ITEM 9.6.

MOORPARK CITY COUNCIL
AGENDA REPORT

TO: Honorable City Council

FROM: Barry K. Hogan, Community Development Director
Prepared By: Laura Stringer, Administrative Services Manager

DATE: July 21, 2006 (CC Meeting of 08/02/06)

SUBJECT: Consider Ordinance to Amend Titles 1 and 15 of the Moorpark Municipal Code by Adding Chapter 1.10, "Code Violations, Penalties and Enforcement;" Amending Chapter 1.12 and Changing the Title from "Enforcement and Penalties" to "Nuisances;" Adding Chapter 1.16, "Administrative Citations" and Amending Section 15.04.060, "Violations and Penalties"

BACKGROUND

Title 1 of the Moorpark Municipal Code includes Chapter 1.12, Enforcement and Penalties and Title 15 includes Section 15.04.060 (Attachment 1). Chapter 1.12, which has not been updated for many years, addresses enforcement of the Municipal Code, including application of penalties and abatement of nuisances. Staff has been working with the City Attorney to update and amend Title 1 to provide for clear procedures for legal remedies to secure enforcement, including penalties, nuisance abatement and administrative processes that are consistent with current state law. Amendment to Title 15 is proposed for consistency.

DISCUSSION

The draft Ordinance (Attachment 2) adds Chapter 1.10 Code Violations, Penalties and Enforcement; amends Chapter 1.12 and Changes the Title from "Enforcement and Penalties" to "Nuisances;" adds Chapter 1.16, "Administrative Citations." Amendment to Section 15.04.060 is proposed to provide consistency with Title 1:

- Chapter 1.10 provides the general means and methods by which the City may secure compliance with the provisions of the Municipal Code and City approvals, permits or licenses.
- Chapter 1.12 as amended and renamed provides the procedures, penalties, cost recovery and administrative process for abatement of identified public nuisances.

- Chapter 1.16 provides for issuance of administrative citations to encourage compliance with the provisions of the Municipal Code and to provide a method of holding persons responsible when they fail or refuse to comply with the provisions of this code. The use of Chapter 1.16 is also intended to minimize the expense and delay associated with pursuing code violations through the civil or criminal justice system.
- Section 15.04.060 as amended removes reference to penalties, which are now included in Title 1.

The draft Ordinance also references schedules of fines, penalties and other fees to be adopted by City Council resolution. The Ordinance sets forth minimum fees if no resolution is in place. Staff recommends that Council set a public hearing for August 16, 2006, to consider a fee resolution for fines and penalties related to code compliance and public nuisance abatement.

STAFF RECOMMENDATION

1. Introduce Ordinance No. _____ for first reading.
2. Schedule second reading and adoption for August 16, 2006.
3. Direct staff to prepare a fee resolution for City Council consideration on September 20, 2006.

Attachments:

1) MMC Chapter 1.12 and Section 15.04.060
2) Draft Ordinance

Chapter 1.12

ENFORCEMENT AND PENALTIES

Sections:

1.12.010	Violations and prosecution.
1.12.020	Aiding and abetting.
1.12.040	Penalty for violation.
1.12.050	Fines—Imprisonment pending payment.
1.12.060	Fines—Failure to pay.
1.12.070	Nuisance—Abatement.
1.12.071	Nuisance—Abatement hearing.
1.12.080	Nuisance—Cost recovery.
1.12.081	Nuisance—Emergency abatement.
1.12.090	Violation of administrative provisions.
1.12.100	Citation—When issued.
1.12.110	Citation—Issuance.
1.12.120	Imprisonment—Place.
1.12.130	Imprisonment—Trusty system.
1.12.140	Imprisonment—Labor by inmates.

1.12.010 Violations and prosecution.

The violation of any provision of this code or other ordinance of the city, including those provisions of this code designated as misdemeanor/infraction, shall be a misdemeanor unless such violation is deemed an infraction because:

A. A judgment imposes a punishment other than imprisonment and a fine not exceeding the amounts specified in Section 1.12.040B of this code; or

B. The city attorney files a complaint in municipal court charging the violation as an infraction, unless the defendant objects at the time of arraignment; or

C. A verified notice to appear is issued charging the violation as an infraction, unless the defendant objects at the time of arraignment; or

D. The violation is specifically designated as an infraction in this code. (Ord. 185 § 1, 1993: Ord. 176 § 1, 1993: Ord. 28 § 1 (part), 1984: Ord. 2 § 1 (part), 1983)

1.12.020 Aiding and abetting.

Whenever in this code or the provisions of any code adopted by the city by reference or any provision of any ordinance of the city not included within this code any act or omission is made unlawful, it shall include causing, permitting, aiding, abetting, suffering or concealing the fact of such act or omission. (Ord. 28 § 1 (part), 1984: Ord. 2 § 1 (part), 1983)

1.12.040 Penalty for violation.

A. Any person convicted of a misdemeanor, the penalty for which is not otherwise prescribed, shall be punished by a fine of not more than one thousand dollars ($1,000.00) or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.

