submitted to the city council.

C. At the time and place fixed for receiving and considering the cost report, the city council shall hear a summary of the cost report and any objections by the responsible party or property owner against whom such costs are being charged or against whose property an abatement lien or special assessment may be imposed. After considering the cost report and any objections thereto, the city council may make such modifications to the cost report as it deems appropriate, after which the report may be confirmed by order of the city council.

D. At the hearing on the cost report, the city council may also authorize the imposition of a lien or special assessment on the property where the nuisance condition was abated by the city pursuant to this Code.

E. A copy of a council order confirming costs against the responsible party shall be served on the responsible party within ten days of such order. The notice shall be served 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. 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 notice 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 notice sent via first-class mail shall not affect the validity of any enforcement proceedings under Chapters 1.10 through 1.15. Any responsible party against whom costs of abatement and any other costs are awarded by council order shall have the right to seek judicial review of such order by filing a petition for writ of mandate in accordance with Code of Civil Procedure Section 1094.5.

1.14.070 Imposition of liens or special assessments.

A. Any penalty imposed for violations of this code, including any other codes or statutes that have been incorporated into this code, any administrative costs or other expenses of enforcement,

and the cost or expenses associated with the abatement of a nuisance condition that are levied in accordance with Chapters 1.10 through 1.20, whether imposed or levied judicially or administratively, may be enforced by the recordation of a lien against the property of the owner of the real property where the nuisance condition existed. Any such lien shall be recorded in the office of the Sonoma County recorder, and from the date of recording shall have the force, effect, and priority of a judgment lien. A lien authorized by this subsection shall specify the amount of the lien, that the lien is being imposed on behalf of the city, the date of the NOV and abatement order, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the record owner of the parcel.

B. Before recordation of a lien authorized by this section, a notice of lien shall be served on the responsible party and/or owner of record of the parcel of land on which the nuisance existed, based on the last equalized assessment roll or the supplemental roll, whichever is more current. The notice of lien shall be served in the same manner as a summons in a civil action. If the owner of record cannot be found, after a diligent search, the notice of lien 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 Sonoma County.

C. Any fee imposed on the city by the county recorder for costs of processing and recording the lien as well as the cost of providing notice to the owner in the manner described herein may be recovered from the owner in any foreclosure action to enforce the lien or upon sale of the property on which the city has placed a lien following recordation.

D. As an alternative to the lien procedure described in this section, any penalty imposed for violations of this code, including any other codes or statutes that have been incorporated into this code, and any costs of enforcement or administration or expenses associated with the abatement of any nuisance levied in accordance with Chapters 1.10 through 1.20, whether imposed or levied judicially or administratively, may become a special assessment against the real property where the nuisance condition(s) existed. 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. Notice of any special assessment that is levied on real property pursuant to this section shall be given to the owner by certified mail, and shall contain the information set forth in Government Code Section [38773.5\(c\)](#). All laws applicable to the levy, collection, and enforcement of municipal taxes, including those described in Government Code Section [38773.5\(c\)](#), shall be applicable to such special assessment.”

D. ADDITION OF CHAPTER 1.18

Chapter 1.18, Administrative Citations, is added to the Cloverdale Municipal Code to read in its entirety as follows:

“Chapter 1.18 Administrative Citations

1.18.010 Purpose and application.

1.18.020 Definitions.

- 1.18.030 Fines.
- 1.18.040 Contents of citation.
- 1.18.050 Service procedures.
- 1.18.060 Satisfaction of the administrative citation.
- 1.18.070 Appeal of the administrative citation.
- 1.18.080 Hearing procedure.
- 1.18.090 Hearing officer's decision.
- 1.18.100 Collection of unpaid fines.
- 1.18.110 Right to judicial review.

1.18.010 Purpose and application.

A. Any violation of this code may be redressed with an administrative citation through the proceedings set forth under this chapter, even if any other section of this code prescribes or permits a criminal, civil, or administrative fine or method of enforcement or redress different than that set forth in this chapter.

B. It is the intent of this chapter that an administrative procedure be established as provided under Government Code Section [53069.4](#) which may be applied to any violation of this code.

