

**PLEASE NOTE:**

This copy of Ordinance No. 290 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

**REGULAR**

**NUMBER: 290**

**TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS RELATING TO ADMINISTRATIVE CITATIONS, AMENDING TITLE I OF THE MILPITAS MUNICIPAL CODE TO ADD A NEW CHAPTER 21, AMENDING SECTIONS OF TITLES XI AND VIII, AND REPEALING A SECTION OF TITLE V**

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_ and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Christopher J. Diaz, City Attorney

**RECITALS AND FINDINGS:**

**WHEREAS**, the City Council has enacted a Municipal Code and other ordinances necessary to promote the health, safety and welfare of the community; and

**WHEREAS**, the City Council desires to encourage compliance with the Municipal Code and City ordinances; and

**WHEREAS**, Chapter 1 of Title 1 of the Municipal Code includes provisions relating to criminal infractions and misdemeanors for certain Municipal Code violations; and

**WHEREAS**, various Chapters and Sections of the Municipal Code include enforcement provisions authorizing the issuance of administrative citations for certain Municipal Code violations; and

**WHEREAS**, currently, there is no comprehensive and uniform procedure for the issuance and appeal of administrative citations for Municipal Code violations; and

**WHEREAS**, California Government Code Section 53069.4 provides for an alternative administrative system of enforcement where the City may make any violation of its Municipal Code and other ordinances subject to an administrative fine or penalty; and

**WHEREAS**, the purpose of this Ordinance is to provide a comprehensive and uniform procedure for the issuance and appeal of administrative citations in the enforcement of the Municipal Code and State law; and

**WHEREAS**, the City Council has determined that enactment of a new comprehensive administrative citation ordinance is in the public interest.

**NOW, THEREFORE**, the City Council of the City of Milpitas does ordain as follows:

**SECTION 1. RECORD AND BASIS FOR ACTION**

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

**SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE, TITLE I**

Title I of the Milpitas Municipal Code is hereby amended to add a new Chapter 21 entitled “Administrative Citations” to read as follows:

**Chapter 21 – Administrative Citations**

**I-21-1.01 - Applicability**

- A. This Chapter provides for administrative citations which are in addition to all other legal remedies, criminal or civil, which may be pursued by the City to address any violation of the Municipal Code or other laws.
- B. Use of this Chapter shall be at the sole discretion of the City and Enforcement Officers.

### **I-21-1.02 - Definitions**

- A. “Enforcement Officer” shall mean that person or persons specifically designated by the Municipal Code or the City Manager to enforce any provisions of the Municipal Code or other laws.
- B. “Responsible Person” shall mean any person who is the owner or occupant of real property, owner or authorized agent of any business, company, or entity, or the parent or the legal guardian of any person under the age of eighteen (18) years, who causes or maintains a violation of the Municipal Code or other laws.

### **I-21-1.03 - Administrative Citation**

- A. Whenever an Enforcement Officer charged with the enforcement of any provision of the Municipal Code determines that a violation of a provision has occurred, the Enforcement Officer shall have the authority to issue an administrative citation to any person responsible for the violation.
- B. Authority to Issue an Administrative Citation
  - (1) Continuing Violation that does not create an immediate danger to public health and safety. Where the violation is a Continuing Violation that does not create an immediate danger to public health and safety, the citation shall set forth a reasonable period of time, which shall not be less than 15 days, for the person responsible for the continuing violation to correct or otherwise remedy the violation prior to the imposition of the administrative fine.
  - (2) Continuing violation that creates an immediate danger to public health and safety. Where a violation is a Continuing Violation that constitutes an immediate danger to public health and safety, the property owner shall be provided notice to correct the violation within a maximum of two (2) hours from when the verbal or written notice was received. Depending upon the severity of the violation, if the violation is not corrected within the two hour time period, the City shall have the option to initiate summary abatement procedures under Section V-500-3.08 or impose the administrative fine and administrative citation provisions under Section V-500-8.00.
  - (3) Individual Violation that does not create an immediate danger to public health and safety. Where a violation is an Individual Violation that does not create an immediate danger to public health and safety, a written notice to correct the violation shall be issued for the first offense. For second and subsequent violations of the same code provision, the person responsible for the violation shall not have an opportunity to correct or otherwise remedy the violation prior to the administrative fine being imposed. Each person, firm or corporation shall be guilty of a separate offense for each day and everyday during any portion of which any violation of any provision is committed.
  - (4) Individual Violation that creates an immediate danger to the public health and safety. Where a violation is an Individual Violation that constitutes an immediate danger to the public health and safety, the property owner shall be provided notice to correct the violation within a maximum of two (2) hours from when the verbal or written notice was received. Depending upon the severity of the violation, if the violation is not corrected within the two hour time period, the City shall have the

option to initiate summary abatement procedures under Section V-500-3.08 or impose the administrative fine and administrative citation provisions under Section V-500-8.00. Each person, firm or corporation shall be guilty of a separate offense for each day and everyday during any portion of which any violation of any provision is committed.

- C. Each administrative citation shall contain the following information:
- (1) The date of the violation;
  - (2) The address or a definite description of the location where the violation occurred;
  - (3) The section of the Municipal Code or other law violated and a description of the violation;
  - (4) The amount of the fine for the Municipal Code or other law violation;
  - (5) 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;
  - (6) An order prohibiting the continuation or repeated occurrence of the violation described in the administrative citation;
  - (7) A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request for a hearing form to contest the administrative citation may be obtained; and
  - (8) The name and signature of the citing Enforcement Officer.
- D. Each provision of this Municipal Code or other law that is violated constitutes a separate violation. Each day such a violation continues shall be regarded as a new and separate violation.