B. Any person convicted of an infraction, the penalty for which is not otherwise prescribed, shall be punished by:

1. A fine not exceeding one hundred dollars ($100.00) for the first violation;

2. A fine not exceeding two hundred dollars ($200.00) for a second violation of the same provision within one (1) year;

3. A fine not exceeding five hundred dollars ($500.00) for each additional violation of the same provision within one (1) year. (Ord. 28 § 1 (part), 1984: Ord. 2 § 1 (part), 1983)

1.12.050 Fines—Imprisonment pending payment.

A. A judgment that a person convicted of a misdemeanor be punished by payment of a fine, with or without other punishment, may also direct that he be imprisoned in the county jail until the fine is satisfied and may further direct that such imprisonment begin at and continue after the expiration of, or run concurrently with all or part of, any imprisonment imposed as a part of the punishment. Every such judgment shall specify the extent of the imprisonment for nonpayment of the fine, which shall not be more than one (1) day for each twenty dollars ($20.00) of the fine nor exceed in any case the term for which the defendant might be sentenced to imprisonment for the offense of which he has been convicted. A defendant held in custody for nonpayment of a fine shall be entitled to credit on the fine for each day he is so held in custody at the rate specified in the judgment. When the defendant has been convicted of a misdemeanor, a judgment that defendant pay a fine may also direct that he pay the fine within a limited time or in installments on specified dates and that in default of payment as therein stipulated he be imprisoned in the discretion of the court either until the defaulted installment is satisfied or until the fine is satisfied in full; but unless such direction is given in the judgment, the fine shall be payable forthwith.

B. Except as otherwise provided in case of fines imposed as conditions of probation, the defendant must pay the fine to the clerk of the court, or to the judge thereof if there is no clerk, unless the defendant is taken into custody for nonpayment of the fine, in which event payments made while he is in custody shall be made to the officer who holds him in custody and all amounts so paid shall

be forthwith paid over by such officer to the court which rendered the judgment. The clerk shall report to the court every default in payment of a fine or any part thereof, or if there is no clerk the court shall take notice of such default. If time had been given for payment of a fine or it has been made payable in installments, the court shall, upon default in payment, immediately order the arrest of the defendant and order him to show cause why he should not be imprisoned until the fine or installment thereof, as the case may be, is satisfied in full. If the fine, or installment, is payable forthwith and it is not so paid, the court shall, without further proceedings, immediately commit the defendant to the custody of the proper officer to be held in custody until the fine is satisfied in full. (Ord. 28 § 1 (part), 1984: Ord. 2 § 1 (part), 1983)

1.12.060 Fines—Failure to pay.

Any person wilfully failing to pay to a lawfully imposed fine for a violation of any provision of this code, regardless of whether such violation is a misdemeanor or an infraction, within the time authorized by the court and without lawful excuse having been presented to the court on or before the date the fine is due, is guilty of a misdemeanor regardless of the full payment of the fine after such time. (Ord. 28 § 1 (part), 1984: Ord. 2 § 1 (part), 1983)

1.12.070 Nuisance—Abatement.

A. In addition to other penalties provided by law, any condition caused or permitted to exist in violation of any provisions of this code, or any such threatened violation, shall be deemed a public nuisance and may be summarily abated as such by the city.

B. Also, any such violation or threatened violation as referred to in subsection A of this section, or any condition caused or permitted to exist in violation of any of the provisions of any code adopted by reference by this code, or of the provisions of any other city ordinance, shall be deemed a public nuisance which may be abated by the city attorney in a civil judicial action.

C. Nothing in this section shall be deemed to prevent the city from commencing a criminal action in addition to, alternatively to, or in conjunction with, the proceedings set forth in this section, nor shall anything in this section be deemed to prevent the city from setting a public hearing to abate a nuisance in addition to, alternatively to, or in conjunction with the proceedings set forth in this section. (Ord. 143 § 2, 1991; Ord. 2 § 1 (part), 1983)

1.12.071 Nuisance—Abatement hearing.

A. The city manager is authorized to administer the provisions of this section. The city manager may appoint one or more members of the city staff to act as his designee(s) in carrying out these responsibilities.

B. Whenever the city manager or his designee finds that any real property within the city, or any building, improvement or structure located thereon, is being maintained contrary to one or more of the provisions of this code and reasonably believes that such violation constitutes a public nuisance under this section or Section 1.12.070, he shall set the matter for a public hearing before the hearing officer.

C. 1. The city clerk shall give not less than ten (10) days written notice to the owner of the affected property of the time and place of the public hearing by United States mail or by personal delivery, as such owner is shown on the latest equalized assessment roll of Ventura County. The city manager may direct that additional notices as he may deem necessary or desirable be given. Such notice shall describe the property involved by street address and shall further describe the property by the Ventura county assessor's property identification number, including the map book, page and parcel numbers as contained in the latest equalized assessment roll of the county assessor. The notice shall include a brief description of the conditions which are deemed to be contrary to the provisions of this code and shall contain a detailed list of the needed corrections or abatement methods necessary to abate the cited conditions.