C. The proceedings set forth under this chapter shall not be exclusive and may be in addition to any other available criminal, civil, or administrative remedy established under this code or under applicable state law or otherwise. This chapter shall be used at the sole discretion of the city.

1.18.020 Definitions.

A. "City Manager" shall mean the city manager of the City of Cloverdale or his or her designee.

B. "Code" means the City of Cloverdale Municipal Code, Building Code, Zoning Code, and any Uniform Codes that have been incorporated into this Code by reference, as well as any other ordinance of the city.

C. "Enforcement Officer" shall mean any Cloverdale employee, contractor, or agent of the city authorized to enforce any provision of this code or this chapter.

D. "Fine" or "fines" shall mean any fines, fees, or penalties assessed or imposed by the city or order of the hearing officer under this chapter, not including administrative costs.

E. "Person" shall mean a natural person or legal entity, and the owners, majority stockholders, corporate officers, trustees, and general partners of a legal entity.

F. "Responsible Person" shall mean a person or person's agent, employee, or independent contractor who causes, permits, allows, maintains, contributes, conceals, or aids or abets the property-related code violation, including a property owner of record, property manager, tenant, subtenant, occupant, or any person in possession of property where the code violation exists.

Each responsible party shall be jointly and severally liable for any and all fines, fees, penalties, and administrative costs awarded, upheld, assessed, or imposed under this chapter.

1.18.030 Fines.

A. The city council may establish the amounts of fines for violations of this code imposed pursuant to this chapter through a schedule of fines established by resolution of the city council. In the absence of such resolution, and except as otherwise provided in this Code, the fines for administrative violations of this code shall be as follows:

1. A fine not exceeding one hundred dollars (\$100) for a first violation.
2. A fine not exceeding two hundred dollars (\$200) for a second violation of the same ordinance within one year.
3. A fine not exceeding five hundred dollars (\$500) for each additional violation of the same ordinance within one year.

1.18.040 Contents of citation.

Each administrative citation shall contain the following information:

- A. Date, approximate time, and address or definite description of the location of the violation(s).
- B. The code sections or conditions violated and a description of the violation(s).
- C. The amount of the fine for the violation(s).
- D. An explanation of how the fine shall be paid and the time period by which it shall be paid.
- E. Explanation of rights of appeal, including the time within which such claimed violation may be contested and the procedure for requesting a hearing to contest the violation.
- F. The name and signature of the enforcement officer issuing the citation; and
- G. If the violation is one which is continuing, an order to correct the violation and prohibiting the continuation or repeated occurrence of the violation, including an explanation of the consequences for failing to correct the violation as ordered. The explanation of the consequences should state that a separate violation exists for each and every calendar day any violation of any provision of this code is committed, continued, or permitted.

1.18.050 Service procedures.

Service of any administrative citations and the notices of correction shall be made as follows:

A. Personal Service. The enforcement officer shall attempt to locate and personally serve the responsible person and obtain the signature of the responsible person on the administrative citation. If the responsible person served refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity of the administrative citation or of subsequent proceedings.

B. Service of Citation by Mail. If the enforcement officer does not succeed in personally serving the responsible person, the administrative citation shall be mailed to the responsible person by certified mail, postage prepaid with a requested return receipt. Simultaneously, the citation shall be sent by first class mail. If the citation is sent by certified mail and returned unsigned, then service shall be deemed effective pursuant to first class mail, provided the citation sent by first class mail is not returned. The location of the responsible person outside of Sonoma County shall be sufficient grounds for service of citation by mail without first attempting personal service.

1.18.060 Satisfaction of the administrative citation.

A. The responsible person must pay the fine to the city within thirty (30) calendar days from service of the citation. All fines assessed shall be payable to the City of Cloverdale in accordance with the payment instructions on the citation.

B. Payment of a fine shall not excuse or discharge a failure to correct continuing violations nor shall it bar further enforcement action by the city.