#### **I-21-1.04 - Amount and Payment of Fines**

- A. Pursuant to the authority granted in Section 53069.4 of the California Government Code, the amount of administrative fines for code or other violations imposed pursuant to this Chapter shall be assessed in the amounts specified by Resolution of the City Council, or where no amount is specified in the Resolution:
- (1) A fine not exceeding one hundred dollars (\$100.00) for a first violation;
  - (2) A fine not exceeding two hundred dollars (\$200.00) for a second violation of the same code provision within one (1) year from the date of the first violation.
  - (3) A fine not exceeding five hundred dollars (\$500.00) for a third or more violation(s) of the same code provision within one (1) year from the date of the first violation.
- B. Payment of the Fine
- (1) The fine shall be paid to the City within thirty (30) days from the date of the administrative citation. A late payment charge of Twenty-Five Dollars (\$25.00)

and interest at the legal rate of ten percent (10%) shall be imposed on a monthly basis for any administrative citation amount remaining unpaid to the City.

- (2) Any administrative citation fine paid pursuant to this Chapter shall be refunded, if 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.
- (3) Payment of a fine under this Chapter shall not excuse or discharge any continuation or repeated occurrence of the Municipal Code or other law violation that is the subject of the administrative citation.

#### **I-21-1.05 - Appeal Hearing Request**

- A. Any recipient of an administrative citation may contest that there was a violation of the Municipal Code or other law or that he or she is the responsible party by completing a request for hearing form and returning it to the City within fifteen (15) calendar days from the date of the administrative citation, together with an advance deposit of the fine or notice that a request for an advance deposit hardship waiver has been filed pursuant to Section I-21-1.06.
- B. A request for a hearing form may be obtained from the department specified on the administrative citation.
- C. Any appeal not timely filed shall be rejected. Failure of any person to file an appeal in accordance with the provisions of this Section I-21-1.05 shall constitute waiver of that person's rights to administrative determination of the merits of the citation and the amount of the fine.

#### **I-21-1.06 - Advance Deposit Hardship Waiver**

- A. Any person who intends to request a hearing to contest that there was a violation of the Municipal Code or other law or that he or she is the Responsible Person and who is financially unable to make the advance deposit of the fine as required in this Chapter may file a request for an advance deposit hardship waiver at the time of filing the hearing request.
- B. The requirement of depositing the full amount of the fine as described in Section I-21-1.05(A) shall be stayed until the Director of Finance makes a determination on the advance deposit hardship waiver request.
- C. The Director of Finance may waive the requirement of an advance deposit only if the requesting party submits to the Director of Finance a sworn declaration, together with any supporting documents or materials, demonstrating to the satisfaction of the Director of Finance the person's actual financial inability to deposit with the City the full amount of the fine in advance of the hearing.
- D. The Director of Finance shall issue and mail a written decision upon the person who applied for the advance deposit hardship waiver. The written decision shall list the reasons for his or her decision. The written decision of the Director of Finance shall be final.

- E. If the Director of Finance determines not to grant the advance deposit hardship waiver, the person shall remit the deposit to the City within ten (10) calendar days of the date of the written decision.

**I-21-1.07 - Dismissal of Citation**

At any time before the hearing, if the Enforcement Officer determines that there was no violation as charged in the administrative citation or that the citation should be dismissed in the interest of justice, the Enforcement Officer may dismiss the administrative citation, cancel the requested hearing, and refund any advance deposit paid pursuant this Chapter.

**I-21-1.08 - Hearing Officer**

The City Manager shall designate the Hearing Officer for the administrative citation hearing. The employment, performance, evaluation, compensation and benefits of the Hearing Officer, if any, shall not be directly or indirectly conditioned upon the amount of administrative citation fines upheld by the Hearing Officer.

**I-21-1.09 - Hearing Procedure**

- A. No hearing to contest an administrative citation or other administrative decision governed by this Chapter before a Hearing Officer shall be held unless and until a timely written request for a hearing has been submitted in accordance with Section I-21-1.05, and the fine has been either deposited in advance or waived in accordance with Section I-21-1.06.
- B. A hearing before the Hearing Officer shall be set for a date that is not less than fifteen (15) days and not more than sixty (60) days from the date that the request for hearing is filed in accordance with the provisions of this Chapter. The person requesting the hearing shall be notified of the time and place set for the hearing at least ten (10) days prior to the date of the hearing.
- C. The Hearing Officer shall only consider evidence that is relevant to whether the violation(s) occurred or administrative citation should be upheld, or whether the Responsible Person has caused or maintained the violation of the Municipal Code or other law on the date(s) specified in the administrative citation.
- D. The Responsible Person contesting the administrative citation shall be given the opportunity to testify and present witnesses and evidence concerning the administrative citation.
- E. The failure of any recipient of an administrative citation to appear at the administrative citation hearing shall constitute a forfeiture of the fine and a failure to exhaust their administrative remedies.
- F. The administrative citation and any additional documents submitted by the Enforcement Officer shall constitute prima facie evidence of the respective facts contained in those documents.
- G. If the Enforcement Officer submits any additional documents concerning the administrative citation to the Hearing Officer for consideration at the hearing, then a copy of the additional documents shall also be mailed to the person requesting the hearing prior to the date of the hearing.