2. In addition, at least ten (10) days prior to the date set for hearing, the city clerk shall cause a copy of such notice to be conspicuously posted on the affected property.

3. The failure of any person to receive such notice shall not affect the validity of any proceedings under this section.

D. Any owner shall have the right to abate the nuisance in accordance with the notice of hearing to abate at his own expense, provided the same is done prior to the time that the matter is set for public hearing before the hearing officer. On receipt of notice from the property owner that the nuisance has been abated in this manner, the city manager shall cause the same to be inspected to verify compliance. If he finds that compliance has been achieved, he shall terminate the proceedings.

E. The hearing to determine whether a nuisance exists shall be conducted by the city manager or his duly authorized designee who shall act as hearing officer, and who shall herein be referred to as the "hearing officer." The hearing officer is authorized to take testimony and decide upon evidence and in the course of doing so, is authorized to administer oaths or affirmations pursuant to California Code of Civil Procedure Section 2093(a) or any of its successor statutes.

F. The hearing to determine whether a nuisance exists shall be conducted by the hearing officer who shall consider all relevant evidence including, but not limited to, applicable staff reports, testimony written or oral relative to the existence of the alleged public nuisance, and the manner and time period proposed for the abatement of same. Such hearing may be continued from time to time.

Upon the conclusion of the public hearing, the hearing officer shall, on the basis of the evidence presented at such hearing, determine whether the property, or any part thereof, as maintained, constitutes a public nuisance, as defined herein. If the hearing officer finds that a public nuisance exists, he shall, by written notice, order the same abated in a reasonable period of time and in accordance with a detailed list of needed corrections or abatement methods. The determination of the hearing officer shall be final unless appealed in the manner provided for in this section.

G. A copy of the hearing officer's order of abatement of the nuisance shall be served upon the owner of the property by United States mail or by personal delivery. The notice shall be deemed received upon personal delivery or upon the third (3rd) day after deposit in the United States mail.

H. The owner of property affected by the decision of the hearing officer, or any interested party, may appeal the decision of the hearing officer to the city council.

The appeal shall be made in writing and filed with the city clerk within five (5) working days following receipt of the notice of the hearing officer. Such appeal shall state the grounds for the appeal. The city clerk shall, upon receipt of such appeal, set the matter for hearing before the city council not less than ten (10) nor more than thirty (30) days following the filing of the appeal. Notice of hearing shall be given by deposit in the United States mail or by personal delivery at least ten (10) days prior to the hearing.

At the time and place of hearing, the city council shall hear and consider all relevant evidence including, but not limited to, the report of the hearing officer and testimony written or oral relative to the existence of the alleged public nuisance and the manner and time period proposed for abatement of same. The hearing may be continued from time to time.

Upon the conclusion of the public hearing, the city council shall, on the basis of the evidence presented at the hearing, determine whether the property, or any part thereof, as maintained, constitutes a public nuisance, as defined herein. If the council finds that a public nuisance exists, it shall, by resolution, order the same abated in a reasonable time and in accordance with a detailed list of needed corrections or abatement methods to be set forth in the resolution. The determination of the city council shall be final.

I. A copy of the city council's resolution ordering abatement of the nuisance shall be served upon the owner of the property by United States mail or by personal delivery.

J. Any owner of property shall have the right to abate the public nuisance in accordance with the city council's resolution ordering abatement, at his own expense, provided the same is done prior to the expiration of the time set forth in the resolution. Upon compliance with the resolution by the owner, the proceedings hereunder shall be deemed terminated. If such nuisance is not completely abated by the owner, as directed, within the time set forth in the resolution, then the city manager shall cause the same to be abated by city forces or private contract, and entry upon the premises is expressly authorized for such purposes.

K. When the city manager causes the abatement of a public nuisance pursuant to the provisions of Section 1.12.071(J) he shall keep an accounting of the cost thereof, including incidental expenses of such abatement. Upon conclusion of such abatement, the city manager shall submit his itemized statement of costs to the city clerk. Upon receipt of such statement, the city clerk shall set the same for hearing before the city council. The city clerk shall cause notice of the time and place of the hearing to be given to the owner of the property to which the same relates, and to any other interested person who requests notice, by deposit in the United States mail or by personal delivery, at least ten (10) days in advance of the hearing. The term "incidental expenses" includes, but is not limited to, the actual expenses and costs to the city in the preparation of reports and notices, specifications and contracts, inspection of the work, and costs of printing and mailing required under this section.

L. At the time and place set for receiving and considering the statement of costs, the city council shall hear and pass upon the statement together with any objections or protests raised by any of the persons liable to be assessed for the cost of abating the nuisance. Thereupon, the city council may make any such revision, correction or modification to the statement as it may deem just, after which the statement as submitted, or as revised, corrected or modified, shall be confirmed by resolution. Such hearing may be continued from time to time. The decision of the city council shall be final.