1.18.070 Appeal of the administrative citation.

A. Time to File an Appeal. Any recipient of an administrative citation may contest that there was a violation of this code or that it continues to exist, or that he or she is the responsible person, by completing a "request for hearing" form and returning it to the city in accordance with the instructions on the form within fifteen (15) calendar days from the date the administrative citation is served or deemed to have been served, together with an advanced deposit of the total fines due. Such "request for hearing" forms shall be made available at no charge at city hall and/or by contact the city clerk. A failure to file a timely "request for hearing" form shall be deemed a waiver of the right to appeal the citation and to seek judicial review. The requirement that the fine be deposited in advance may be waived if an advanced deposit hardship waiver form has been filed and approved in accordance with procedures adopted by the city manager.

B. Return of Deposit. Any administrative citation fine which has been deposited shall be refunded, in whole or in part, to the extent it is determined, after a hearing, that the person charged in the administrative citation was not responsible for the violation or that there was no violation as charged in the administrative citation.

C. Hearing Officer. The city manager shall be authorized to assign a hearing officer to any person or persons, qualified by training or experience, whom the city manager may appoint or who are retained by contract to conduct such hearings. The hearing officer may, but is not required to be, a city employee.

1.18.080 Hearing procedure.

A. No hearing to contest an administrative citation before a hearing officer shall be held unless and until a timely “request for hearing” form has been completed and submitted and the fine has been deposited in advance or waived as provided under this chapter..

B. After receipt of the “request for hearing” and fine deposit, a hearing before the hearing officer shall be set for a date that is not less than fifteen (15) and not more than forty-five (45) calendar days from the date that such request is filed in accordance with the provisions of this section. The person requesting the hearing and the city may agree to a hearing date that is either sooner or later than the time periods required herein for a hearing. Unless advanced notice is otherwise waived by the requesting party, the person requesting the hearing shall be notified of the time and place set for the hearing at least ten (10) calendar days prior to the date of the hearing. The failure of any recipient of an administrative citation to appear at the scheduled hearing shall constitute a forfeiture of the fine and be a bar to judicial review of the hearing officer decision based upon a failure to exhaust administrative remedies.

C. The hearing officer shall only consider evidence that is relevant to whether the violation occurred, and whether the responsible person has caused or maintained the violation of this code on the date(s) specified in the administrative citation. Such relevant evidence includes, without limitation, staff reports or presentations, oral, physical, and documentary evidence regarding the alleged violation(s), and proposed method of abatement, if any.

D. The hearing is intended to be informal in nature. Formal rules of evidence and discovery do not apply. The city manager may, from time to time, adopt procedures for the format and proceedings of the administrative hearing. The person contesting the administrative citation shall be given the opportunity to testify and present witnesses and evidence concerning the administrative citation. The city shall have the burden of proof by preponderance of the evidence to establish that the responsible person committed the violation specified in the administrative citation.

E. Each witness, prior to providing oral testimony, shall be sworn by the hearing officer or his or her designee. Each party shall have the opportunity to cross-examine witnesses and present evidence in support of the party’s cause.

F. The administrative citation and any additional document submitted by the issuing officer/employee shall constitute prima facie evidence of the respective facts contained in those documents. Formal rules of evidence shall not apply.

G. Upon request which provides reasonable advanced notice to the city, the recipient of an administrative citation shall be provided with copies of the citations, reports and other documents submitted or relied upon by the issuing officer/employee when issuing the citation, as well as any additional materials provided to the hearing officer for the hearing.

H. On the hearing officer’s own discretion or upon request by any party, the hearing officer may continue the hearing and request additional information from any person or witness prior to

issuing a written decision. Notice of the continued hearing must be given to each party and shall include the time, date, and place to which the hearing is to be continued.

1.18.090 Hearing officer's decision.

A. After considering all of the testimony and evidence submitted at the hearing or continued hearing, the hearing officer shall issue a written decision setting forth the findings supporting the decision within thirty (30) calendar days of the hearing. The written decision shall include the reasons for the decision.

B. If the hearing officer determines that the administrative citation should be upheld as to a responsible party, then any fine amount on deposit with the city shall be retained by the city. The hearing officer shall impose and assess the prescribed fine against each responsible party.