- H. No other discovery is permitted. Formal rules of evidence shall not apply.
- I. The Hearing Officer may continue the hearing and request additional information from the Enforcement Officer or the recipient of the administrative citation prior to issuing a written decision.

**I-21-1.10 - Hearing Officer's Decision**

- A. After considering all of the testimony and evidence submitted at the hearing, the Hearing Officer shall issue a written decision to uphold or dismiss the administrative citation and shall list in the decision the reasons for that decision. The decision of the Hearing Officer shall be final.
- B. If the Hearing Office determines that the administrative citation should be upheld, then the fine amount on deposit with the City shall be retained by the City.
- C. If the Hearing Officer determines that the administrative citation should be upheld and the fine has not been deposited pursuant to an advance deposit hardship waiver, the Hearing Officer shall set forth in the decision a payment schedule for the fine.
- D. If the Hearing Officer determines that the administrative citation should be dismissed and the fine was deposited with the City, then the City shall refund the amount of the deposited fine in accordance with standard operating procedures established by the City.
- E. The recipient of the administrative citation shall be mailed a copy of the Hearing Officer's written decision.

**I-21-1.11 - Failure to Pay Fines**

- A. The failure of any person to pay a fine assessed by the administrative citation within the time specified on the administrative citation constitutes a debt to the City. To enforce the debt, the City may file a civil action, impose a special assessment as set forth below, or pursue any other legal remedy to collect such debt, including reasonable costs of collection and attorneys' fees.
- B. The City may impose a special assessment against the property that is subject of an administrative citation if the citation has been issued to the property owner. If the administrative citation concerns property now owned by the Responsible Person, the City may impose a special assessment against the property owned by the Responsible Person. The City Manager shall record a notice of lien in the Santa Clara County Recorder's Office for the amount of the lien assessment.
- C. After recordation, a copy of the lien assessment shall be turned over to the Santa Clara County tax collector. At that point, it will be the duty of the tax collector to add the amounts of the respective assessments to the next regular property tax bills levied against the lots and parcels of land for municipal purposes. Those amounts shall be collected at the same time and in the same manner as ordinary property taxes are collected, and shall be subject to the same penalties and procedures under foreclosure and sale as provided for with ordinary municipal taxes. In the alternative, after recording, the lien may be foreclosed by judicial or other sale in the manner and means provided by law.

**I-21-1.12 - Right to Judicial Review**

Any person aggrieved by an administrative decision of a Hearing Officer on an administrative citation may obtain review of the administrative decision by filing a petition for review with the Santa Clara County Superior Court in accordance with the timelines and provisions set forth California Government Code Section 53069.4.

#### **I-21-1.13 - Notices**

- A. The administrative citation and all notices to be given by this Chapter shall be provided to the Responsible Person in accordance with the provisions of this Section I-21-1.13. Unless different provisions herein are otherwise specifically made, such administrative citation or notice may be given either by personal delivery thereof to the person to be notified or by deposit in the United States mail, in a sealed envelope, postage prepaid, addressed to such person to be notified, at his last known business or residence address as the same appears in the public records of the City or other records pertaining to the matter to which such notice is directed. Notice by mail shall be deemed to have been completed at the time of deposit with the U.S. Postal Service.
- B. Failure to receive any notice specified in this part does not affect the validity of proceedings conducted hereunder.

#### **I-21-1.14 - Civil or Criminal Actions Not Affected**

Any administrative citation issued pursuant to this Chapter shall not prejudice or adversely affect any other action, civil or criminal, that may be brought to abate the public nuisance or violation or to seek compensation for damages suffered. A civil or criminal action may be brought concurrently with any other process regarding the same public nuisance or violation.

### **SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE, TITLE XI, CHAPTER 10**

Section 63 of Chapter 10 of Title XI of the Milpitas Municipal Code is hereby amended to read as follows:

~~XI 10 63.07—Administrative Citation Procedure~~

~~A. General. When he or she determines that one or more violations of this Chapter have occurred, the City Manager and his or her designee may issue administrative citations pursuant to the procedures set forth in Sections XI 10 63.07(B), Administrative Citation, of this Chapter.~~

~~1. Continuing Violation that does not create an immediate danger to public health and safety. Where the violation is a Continuing Violation that does not create an immediate danger to public health and safety, the citation shall set forth a reasonable period of time, which shall not be less than 30 days, for the person responsible for the continuing violation to correct or otherwise remedy the violation prior to the imposition of the administrative fine.~~

~~2. Continuing violation that creates an immediate danger to public health and safety. Where a violation is a Continuing Violation that constitutes an immediate danger to public health and safety, the property owner shall be provided notice to correct the violation within a maximum of two (2) hours from when the verbal or written notice was received. Depending upon the severity of the violation, if the violation is not corrected within the two hour time period, the City shall have the option to initiate summary abatement procedures under Section XI 10 63.09 Abatement Procedure, of this chapter, or impose the administrative fine below and administrative citation provisions under Section XI 10 63.07(B), Administrative Citation, of this Chapter.~~