M. The city clerk shall give notice of the city council's decision to the owner of the property by deposit in the United States mail or by personal delivery within ten (10) days after the city council renders its decision.

N. The cost of abatement of a nuisance, as confirmed by the city council, shall constitute a special assessment against the respective lot or parcel of land to which it relates, and after its recording, as thus made and confirmed,

the same shall constitute a lien on the property in the amount of such assessment. After the confirmation of the statement, a copy thereof shall be transmitted to the assessor and tax collector for the city by the city clerk. Whereupon it shall be the duty of the assessor and tax collector to add the amount of such assessment, or assessments, to the next regular bills of taxes levied against the respective lot or parcel of land for municipal purposes, and thereafter the amount 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 for foreclosure and sale in the case of delinquency as provided for ordinary municipal taxes.

O. Any person who maintains any public nuisance as defined in this section or Section 1.12.070 or who violates or fails to comply with an order of abatement made pursuant to this section is guilty of a misdemeanor.

No person shall obstruct, impede or interfere with any representative of the city or with any owner, as defined in this section, of a property which has been ordered vacated, repaired, rehabilitiated or which improvements thereon have been ordered demolished and removed, whenever such representative of the city or owner is engaged in vacating, repairing, rehabilitating the property or demolishing and removing the improvements pursuant to the provisions of this section, or in performing any necessary act preliminary or incidental to such work as authroized or directed pursuant to this section. (Ord. 143 § 3 (part), 1991)

1.12.080 Nuisance—Cost recovery.

A. Whenever any person creating, causing, committing or maintaining a public nuisance, as referred to in Section 1.12.070 of this chapter, or other public nuisances, as defined under state law or other ordinance or regulation, has been given notice, by or on behalf of the city attorney or by any other city officer, employee or policing agent authorized to give such notice, to abate such nuisance or cease and desist from continuing such nuisance or violation of law, and such person who was given notice fails, refuses or neglects to comply with the notice within the time specified therein, or if such a time is not specified, then within a time reasonably sufficient to enable such compliance, such noncomplying person shall be liable to the city for any and all costs and expenses to the city involved in thereafter abating the nuisance and in obtaining compliance with or enforcing the law as referred to or encompassed in the notice.

B. Costs and expenses, as referred to in subsection A of this section may include, but are not limited to, any and all direct costs and expenses related to such things as personnel salaries and benefits, operational overhead, rent, interest, fees for experts or consultants, legal costs or expenses, including attorneys' fees, claims against the city arising as a consequence of the nuisance or violation and procedures associated with collecting moneys due hereunder.

C. The provisions of subsection A of this section shall also apply to any person who received a notice, as specified therein, and thereafter the nuisance or violation was abated, but such person subsequently allowed or was responsible for a recurrence of the nuisance or violation.

D. The liability of any person for the payment of the costs and expenses provided for in subsection A of this section may be waived in whole or in part by the city attorney in any case wherein he determines, in his sole discretion, that the failure or refusal of such person to comply with the notice therein involved was based upon a good faith and bona fide issue of law or fact specially involved in the circumstances of the case. Any determination or decision of the city attorney in this regard shall be final and conclusive and shall not be subject to appeal as prescribed in Chapter 2.04 of this code.

E. Moneys due to the city pursuant to this section may be recovered in an appropriate civil action. Alternatively, such liability may be enforced by special assessment proceedings against the parcel of land upon which the nuisance existed, which proceedings may be conducted in a manner substantively similar to proceedings described in Sections 39574 et seq. of the Government Code of the state relating to weed abatement assessments. (Ord. 2 § 1 (part), 1983)

1.12.081 Nuisance—Emergency abatement.

Any nuisance which is determined by the city to be an immediate public health hazard may be removed by the city from a property through summary abatement without notice. When the city has effected the removal of such solid waste, the owner or occupant of the property shall be liable to the city for the cost of such removal and disposal. (Ord. 143 § 3 (part), 1991)

1.12.090 Violation of administrative provisions.

The violation of, or the failure or omission to perform in accordance with, any administrative provision of this code by any officer or employee of the city shall generally not be considered a criminal act, but may be deemed a failure to perform the duties or to observe the rules and regulations of the department, office, commission or board within the meaning of the rules and regulations of the city or of the civil service regulations of the city, if applicable. (Ord. 2 § 1 (part), 1983)

1.12.100 Citation—When issued.

In any case in which a person is arrested for a violation of any provision of this code and does not demand to be taken before a magistrate, such person may, in lieu of being taken before a magistrate, be issued a written notice to appear in court and may then be released, all pursuant to and in accordance with the procedures prescribed by California Penal Code Section 853.6 et seq. (Ord. 2 § 1 (part), 1983)

1.12.110 Citation—Issuance.

A. Officers and employees of the city who have the discretionary duty to enforce a statute or ordinance may, pursuant to Section 836.5 of the Penal Code and subject to the provisions of this section, arrest a person without a warrant whenever any such officer or employee has reasonable cause to believe that the person to be arrested has committed an offense in the officer's or employee's presence which he or she has the discretionary duty to enforce, and to issue a notice to appear, and to release such person on his or her written promise to appear in court, pursuant to Section 853.6 of the Penal Code.