C. In the event of a hardship waiver of the deposit requirement, the order shall also state the date all payments are due and the fine for any late payment for any amount ordered by the hearing officer and that, if the violation continues, the responsible party may be subject to additional fines, penalties, or administrative costs authorized by law. The order shall also state that fines and penalties shall also be collectible as set forth in this chapter.

D. If the hearing officer determines that the administrative citation should be canceled in whole or in part, then the city shall promptly refund the corresponding amount of any deposited fine, without interest, to that responsible party.

E. The written decision shall be served upon each party in the manner set forth by Section 1.18.050.

1.18.100 Collection of unpaid fines.

Failure of any person to pay the fine assessed by an administrative citation within thirty (30) calendar days or such other time limit set forth in the administrative citation, or by the time determined by the hearing officer as provided in Section 1.18.090, shall constitute a debt owed to the city and may be enforced as a personal obligation of the responsible party. Administrative fines shall accrue interest at the same annual rate as any civil judgment in favor of the city, in accordance with Code of Civil Procedure Section [685.010](#). Interest shall accrue commencing on the twentieth (20th) calendar day after the fine becomes due. In the event a civil action is commenced to collect the administrative fines, the city shall be entitled to recover all costs associated with the collection of the fines, including, but not limited to, staff time and attorney fees incurred in the collection of the fines and those costs set forth in Code of Civil Procedure Section [1033.5](#). The city may take such other actions as are allowed for enforcement of a civil judgment as provided for pursuant to the Enforcement of Judgments Law, California Code of Civil Procedure Section [680.010](#) et seq. The remedies set forth in this section are not exclusive, and the city may collect any past due amounts assessed or ordered by all available legal means.

1.18.110 Right to judicial review.

A. The decision of the hearing officer shall be deemed the final administrative order of the city.

B. Any person who is aggrieved by the decision of the hearing officer under this chapter may obtain judicial review of such decision by filing an appeal to be heard in the Sonoma County superior court in accordance with California Government Code Section [53069.4](#). A copy of the notice of appeal shall be served in person or by first class mail upon the city clerk. The right to appeal is limited to the terms and conditions set out in California Government Code Section [53069.4](#). If no appeal is filed with the superior court within twenty calendar days after service, then the written decision is hereby deemed confirmed.

E. ADDITION OF CHAPTER .102

Chapter 1.20, Administrative Notice and Order to Abate, is added to the Cloverdale Municipal Code to read in its entirety as follows:

“1.20 Administrative Notice and Order to Abate

- 1.20.010 General enforcement authority for this chapter and purpose.
- 1.20.020 Definitions.
- 1.20.030 Fines.
- 1.20.040 Administrative notice and order.
- 1.20.050 Recordation of administrative notice and order.
- 1.20.060 Service procedures.
- 1.20.070 Hearing procedure.
- 1.20.080 Hearing officer’s decision
- 1.20.090 Right to judicial review.
- 1.20.100 Collection of unpaid fines or administrative costs.

1.20.010 General enforcement authority for this chapter and purpose.

The purpose and intent of this chapter is to effectively enforce violations of this code committed on a continuing or ongoing basis. This chapter is adopted pursuant to the municipal affairs provision contained in Section 7 of Article XI of the Constitution of the State of California and Government Code Section [36900](#) for the purpose of making any violation of this code or of any ordinance enacted by the city council subject to administrative fines, remedies, and penalties, to set forth the procedures authorized in Government Code Section [53069.4](#) for the imposition, enforcement, collection, and administrative review of such fines and penalties, and to redress and enforce violations of this code that constitute public nuisances through a nuisance abatement mechanism. This chapter shall be used at the sole discretion of the city.

1.20.020 Definitions.

A. “Administrative Costs” shall mean any and all costs incurred by the city in connection with the matter before the hearing officer, including but not limited to costs of investigation, staffing costs incurred in preparation for the hearing and for the hearing itself, the services of the hearing officer, any abatement costs, costs for all inspections, and attorneys’ fees.

B. “City Manager.” shall mean the city manager of the City of Cloverdale or his or her designee.

C. “Code” means the City of Cloverdale Municipal Code, Building Code, Zoning Code, and any Uniform Codes that have been incorporated into this Code by reference, as well as any other ordinance of the city.