~~3. Individual Violation that does not create an immediate danger to public health and safety. Where a violation is an Individual Violation that does not create an immediate danger to public health and safety, a written notice to correct the violation shall be issued for the first offense. For second and subsequent violations of the same code provision, the person responsible for the violation shall not have an opportunity to correct or otherwise remedy the violation prior to the administrative fine being imposed. Each person, firm or corporation shall be guilty of a separate offense for each day and everyday during any portion of which any violation of any provision is committed.~~

~~4. Individual Violation that creates an immediate danger to the public health and safety. Where a violation is an Individual Violation that constitutes an immediate danger to the public health and safety, the property owner shall be provided notice to correct the violation within a maximum of two (2) hours from when the verbal or written notice was received. Depending upon the severity of the violation, if the violation is not corrected within the two hour time period, the City shall have the option to initiate summary abatement procedures under Section XI 10-63.09, Abatement Procedure, of this Chapter, or impose the administrative fine below and administrative citation provisions under Section XI 10-63.07(B), Administrative Citation, of this Chapter. Each person, firm or corporation shall be guilty of a separate offense for each day and everyday during any portion of which any violation of any provision is committed.~~

~~a. The schedule of fines for administrative citations issued for violations of this Chapter is as follows:~~

~~i. Not to exceed one hundred dollars (\$100) for the first violation;~~

~~ii. Not to exceed two hundred dollars (\$200) for the second violation of the same code provision within twelve (12) months; and~~

~~iii. Not to exceed five hundred dollars (\$500) for the third and subsequent violation of the same code provision within twelve (12) months.~~

~~b. Each person that fails to pay any fine set out in an administrative citation issued pursuant to this section shall be liable for a late payment charge of 10%.~~

#### B. Administrative Citation

~~1. Whenever an enforcement officer charged with the enforcement of any provision of this Chapter determines that a violation of that provision has occurred, the enforcement officer shall have the authority to issue an administrative citation to any person responsible for the violation.~~

~~2. Each administrative citation shall contain the following information:~~

~~a. The date of the violation;~~

~~b. The address or a definite description of the location where the violation occurred;~~

~~c. The section of this Chapter violated and a description of the violation;~~

~~d. The amount of the fine for the code violation;~~

~~e. 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;~~

~~f. An order prohibiting the continuation or repeated occurrence of the violation described in the administrative citation;~~

~~g. A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request for hearing form to contest the administrative citation may be obtained; and~~

~~h. The name and signature of the citing enforcement officer.~~

~~3. Amount of Fines:~~

~~a. The amounts of the fines for code violations imposed pursuant to this Chapter shall be set forth in the schedule of fines established by resolution of the City Council.~~

~~b. The schedule of fines shall specify any increased fines for repeat violations of the same code provision by the same person within twelve months from the date of an administrative citation.~~

~~c. The schedule of fines shall specify the amount of any late payment charge imposed for the payment of a fine after its due date.~~

~~4. Payment of the Fine:~~

~~a. The fine shall be paid to the City within thirty days from the date of the administrative citation.~~

~~b. Any administrative citation fine paid pursuant to Section XI 10-63.07(B)(4)(a) shall be refunded, with interest, if 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. Payment of a fine under this Chapter shall not excuse or discharge any continuation or repeated occurrence of the code violation that is the subject of the administrative citation.~~

~~5. Hearing Request:~~

~~a. Any recipient of an administrative citation may contest that there was a violation of the Code or that he or she is the responsible party by completing a request for hearing form and returning it to the City within fifteen (15) days from the date of the administrative citation, together with an advance deposit of the fine or notice that a request for an advance deposit hardship waiver has been filed.~~

~~b. A request for hearing form may be obtained from the City Clerk.~~

~~c. The person requesting the hearing shall be notified of the time and place set for the hearing at least ten days prior to the date of the hearing.~~

~~d. If the enforcement officer submits an additional written report concerning the administrative citation to the hearing officer for consideration at the hearing, then a copy of this report also shall be served on the person requesting the hearing at least five days prior to the date of the hearing.~~

~~6. Advance Deposit Hardship Waiver. Any person who intends to request a hearing to contest that there was a violation of the Code or that he or she is the responsible party and who is financially unable to make the advance deposit of the fine as required, may file a request for an advance deposit hardship waiver at the time of filing the hearing request.~~

**XI-10-63.097 - Abatement Procedure**

A. Notification of Nuisance. Whenever the City Manager determines that any property within the City is being maintained contrary to one or more of the provisions of this Chapter, he or she will give written notice ("Notice to Abate") to the owner/occupant(s) of said property stating the section(s) being violated. Such notice shall set forth a reasonable time limit, in no event less than or equal to thirty (30) calendar days, for correcting the violation(s) of Chapter XI-10, Zoning, for correcting the violation(s) and may also set forth suggested methods of correcting the same unless the City Manager determines that the condition constitutes a threat

to the health and safety of any person, in which event, the City Manager may designate a shorter time limit for correcting the violation. Such notice shall be served upon the owner/occupant in accordance with provisions of Section XI-10-63.097(D), Notice of Hearing, of this Chapter, covering service in person or by mail.