B. No officer or employee shall be allowed by his or her superior to exercise the arrest and citation authority conferred in this section unless such officer or employee is within a classification of city officers and employees designated by resolution of the city council to exercise such arrest and citation authority as to specified violations.

C. The city manager shall establish and cause to be administered a special enforcement training program designated to instruct each officer or employee who will exercise such arrest and citation authority, regarding the provisions of the statutes and ordinances to be enforced, the evidentiary prerequisites to proper procedures for making arrests or otherwise prudently exercising such arrest and citation authority, and the legal and practical ramifications and limitations attendant thereto. Any such officers or employees shall be appropriately instructed to deposit executed citations or notices with the police department for filing with the court, after review for legal sufficiency. (Ord. 2 § 1 (part), 1983)

1.12.120 Imprisonment—Place.

That portion of the Ventura County Court House known as the Ventura County Jail is designated as the place of imprisonment for all persons convicted of and sentenced to imprisonment for a violation of this code. (Ord. 6 § 10 (part), 1983)

1.12.130 Imprisonment—Trustee system.

The sheriff is authorized to establish a trustee system for the purpose of regulating the conduct of prisoners, and he may promulgate such regulations, written or oral, as he may deem necessary in pursuance thereof. (Ord. 6 § 10 (part), 1983)

1.12.140 Imprisonment—Labor by inmates.

Every male person having the physical ability to do so, confined in the county jail under a final judgment of imprisonment may be required by the sheriff to labor upon any public grounds, roads, streets, alleys, highways or public buildings or any other places deemed advisable and for the benefit of the county, within such county, each day except Sundays and legal holidays during the time they are so confined. (Ord. 6 § 10 (part), 1983)

authorized by this code or any permits or certificates issued under this code.
(Ord. 289 § 2 (part), 2002: Ord. 253 § 1 (part), 1999)

15.04.050 Disaster response.

The city manager may enter into mutual aid agreements for emergency building and safety services for the purpose of assuring adequate and effective response in the event of earthquake or other unforeseen emergencies. (Ord. 289 § 2 (part), 2002: Ord. 253 § 1 (part), 1999)

15.04.060 Violations and penalties.

A. It is unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any land, building or structure, building service equipment, machine or equipment; or cause or permit the same to be done in violation of this code or the technical codes. Each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this code or the technical codes is committed, continued or permitted.

B. It is unlawful for any person to remove, deface, alter or obstruct from view a posted notice of the building official or duly appointed representative when such notice constitutes a stop work order or a warning of substandard or hazardous conditions or prohibits or restricts the occupancy or use of a building, structure or building service equipment regulated by this code or the technical codes.

C. Every violation of this code or the technical codes shall be deemed a misdemeanor.

D. Any person convicted of a misdemeanor shall be punishable by a fine of not more than one thousand dollars ($1,000.00) or by imprisonment for not more than six (6) months or by both such fine and imprisonment. (Ord. 289 § 2 (part), 2002: Ord. 253 § 1 (part), 1999)

Chapter 15.08

BUILDING CODE*

Sections:

15.08.010 Building code adopted.
15.08.020 Administrative provisions deleted.
15.08.030 Foundation design.
15.08.040 Plywood design.
15.08.050 Hold-down connectors.
15.08.060 Height to length ratio
15.08.070 Table 25-I amended.
15.08.080 Fire hazard zone requirements.
15.08.090 Foundation investigation.
15.08.100 Grading enforcement by city engineer.
15.08.110 Swimming pools.

* Prior ordinance history: Ords. 14, 75, 115, 127 and 210.

15.08.010 Building code adopted.

Except as hereinafter provided, the Uniform Building Code, 1997 Edition, Volumes 1, 2 and 3, including: (1) generic fire-resistive assemblies listed in the Fire Resistance Design Manual, Fourteenth Edition, dated April 1994, published by the Gypsum Association as referenced in Tables 7-A, 7-B and 7-C; (2) Appendix Chapter 3, Divisions I, II; (3) Appendix Chapter 4, Division I; (4) Appendix Chapter 12, Division II; (5) Appendix Chapter 15 except Sections 1516.3(#2) and 1516.3(#3); (6) Appendix Chapters 29, 30 including ANSI/ASME A17.1, 1987 Safety Code for Elevators and Escalators, and to ANSI/ASME A 17.3-1996, Safety Code for Existing Elevators and Escalators, published by the American Society of Mechanical Engineers; and (7) Appendix 31, Division III, and Chapter 33; (8) Structural Welding Code-Reinforcing Steel, AWS D1.4-92 (UBC Standard 19-1); (9) Load and Resistance Factor Design Specifications for Structural Steel Buildings, December 1, 1993 (Chapter 22, Division II); (10) Specification for Structural Steel Buildings Allowable Stress Design and Plastic Design, June 1, 1989 (Chapter 22, Division III); (11) Load and Resistance Factor Design Specification for Cold Formed Steel Structural Members, 1986 (with December, 1989 Addendum) (Chapter 22, Division VI); (12) Specification for Design of Cold-Formed Steel Structural Members, 1986 (Chapter 22, Division VII); (13) Standard Specification for Steel Joists, K-Series, LH-Series, DLH-Series and Joist Girders, 1994 (Chapter 22, Division IX); (14) Structural Applications of Steel Cables for Buildings, ASCE 17-95 (Chapter 22, Division XI); and (15) National Design Specification for