D. “Enforcement Officer” shall mean any Cloverdale employee, contractor, or agent of the city authorized to enforce any provision of this code or this chapter.

E. “Fine” or “fines” shall mean any fines, fees, or penalties assessed or imposed by the city or order of the hearing officer under this chapter, not including administrative costs.

F. “Person” shall mean a natural person or legal entity, and the owners, majority stockholders, corporate officers, trustees, and general partners of a legal entity.

G. “Responsible Person” shall mean a person or person’s agent, employee, or independent contractor who causes, permits, allows, maintains, contributes, conceals, or aids or abets the property-related code violation, including a property owner of record, property manager, tenant, subtenant, occupant, or any person in possession of property where the code violation exists. Each responsible party shall be jointly and severally liable for any and all fines, fees, penalties, and administrative costs awarded, upheld, assessed, or imposed under this chapter.

1.20.030 Fines.

The city council may establish the amounts of fines for violations of this code imposed pursuant to this chapter through a schedule of fines established by resolution of the city council. In the absence of such resolution, and except as otherwise specified in this Code, the fines for administrative violations of this code shall be as follows:

- A. A fine not exceeding one hundred dollars (\$100) for a first violation.
- B. A fine not exceeding two hundred dollars (\$200) for a second violation of the same ordinance within one year.
- C. A fine not exceeding five hundred dollars (\$500) for each additional violation of the same ordinance within one year.

1.20.040 Administrative notice and order.

A. Whenever a code enforcement officer determines that a violation of a provision of this code has occurred, the code enforcement officer may issue an administrative notice and order to the responsible party for the violation.

B. Each administrative notice and order shall contain the following information:

- 1. Date of violation or date violation is identified and address or definite description of the location of the violation(s), such as the street address or tax assessor parcel number (APN);

2. The code sections or conditions violated and a description of the violation(s);
3. A description of the action necessary to correct the violation and reasonable time not less than ten calendar days to correct the violation prior to the imposition of fines;
4. The amount of the fine for the code violation(s);
5. An explanation of how the fine shall be paid, the time period by which it shall be paid, and the consequences of failure to pay the fine;
6. An order prohibiting the continuation or repeated occurrence of the violation and an explanation of the consequences for failing to correct the violation, including that a separate violation exists for each and every calendar day any violation of any provision of this code is committed, continued, or permitted;
7. A description of the administrative review procedures, including the time, date and place of the hearing, which shall be no less than ten calendar days after the date of the administrative notice and order. The description shall also state that the purpose of the hearing will be to make a determination on the existence of the violation(s), public nuisance, and on whether to adopt the administrative order, including the imposition of fines and administrative costs under this chapter;
8. The name, date, and signature of the issuing enforcement officer; and
9. A statement that any violation of this code is deemed to constitute a public nuisance, which if not corrected or abated as required under this administrative notice and order may be found to exist and ordered to be abated after a public hearing, with abatement and related administrative costs being imposed on the responsible person and/or property owner, and collected judicially, or by special assessment or tax collection or lien, as provided under this code.

C. Nothing in this chapter shall preclude, limit, prohibit, restrict, or otherwise prevent the city under this code or state or federal law from taking immediate action, including the immediate issuance of an administrative citation, administrative notice and order, or summary abatement, for violations of this code that pertain to continuing or ongoing building, plumbing, electrical or other similar structural or zoning issues that create an immediate danger to health or safety.

1.20.050 Recordation of administrative notice and order.

A. If the responsible person does not comply with the administrative notice and order within a reasonable time designated in the notice and order, the code enforcement officer may file in the office of the county recorder a certificate describing the property and certifying the following:

1. That the building, structure, or property is in violation of this code; and

2. That the owner has been so notified.

B. This certificate may be filed either prior to the administrative hearing designated in the administrative notice and order, or prior to any continuance thereof, or within a reasonable time following the issuance of the hearing officer's decision pursuant to Section 1.20.070.