- B. Exception for Undue Hardship. The notice shall also inform the owner/occupant (excluding an owner acting in a capacity of landlord of rental property) that, upon written request of the owner/occupant submitted within seven (7) calendar days of the "Notice to Abate," the City Manager, in his or her sole discretion, may allow for a time limit in excess of thirty (30) days for correcting the violation in cases where strict enforcement of the time limit would result in an undue hardship on the owner/occupant. In the written request, the owner/occupant shall state the reasons why strict enforcement of the time limit would result in an undue hardship.
- C. Administrative Hearing to Abate Nuisance. In the event said owner/occupant shall fail, neglect or refuse to comply with the "Notice to Abate," the City Manager shall conduct an administrative hearing to ascertain whether said violation constitutes a public nuisance.
- D. Notice of Hearing. Notice of said administrative hearing shall be served upon the owner/occupant not less than seven (7) calendar days before the time fixed for hearing. Notice of the hearing shall be served in person or by certified mail to the owner/occupant's last known address. Service shall be deemed complete at the time notice is personally served or deposited in the mail. Failure of any person to receive notice shall not affect the validity of any proceedings hereunder. Notice shall be substantially in the format set forth below:

NOTICE OF ADMINISTRATIVE HEARING ON ABATEMENT OF NUISANCE

This is a notice of hearing before the City Manager (or his/her designees) to ascertain whether certain property situated in the City of Milpitas, State of California, known and designated as (public right-of-way address) \_\_\_\_\_, in said City, and more particularly described as (Assessor's Parcel Number) \_\_\_\_\_ constitutes a violation or public nuisance subject to abatement pursuant to Section XI-10-63.0907, Abatement Procedure, of the Milpitas Municipal Code. If said property, in whole or part, is found to constitute a public nuisance as defined in the Milpitas Municipal Code and if the same is not properly abated by the owner/occupant, such nuisance may be abated by municipal authorities, in which case the cost of such rehabilitation, repair, or abatement will be assessed upon such property and such costs, together with interest thereon, may constitute a special assessment or lien upon such property until paid. In addition, you may be cited for violation of the provisions of the Municipal Code and subject to an administrative fine.

Said alleged conditions consist of the following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The method(s) of abatement are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All persons having an interest in said matters may attend the hearing and their testimony and evidence will be [heard to determine whether certain conditions constitute a public nuisance and whether such conditions shall be abated as a public nuisance.](#)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
City Manager

Time and Date of Hearing: \_\_\_\_\_

Location of Hearing: \_\_\_\_\_

- E. Administrative Hearing by City Manager or His/Her Designees. At the time stated in the notice, the City Manager shall hear and consider all relevant evidence, objections or protests, and shall receive testimony relative to such alleged public nuisance and to proposed rehabilitation, repair, removal or abatement of such property. Said hearing may be continued from time to time.

If the City Manager finds that such public nuisance does exist and that there is sufficient cause to rehabilitate, abate, remove or repair the same, the City Manager shall prepare findings and an order, which shall specify the nature of the nuisance, the method(s) of abatement and the time within which the work shall be commenced and completed. A copy of the findings and order shall be served on all owner/occupants of the subject property in accordance with the provisions of Section XI-10-63.097(D), Notice of Hearing, of this Chapter. In addition, a copy of the findings and order shall be forthwith conspicuously posted on the property. The order shall set forth the time within which such work shall be completed by the owner/occupant, in no event less than fifteen (15) calendar days.

In the event the owner/occupant fails to abate the nuisance as ordered, the City Manager shall cause the same to be abated by City employees or private contract. The costs shall be billed to the owner/occupant, as specified in Sections XI-10-63.1008(A) through XI-10-63.0810(E), Cost Recovery, of this Chapter. In appropriate circumstances, the City Manager shall request the City Attorney to obtain all necessary judicial approval for entry onto the subject premises for abatement purposes.

- F. Hearing Procedure Before City Manager and His/Her Designees. All hearings shall be tape recorded.

Hearings need not be conducted according to the technical rules of evidence.

Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this [State](#). Any relevant evidence shall be admitted if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.

Irrelevant and unduly repetitious evidence shall be excluded.

- G. Appeal of Decision by City Manager and His/Her Designees to the City Council. The decision of the City Manager and His/Her Designees may be appealed to the City Council in conformance with the provisions of Milpitas Municipal Code Section I-20-5.
- H. Limitation on Filing Judicial Action. Any judicial action appealing the City Council's decision and order shall be commenced within thirty (30) calendar days of the date of service of the decision.
- I. Summary Abatement of Immediate Hazard or Obstruction. In the event of:
  1. A nuisance defined by statute, ordinance or resolution as a public nuisance which constitutes an immediate danger to persons or property;
  2. A nuisance defined by statute, ordinance or resolution as a public nuisance which is located or maintained on public property including, but not limited to, any public right-of-way, highway, sidewalk, easement, park or building; or
  3. Any obstruction or encroachment to free passage upon any public property (which is hereby declared to be a public nuisance) including, but not limited to, any public right-of-way, highway, easement, sidewalk, park or building, the City Manager may, forthwith and without notice, abate said nuisance and recover the cost of abatement as provided for in Section XI-10-63.~~4008~~, Cost Recovery, of this Chapter. Summary abatement may include the temporary removal to a safe location of persons placed in immediate danger from a public nuisance. In such event, the City shall be entitled to recover all costs related to the removal, including but not limited to, storage of possessions and rental of living accommodations, as well as any other recoverable cost provided for in Section XI-10-63.~~4008~~, Cost Recovery, of this Chapter.