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, AMENDING TITLES 1 AND 15 OF THE MOORPARK MUNICIPAL CODE BY ADDING CHAPTER 1.10 ENTITLED "CODE VIOLATIONS, PENALTIES AND ENFORCEMENT"; AMENDING CHAPTER 1.12 WHICH WILL BE RENAMED "NUISANCES"; ADDING CHAPTER 1.16 ENTITLED "ADMINISTRATIVE CITATIONS"; AND AMENDING SECTION 15.04.060 ENTITLED "VIOLATIONS AND PENALTIES".

THE CITY COUNCIL OF THE CITY OF MOORPARK DOES ORDAIN AS FOLLOWS:

SECTION 1. Adoption of Chapter 1.10. Chapter 1.10 entitled "Code Violations, Penalties and Enforcement" is hereby added to Title 1 of Municipal Code of the City of Moorpark to read as follows:

Chapter 1.10

CODE VIOLATIONS, PENALTIES AND ENFORCEMENT.

Sections:

1.10.010 Purpose.
1.10.020 Code violations.
1.10.030 Entitlement permit, other permit or license violations.
1.10.040 Authority to arrest and issue criminal citations.
1.10.050 Criminal prosecution.
1.10.060 Misdemeanor penalties.
1.10.070 Infraction penalties.
1.10.080 Public nuisances.
1.10.090 Administrative citations.
1.10.100 Civil actions.

1.10.010 Purpose.

The provisions of this chapter represent the general means and methods by which the City may secure compliance with the provisions of this code and City approvals, permits or licenses. The City may use any available legal remedy to secure compliance. Multiple enforcement remedies may be used to achieve compliance with respect to persons who commit continuing violations.

1.10.020 Code violations.

A. It is unlawful for any person to violate any provision or to fail to comply with any requirement of this code.

B. Whenever in this code any act or omission is made unlawful, it includes causing, permitting, aiding, abetting, maintaining, suffering or concealing the fact of such act or omission.

C. Any person violating any of the provisions of this code is guilty of a misdemeanor, unless the offense is specifically classified in this code or by state law as an infraction. However, the city attorney is authorized to file or charge any violation of this code as either a misdemeanor or infraction or reduce any charge filed as a misdemeanor to an infraction.

D. Each day that any condition caused or permitted to exist in violation of this code constitutes a new and separate violation.

E. The owner of any property, building or structure within the City is responsible for keeping such property, building or structure free of violations related to its use or condition. The owner of such property, building or structure is separately liable for violations committed by tenants or occupants relative to the use or condition of the property.

F. The penalty provided in this section is in addition to other provisions of this code or other law.

1.10.030 Entitlement permit, other permit or license violations.

A. Each person or the successor of each person who holds an entitlement permit, a variance permit, or any other permit or license issued by the City shall comply with each provision of the permit or license and with each term that is imposed as a condition to the exercise of the permit or license.

B. Each person or the successor of each person who receives a rezoning or subdivision approval shall comply with each provision of the approval and with each term that is imposed as a condition to the approval of the rezoning or subdivision.

1.10.040 Authority to issue criminal citations.

Pursuant to California Penal Code section 836.5, City code compliance officers are authorized to issue criminal citations following the procedures

set forth in California Penal Code sections 853.5 through 853.6a, or such other procedures as the State of California may subsequently enact.

1.10.050 Criminal prosecution.

Pursuant to California Government Code section 36900, the city attorney may prosecute any violation of this code in the name of the people of the State of California.

1.10.060 Misdemeanor penalties.

Any person convicted of a misdemeanor for the violation of this code may be punished by a fine of not more than $1,000.00 or by imprisonment not to exceed 6 months, or by the imposition of both such fine and imprisonment.

1.10.070 Infraction penalties.

A. The City Council will establish by resolution the fines which will be imposed upon any infraction. If the City Council fails to pass any such resolution, the fines shall be as provided in this section.

B. Except as provided in subsection (C) below, any person convicted of an infraction for the violation of this code may be punished by:

1. A fine not exceeding $100.00 for a first violation.

2. A fine not exceeding $200.00 for a second violation of the same code section within the previous twelve (12) months.

3. A fine not exceeding $500.00 for each additional violation of the same code section within the previous twelve (12) months.