C. Whenever the corrections ordered in the administrative notice and order have been abated, repaired, or corrected to the extent that a violation no longer exists, the code enforcement officer shall, at his/her sole discretion, either file, or cause to be filed, with the county recorder or, in lieu of such filing, provide to the property owner with notice a new certificate certifying that the building, structure, or property has been brought into compliance with the administrative notice and order, or that all required corrections have been made so that the building, structure, or property conforms to the requirements contained in the administrative notice and order.

1.20.060 Service procedures.

A. Service of the notices under this article shall be made by any of the following methods:

1. Personal service; or
2. Certified mail, postage prepaid with a requested return receipt, and posting the notice conspicuously on or in front of the property.

B. Where real property is in violation of this code, written notice shall be personally served or mailed to the property owner, certified mail, postage prepaid with a requested return receipt, at the address as shown on the most current publicly available equalized county property tax assessment roll. In addition, a copy of the notice shall be conspicuously posted at the property which is in violation of this code.

C. Notwithstanding the method of delivery, the failure of any person with an interest in the property to receive any notice served in accordance with this section shall not affect the validity of any proceedings taken under this code.

1.20.060 Hearing procedure.

A. The purpose of the hearing is to provide a review of the administrative notice and order by a hearing officer and an opportunity to the person subject to a notice and order to object to the determination that a violation has occurred and/or that the violation has continued to exist or that a public nuisance exists.

B. Hearing Officer. The city manager shall be authorized to assign a hearing officer to any person or persons, qualified by training or experience, whom the city manager may appoint or who are retained by contract to conduct such hearings. The hearing officer may be, but is not required to be, a city employee.

C. The hearing officer shall only consider evidence that is relevant to whether the violation occurred and/or whether a public nuisance exists, whether the recipient of the notice and order is

the responsible party, and the administrative costs incurred by the city. Such relevant evidence includes, without limitation, staff reports or presentations, oral, physical, and documentary evidence regarding the alleged violation(s), proposed method of abatement, if any, and administrative costs incurred by the city.

D. The hearing is intended to be informal in nature. Formal rules of evidence and discovery do not apply. The city manager may, from time to time, adopt procedures for the format and proceedings of the administrative hearing. The person contesting the administrative notice and order shall be given the opportunity to testify and present witnesses and evidence. The city shall have the burden of proof by preponderance of the evidence to establish that the responsible person committed the violation specified in the notice and order.

E. Each witness, prior to providing oral testimony, shall be sworn by the hearing officer or his or her designee. Each party shall have the opportunity to cross-examine witnesses and present evidence in support of the party's cause.

F. The failure of a responsible party named in an administrative notice and order to appear at the administrative notice and order hearing shall constitute a failure to exhaust the party's administrative remedies.

G. On the hearing officer's own discretion or upon request by any party, the hearing officer may continue the hearing and request additional information from any person or witness prior to issuing a written decision. Notice of the continued hearing must be given to each party and shall include the time, date, and place to which the hearing is to be continued.

1.20.070 Hearing officer's decision.

A. After considering all of the testimony and evidence submitted at the hearing or continued hearing, the hearing officer shall issue a written decision setting forth the findings supporting the decision within thirty (30) calendar days of the hearing. The decision is to be entitled "administrative enforcement order" and shall either uphold or cancel the administrative notice and order as to each named responsible party. The decision shall list the findings in support of the decision and the imposition of administrative costs and/or fines. When the administrative enforcement order directs the abatement of a violation, including a nuisance, the violation may be corrected or abated as authorized within this chapter or as otherwise permitted by law.

B. If the hearing officer determines that a public nuisance exists, then the written decision shall also include:

1. A description of the nuisance, which, if based upon a violation of this code, shall identify the provision being violated including the factual findings and determinations supporting the decision; and
2. An order to correct or abate the nuisance by a certain date, which if not complied with shall direct that the city take those steps necessary and authorized by law to enter onto the

property and abate the nuisance at the cost of the property owner through a special assessment or lien as provided in this Code.

C. When the administrative enforcement order directs that the nuisance be corrected or abated, it shall also impose the fines and assess administrative costs against each responsible party incurred up to the date of the administrative hearing. The administrative enforcement order shall include notice to each responsible party that administrative costs incurred up to the date of the administrative hearing may become the subject of a lien or special assessment against the property where the violations occurred, and payment is not received for such administrative costs within thirty calendar days of date of the order.