**XI-10-63.~~4008~~ - Cost Recovery**

- A. Recovery of Costs. This Section establishes procedures for the recovery of administrative costs, as well as attorneys' fees and costs, incurred by the City in the enforcement process, for the abatement of conditions defined as a nuisance or violation by Section XI-~~1021-63-071.01~~, Administrative Citation Procedure, of this Chapter.
- B. Definition of Costs. For the purposes of this Chapter, "costs" shall mean administrative costs, including staff time expended and reasonably related to nuisance abatement cases, for items including, but not limited to, investigation, site inspection and monitoring, testing, reports, telephone contacts, correspondence and meetings with affected parties, as well as all attorneys' fees incurred pursuant to any action, administrative proceeding, or special proceeding to abate the nuisance including, but not limited to, filing fees and fees for witnesses. Pursuant to Government Code Section 38773.5(a), where the City seeks to recover attorneys' fees at the initiation of any action or proceeding, a prevailing opposing party may recover its reasonable attorneys' fees to the extent that the amount of said fees does not exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.
- C. Cost Accounting and Recovery Required. The City shall maintain records of all costs incurred by responsible City departments associated with the enforcement process pursuant to this Chapter and shall recover the costs from the property owner/occupant as provided by this ~~s~~Section.
- D. Notice of Cost Recovery Requirements. The City Manager shall include in the "Notice to Abate" a statement of the intent of the City to charge the property owner/occupant for all costs incurred by the City if the violation is not corrected as required. The notice shall state

that the property owner/occupant will receive at the conclusion of the enforcement case a summary of enforcement costs associated with the processing of the case.

- E. Collection of Charges. Such costs shall be recoverable as provided for in Sections XI-10-63.0911(A) through XI-10-63.0911(B), Record of Cost Abatement and Assessment and Lien, of this Chapter.

**XI-10-63.1109 - Lien Procedure**

- A. Record of Cost of Abatement. The City Manager shall keep an account of the costs, as defined in Section XI-10-63.0810(B), Definition of Costs, of this Chapter, for abating such nuisance on each separate lot or parcel of land where the work is done by the City and shall render an itemized report in writing showing the cost of abatement, including the rehabilitation or repair of said property, including any salvage value relating thereto. A copy of the same shall be posted for at least five (5) calendar days upon such property, together with a notice of the right to appeal to the City Manager. A copy of said report and notice shall be served upon the owner/occupants of said property, based on the last equalized assessment roll or the supplemental roll, whichever is more current. If the owner/occupant of record, after diligent search, 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 (10) days and publication thereof in a newspaper of general circulation published in the county in which the property is located. Proof of said posting and service shall be made by affidavit filed with the City Clerk. The owner/occupant shall have thirty (30) calendar days from the date upon which the notice is served to reimburse the City for its costs or to otherwise make arrangements for repayment as to which the City, in its sole discretion, may agree.
- B. Assessment and Lien. The total cost for abating such nuisance, as so confirmed by the City Manager, shall, upon failure to pay the costs as specified in Section XI-10-63.0911(A), Record of Cost Abatement, of this Chapter, constitute a lien or special assessment pursuant to Government Code Sections 38773.1 (nuisance abatement lien), 38773.2 (graffiti nuisance abatement lien) or 38773.5 (special assessment), or 38773.6 (graffiti special assessment) against the respective lot or parcel of land to which it relates. After confirmation and recordation of a Notice of Special Assessment, a certified copy of the City Manager's decision shall be filed with the Santa Clara County Assessor's Office on or before August 1 of each year, whereupon it shall be the duty of said Assessor to add the amounts of the respective assessments to the next regular tax bills levied against said respective lots and parcels of land for municipal purposes and thereafter said amounts shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided of ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to such special assessments. Upon recordation in the Office of the County Recorder, a Notice of Lien, as so made and confirmed, shall constitute a lien on said property and from the date of recording shall have the force, effect, and priority of a judgment lien.

In the alternative, after such recordation, such lien may be foreclosed by an action brought by the City for a money judgment or by any other means provided by law.

A Notice of Lien for recordation shall be in form substantially as follows:

NOTICE OF LIEN  
(Claim of City of Milpitas)

Pursuant to the authority vested by the provisions of Section XI-10-63.03, Declaration of Public Nuisance, of the Milpitas Municipal Code, the City Manager of the City of Milpitas did on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, cause the property hereinafter described to be rehabilitated or the building or structure on the property hereinafter described, to be repaired or demolished in order to abate a public nuisance on said real property, pursuant to an order to abate issued by on; and the City Manager of the City of Milpitas did on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, assess the cost of such rehabilitation, repair, demolition, or abatement upon the real property hereinafter described; and the same has not been paid nor any part thereof; and that said City of Milpitas does hereby claim a lien on such rehabilitation, repair, or abatement in the amount of said assessment, to wit; the sum of \$\_\_\_\_\_: and the same, shall be a lien upon said real property until the same has been paid in full and discharged of record.

The real property hereinabove mentioned, and upon which a lien is claimed, is that certain parcel of land lying and being in the City of Milpitas, County of Santa Clara, State of California, owned by and more particularly described as follows (legal description):

(description)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
City Manager

In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the amount of the lien, the name of the agency on whose behalf the lien was imposed, the date of the abatement order, the public right-of-way address, legal description, and the name and address of the recorded owner/occupant of the property shall be recorded by the governmental agency. A nuisance abatement and the release of the lien shall be indexed in the grantor-grantee index.