C. Any person convicted of an infraction for a violation of any City Building or Safety code may be punished by:

1. A fine not exceeding $100.00 for a first violation.

2. A fine not exceeding $500.00 for a second violation of the same code section within the previous twelve (12) months.

3. A fine not exceeding $1,000.00 for each additional violation of the same code section within the previous twelve (12) months.

1.10.080 Public nuisances.

In addition to the penalties provided in this chapter, any condition caused or permitted to exist in violation of this code is deemed a public nuisance and may be abated as such by the City in any manner provided by law or in this code for the abatement of a nuisance.

1.10.090 Administrative citations.

Upon a finding by a City official vested with the authority to enforce the provisions of this code that a violation exists, such official may issue an administrative citation under Chapter 1.16.

1.10.100 Civil actions.

The city attorney, at the direction of the City Council, may institute an action in any court of competent jurisdiction to restrain, enjoin or abate any condition found to be in violation of this code or any approval, order, rule or regulation issued by any duly authorized officer or agent of the City in the manner provided by law. The prevailing party in any such civil action will be entitled to recovery of attorneys' fees and costs incurred in such action.

SECTION 2. Revision of Chapter 1.12. The title of Chapter 1.12 of Title I of the Municipal Code currently entitled "Enforcement and Penalties" is hereby changed to "Nuisances." Chapter 1.12 is further amended in its entirety to read as follows:

Chapter 1.12

NUISANCES

Sections:

1.12.010 Notice of Public Nuisance and Order to Abate.
1.12.020 Contents of Notice and Order.
1.12.030 Persons entitled to service.
1.12.040 Service of Notice and Order.
1.12.050 Completion of service.
1.12.060 Appeal of Notice and Order.
1.12.070 Appeal Fee.
1.12.080 Hardship Waiver.
1.12.090 Incomplete filing.
1.12.100 Failure to file appeal.
1.12.110 Processing and conducting of appeal.
1.12.120 Recordation of Notice and Order.

1.12.130 Recordation of Notice of Compliance.
1.12.140 Other Abatement Procedures.
1.12.150 Abatement Hearing.
1.12.160 Appeal of Hearing Officer's Decision.
1.12.170 Abatement of Nuisance by Property Owner.
1.12.180 Abatement of Nuisance by City.
1.12.190 Liability to City for its Costs.
1.12.200 Emergency Abatement.

1.12.010 Notice of Public Nuisance and Order to Abate.

A. The city manager is authorized to administer the provisions of this section. The city manager may appoint one or more members of City staff to carry out these responsibilities. For purposes of this chapter, the term "city manager" shall mean the city manager and his or her designee(s).

B. When the city manager has found and determined that conditions, uses or activities at or upon any real property or premises constitute a public nuisance pursuant to any provision of the Municipal Code and/or applicable statute, rule, code and regulation, the city manager may issue or cause the issuance of a Notice of Public Nuisance and Order to Abate ("Notice and Order") pursuant to this Chapter.

1.12.020 Contents of Notice and Order.

A. The Notice and Order shall include all of the following information:

1. The name of the property's record owner, the occupant, if any, and/or the agent, if any, having charge or control of the property;

2. The street address or a definite description of the location where the violation occurred;

3. The code section(s) violated;

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

5. The actions necessary to correct the subject violations;

6. The deadline or specific date by which to correct the violations; an order prohibiting the continuation or repeated

occurrence of the code violation described in the Notice and Order;

7. A notification that the Notice and Order may be recorded with the Office of the County Recorder;

8. A description of the administrative appeal process for a person's appeal of the city manager's determination of violation, including the time within which an appeal must be filed; and

9. The name and signature of the city manager.

1.12.030 Persons entitled to service.

The Notice and Order, and any amended or supplemental Notice and Order, shall be served upon the record owner, the tenant or occupant, if any is known to the city manager, and the agent having charge or control of the property, if any is known to the city manager. The failure of the city manager to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed by the provisions of this code.

1.12.040 Service of Notice and Order.

A. Service of a copy of the Notice and Order shall be made upon all persons entitled thereto in one of the following manners:

1. Personal service; or

2. Certified mail, postage prepaid, return receipt requested at their address as it appears on the last equalized assessment roll of the County or as otherwise known to the citing officer. Concurrently, the same Notice shall be sent by regular mail. If a Notice that is sent by certified mail is returned unsigned, then service will be deemed effective by regular mail, provided that Notice is not returned. Service by mail will be effective on the date of mailing; or

3. Posting the notice conspicuously on or in front of the affected property or any other real property within the City in which the City has knowledge that the responsible person has a legal interest.

B The failure of any interested person to receive any Notice served in accordance with this section will not affect the validity of any proceedings taken under this Chapter.