D. If the hearing officer determines that the administrative notice and order should be upheld as to a responsible party, then the hearing officer shall impose and assess the prescribed fine against each responsible party.

E. The order shall also state the date all payments are due and the fines for any late payment for any amount ordered by the hearing officer and that, if the violation continues, the responsible party may be subject to additional fines or administrative costs, as authorized by law. The order shall also state that fines and administrative costs shall also be collectible as set forth under elsewhere in this Code.

F. If the hearing officer determines that the administrative notice and order should be canceled in whole or in part, then the case shall be terminated as to that responsible party.

G. The written decision shall be served upon each party in the manner set forth by Section 1.20.060 or by any other means agreed to by each party, including email, fax, or other means. When the administrative enforcement order is served on the code enforcement officer, the order shall be deemed final.

1.20.080 Collection of unpaid fines or administrative costs.

The city may collect any past due fines assessed and/or administrative costs in the administrative enforcement order by all available legal means.

1.20.090 Right to judicial review.

A. The decision of the hearing officer shall be deemed the final administrative order of the city.

B. Any person who is aggrieved by the decision of the hearing officer may obtain judicial review of such decision by filing an appeal to be heard in the Sonoma County superior court in accordance with California Government Code Section [53069.4](#). If no appeal is filed with the superior court within twenty calendar days after service, then the written decision is hereby deemed confirmed. In the event that a copy of the notice of appeal is served in person or by first class mail upon the City of Cloverdale by the contestant-appellant pursuant to the appeal to the superior court, the time for payment shall be suspended from the date of said service until the judgment of the court is final.

C. Public Nuisance Finding. Any finding in an administrative enforcement order that a nuisance exists and any order made within an administrative enforcement order to abate or correct the nuisance shall constitute a final, administrative determination, shall not be appealable, and shall be subject to judicial review in the Sonoma County superior court by filing with the court a petition for writ of mandate pursuant to the provisions and time limits set in Code of Civil Procedure Section [1094.6](#)

1.20.100 Private right of enforcement against responsible parties.

Any person, entity, association, or organization aggrieved by a willful violation of any provision of this chapter, where the owner(s) of a property has failed or refused to correct and/or abate a violation under this chapter for forty (40) calendar days after the administrative order becomes final, shall have the right to file an action and/or proceeding for injunctive relief and damages against the owner(s) of such property. Any person, entity, association, or organization which prevails or is successful in any such action or proceeding shall be entitled, in addition to any other relief, to recover all reasonable costs, expenses and attorneys' fees incurred in such action or proceeding. treble damages also shall be awarded for such willful failure to comply with this chapter.”

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Ordinance 2022-747 (Gus Sign)

Final Audit Report

2022-06-15

Created:	2022-06-15
By:	Mike Maloney (Mmaloney@ci.cloverdale.ca.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAXCVs2Rpe2eGODnIYmMKS-TAhBchfUMXk

"Ordinance 2022-747 (Gus Sign)" History

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2022-06-15 - 4:06:18 PM GMT
-  Document emailed to Gus Wolter (gwolter@ci.cloverdale.ca.us) for signature
2022-06-15 - 4:07:04 PM GMT
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2022-06-15 - 6:43:47 PM GMT
-  Document e-signed by Gus Wolter (gwolter@ci.cloverdale.ca.us)
Signature Date: 2022-06-15 - 6:46:41 PM GMT - Time Source: server
-  Document emailed to Mike Maloney (Mmaloney@ci.cloverdale.ca.us) for signature
2022-06-15 - 6:46:43 PM GMT
-  Email viewed by Mike Maloney (Mmaloney@ci.cloverdale.ca.us)
2022-06-15 - 7:01:51 PM GMT
-  Document e-signed by Mike Maloney (Mmaloney@ci.cloverdale.ca.us)
Signature Date: 2022-06-15 - 7:02:04 PM GMT - Time Source: server
-  Agreement completed.
2022-06-15 - 7:02:04 PM GMT