**XI-10-63.120 - Interest on Liens**

- A. Amount of Interest on City Liens and Assessments—Findings. The City Council finds and declares that the establishment of an interest accrual requirement as to unpaid City liens and assessments upon real property which are of record with the County Recorder for Santa Clara County is a necessary and appropriate exercise of the City Council's police power.
- B. Accrual of Interest on Liens and Assessments. Unless otherwise prohibited by law or regulation, all liens and assessments which are imposed by the City against any real property located in the City of Milpitas that are recorded on and after the effective date of this regulation shall accrue interest at the rate of eight (8) percent annually until the lien or assessment, including interest thereon, is paid in full.

**XI-10-63.131 - Miscellaneous**

- A. Alternative Actions Available; Violation an Infraction. Nothing in this Chapter shall be deemed to prevent the Council from ordering the commencement of a civil proceeding to abate a public nuisance pursuant to applicable law or from pursuing any other remedy available under applicable law. Violation of the provisions of this Chapter constitutes an infraction, as set forth in Section I-1-4.09 of the Municipal Code. The City Manager is designated as the enforcement authority.

- B. Additional Costs of Abatement. The City Council provides that a court may order the owner/occupant of property responsible for a condition that may be abated in accordance with this Chapter to pay three times the costs of abatement pursuant to Government Code 38773.7 upon the entry of a second civil court judgment for violation of this Chapter within a two-year period.
- C. Residential Rental Housing. The notice sent to the owner/occupant of residential rental housing pursuant to Section XI-10-63.097(A), Notification of Nuisance, of this Chapter, shall contain the statement required by Health and Safety Code Section 17980 regarding the application of Revenue and Taxation Code Sections 17274 and 24436.5, which allow the Franchise Tax Board to deny state income tax deductions to taxpayers who fail to bring substandard residential rental property into compliance with this Chapter.

**SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE, TITLE XI, CHAPTER 16**

Section 14 of Chapter 16 of Title XI of the Milpitas Municipal Code is hereby amended to read as follows:

**XI-16-14 - Enforcement and Penalties**

- (a) Criminal Penalties. Violations of the provisions of this Chapter shall be subject to criminal penalties as provided in Section I-1-4.09-1 of this Code.
- (b) Judicial Civil Penalties. Any person who intentionally or negligently violates any provision of this Chapter or any provision of any permit or certificate issued pursuant to this Chapter shall be civilly liable to the city in a sum not to exceed twenty-five thousand dollars per day for each day in which such violation occurs.
- (c) Administrative Citations. When the City Manager and/or his or her designee determines that one or more violations of this Chapter have occurred an administrative citation may be issued pursuant to the procedures set forth in Sections ~~V-500-8.001-21-1.01~~ through ~~V-500-8.061-21-1.14~~. The schedule of fines for administrative citations issued for violations of this Chapter shall be set forth in the schedule of fines established by resolution of the City Council.
- (d) Notice of Noncompliance. If the severity of the violation warrants immediate action, a Notice of Noncompliance or Stop Work Notice shall be issued, permits may be suspended or revoked, Stormwater Pollution Prevention Plans may be found in noncompliance, and corrective actions may be implemented in accordance with Section 11 of this Chapter. For all other cases, including those sites or projects where a stormwater pollution prevention plan is not required, the City Manager or his or her designee shall issue a Notice of Noncompliance that shall enumerate the violations found. The City Manager or his or her designee shall order compliance by a date or hour certain at his or her discretion. If the violations are not abated in the time period identified in the Notice of Noncompliance, the site shall be deemed to be in noncompliance with federal, State and local laws and the City Manager or his or her designee shall have the authority to issue a Stop Work Notice and/or deem the Stormwater Pollution Prevention Plan inadequate. If a Stop Work Notice is issued, corrective actions must be performed until the site has achieved compliance. Corrective actions may include revision and resubmission of any Plan, including, but not limited to, Stormwater Pollution Prevention Plan, Erosion Control Plan or Grading Plan. The City Manager or his or her designee may also require a discharger that has violated any discharge limits contained in this Chapter to install a temporary system for the capture, testing, and release of stormwater.

- (e) Suspension of Utility Service. The City may, without prior notice, suspend water service, sanitary sewer service, and/or storm drain discharge access to a person discharging to the storm drain system when such suspension is necessary to stop an actual or threatened discharge which presents, or may present, imminent and substantial danger to the environment or to the health or welfare of persons; or presents, or may present, imminent and substantial danger to the storm drain system.
- (f) For construction projects where a total of three or more Stop Work Notices and Notices of Noncompliance for urban runoff violations have been issued, the City Manager or his or her designee may require the contractor to hire a Qualified SWPPP Developer (QSD) or Qualified SWPPP Practitioner (QSP) within three business days. The QSD/QSP shall establish effective BMPs, provide guidance for improvement for the duration of the project, and certify compliance. A Stop Work Notice shall be issued for failure to comply.
- (g) Remedies Cumulative. The remedies provided in this section are cumulative and not exclusive, and shall be in addition to any other penalty provided for in this Chapter and shall be in addition to all other remedies available to the City under State and federal law.

**SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE, TITLE VIII**

Section 8.00 of Chapter 6 of Title VIII of the Milpitas Municipal Code is hereby amended to read as follows:

**VIII-6-8.00 - Non-Compliance**

Any violation of this Chapter shall be subject to the penalties provision set forth in Section I-1-4.09 (Penalty Provision), Sections ~~V-500-8.00- I-21-1.01 through I-21-1.14~~ (Administrative Citation), or any other penalty provisions in the Municipal Code or State law.

**SECTION 5. AMENDMENT OF MILPITAS MUNICIPAL CODE, TITLE V**

This Ordinance will repeal Section V-500-8.00 (Administrative Citation) of the Milpitas Municipal Code.<sup>[s1]</sup>

~~V-500-8.00 – Administrative Citation~~

~~V-500-8.01~~

~~Whenever an enforcement officer charged with the enforcement of any provision of this Chapter determines that a violation of that provision has occurred, the enforcement officer shall have the authority to issue an administrative citation to any person responsible for the violation.~~

~~V-500-8.01-1 – Authority to Issue an Administrative Citation~~

~~(a) Continuing Violation that does not create an immediate danger to public health and safety. Where the violation is a Continuing Violation that does not create an immediate danger to public health and safety, the citation shall set forth a reasonable period of time, which shall not be less than 15 days, for the person responsible for the continuing violation to correct or otherwise remedy the violation prior to the imposition of the administrative fine.~~

~~(b) Continuing violation that creates an immediate danger to public health and safety. Where a violation is a Continuing Violation that constitutes an immediate danger to public health and safety, the property owner shall be provided notice to correct the violation within a maximum of two (2) hours from when the verbal or written notice was received. Depending upon the severity of the~~

~~violation, if the violation is not corrected within the two hour time period, the City shall have the option to initiate summary abatement procedures under Section V 500 3.08 or impose the administrative fine and administrative citation provisions under Section V 500 8.00.~~

~~(c) Individual Violation that does not create an immediate danger to public health and safety. Where a violation is an Individual Violation that does not create an immediate danger to public health and safety, a written notice to correct the violation shall be issued for the first offense. For second and subsequent violations of the same code provision, the person responsible for the violation shall not have an opportunity to correct or otherwise remedy the violation prior to the administrative fine being imposed. Each person, firm or corporation shall be guilty of a separate offense for each day and everyday during any portion of which any violation of any provision is committed.~~

~~(d) Individual Violation that creates an immediate danger to the public health and safety. Where a violation is an Individual Violation that constitutes an immediate danger to the public health and safety, the property owner shall be provided notice to correct the violation within a maximum of two (2) hours from when the verbal or written notice was received. Depending upon the severity of the violation, if the violation is not corrected within the two hour time period, the City shall have the option to initiate summary abatement procedures under Section V 500 3.08 or impose the administrative fine and administrative citation provisions under Section V 500 8.00. Each person, firm or corporation shall be guilty of a separate offense for each day and everyday during any portion of which any violation of any provision is committed.~~

#### V 500 8.02

~~Each administrative citation shall contain the following information:~~

- ~~1. The date of the violation;~~
- ~~2. The address or a definite description of the location where the violation occurred;~~
- ~~3. The section of this Chapter violated and a description of the violation;~~
- ~~4. The amount of the fine for the code violation;~~
- ~~5. 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;~~
- ~~6. An order prohibiting the continuation or repeated occurrence of the violation described in the administrative citation;~~
- ~~7. A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request for hearing form to contest the administrative citation may be obtained; and~~
- ~~8. The name and signature of the citing enforcement officer.~~

#### V 500 8.03 Amount of Fines

~~(a) The amounts of the fines for code violations imposed pursuant to this Chapter shall be set forth in the schedule of fines established by resolution of the City Council.~~

~~(b) The schedule of fines shall specify any increased fines for repeat violations of the same code provision by the same person within twelve months from the date of an administrative citation.~~

~~(c) The schedule of fines shall specify the amount of any late payment charge imposed for the payment of a fine after its due date.~~

V 500 8.04 – Payment of the Fine

(a) The fine shall be paid to the City within thirty days from the date of the administrative citation.

(b) Any administrative citation fine paid pursuant to Section V 500 8.04(a) shall be refunded, with interest, if 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) Payment of a fine under this Chapter shall not excuse or discharge any continuation or repeated occurrence of the code violation that is the subject of the administrative citation.

V 500 8.05 – Hearing Request

(a) Any recipient of an administrative citation may contest that there was a violation of the Code or that he or she is the responsible party by completing a request for hearing form and returning it to the City within fifteen (15) days from the date of the administrative citation, together with an advance deposit of the fine or notice that a request for an advance deposit hardship waiver has been filed.

(b) A request for hearing form may be obtained from the City Clerk.

(c) The person requesting the hearing shall be notified of the time and place set for the hearing at least ten days prior to the date of the hearing.

(d) If the enforcement officer submits an additional written report concerning the administrative citation to the hearing officer for consideration at the hearing, then a copy of this report also shall be served on the person requesting the hearing at least five days prior to the date of the hearing.

V 500 8.06 – Advance Deposit Hardship Waiver

Any person who intends to request a hearing to contest that there was a violation of the Code or that he or she is the responsible party and who is financially unable to make the advance deposit of the fine as required in Section V-500-8.05 may file a request for an advance deposit hardship waiver at the time of filing the hearing request.

**SECTION 6. SEVERABILITY**

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

**SECTION 7. EFFECTIVE DATE AND POSTING**

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.