1.12.050 Completion of service.

Service of a Notice and Order which is personally served shall be deemed completed at the time of such personal service. Service of a Notice and Order which is served by mail is deemed completed on the date said Notice and Order is deposited in the mail. Service of the Notice and Order which is served by posting is deemed complete on the date of posting of said Notice and Order.

1.12.060 Appeal of Notice and Order.

A. The owner of property affected by service of Notice and Order, or any other interested party, may appeal the decision of the city manager.

B. The appeal shall be made in writing and filed with the city manager within five (5) business days following receipt of the Notice and Order and shall contain the following information.

1. Name(s) of each appellant and their legal or equitable interest in the appeal;

2. A brief statement in ordinary and concise language of the specific items protested, together with any material facts claimed to support the contentions of the appellant;

3. A brief statement in ordinary and concise language of the relief sought and the reasons why the Notice and Order should be reversed, modified or otherwise set aside; and

4. The signatures of all parties named as appellants and their official mailing addresses and electronic mail address, if any.

C. Such appeal shall provide the appropriate fee as established by this chapter.

D. Any appeal filed that fails to provide all of the required information shall be deemed incomplete.

1.12.070 Appeal fee.

The City Council may establish and amend the amount of the appeal fee by resolution. If the City Council fails to pass any such resolution, the fee for the appeal shall be $500.00, unless the appellant establishes that the $500.00 constitutes a substantial financial hardship per this chapter, in which event the city manager may waive all or a portion of the fee.

1.12.080 Hardship Waiver.

A person seeking to appeal a Notice and Order may request a hardship waiver of the fee by filing a Hardship Waiver on forms supplied by the City. The original Hardship Waiver form, signed under penalty of perjury, shall be filed with the city manager along with the appeal. The person requesting the Waiver bears the burden of establishing that such person does not have the financial ability to pay the fee. The request will be decided by the city manager, or his/her designee, within five (5) business days from date the request is received, and the city manager's decision is final. The applicant will be notified by telephone, facsimile, email, in writing, or in person of the decision on the request. The filing of a Hardship Waiver does not extend the time to file for an appeal hearing. If the request for Hardship Waiver is denied, an appeal hearing will not be scheduled unless the appeal fee is paid within five (5) business days following the city manager's decision.

1.12.090 Incomplete filing.

Not later than five (5) business days from the date the appeal is filed the city manager shall determine whether the appeal is complete. If the appeal is determined to be incomplete, the city manager shall immediately mail to the appellant a Notice of Incomplete Filing which shall provide a written explanation of each reason why the appeal has been determined to be incomplete. The applicant has five (5) business days from the Notice of Incomplete Filing to complete the appeal. Time extensions for the completion of the appeal are not allowed.

1.12.100 Failure to file appeal.

Failure to timely and properly file an appeal from a Notice and Order shall constitute a waiver of all rights to an administrative appeal hearing and adjudication of the Notice and Order or any portion thereof. The determination that the violation occurred and that the violator was responsible for the violation shall be deemed final on the date that service of the Notice and Order is deemed completed.

1.12.110 Processing and conducting of appeal.

The appeal of any Notice and Order shall be processed and conducted in accordance with the provisions of this chapter. Any decision of the hearing officer in accordance with those provisions shall be filed within the time provided and also processed and conducted as set forth in this chapter.

1.12.120 Recordation of Notice and Order.

If an appeal is not filed in a timely manner, or if the appeal is denied because it is incomplete or if the Notice and Order is upheld following any appeal hearing, the Notice and Order may be recorded against the property in the Office of the County Recorder to certify that: (i) the subject property is being maintained in violation of the Municipal Code and/or applicable statute, rule, code and regulation; and (ii) the property owner and any other responsible person(s) have been so notified.

1.12.130 Recordation of Notice of Compliance.

Whenever it is determined that the corrections ordered by the Notice and Order have been completed so that the premises no longer exists in a condition that is in violation of the Municipal Code and/or applicable statute, rule, code and regulation and either that such abatement has been accomplished at no cost to the City, or that such costs have been collected and paid in full, a Notice of Compliance shall be recorded in the Office of the County Recorder certifying that all required corrections have been made and that the subject premises is no longer being maintained as a public nuisance.

1.12.140 Other Abatement Procedures.

The provisions of this Chapter shall not in any manner limit or restrict the City or the city attorney from enforcing the Municipal Code or abating public nuisances in any other manner provided by law.

1.12.150 Appeal hearing.

A. Whenever an appeal has been filed in a timely manner under this Chapter, the city manager may set the matter for a public hearing before a "hearing officer." The city manager will appoint the State of California Office of Administrative Hearings or its functional equivalent to serve as the hearing officer. The hearing officer will conduct a hearing to consider whether Notice and Order should be upheld.

B. The city manager shall, upon receipt of such appeal and fee, set the matter for a hearing before the hearing officer not less than ten (10) nor more than ninety (90) calendar days following the filing of the appeal.

C. At least ten (10) calendar days prior to hearing, the city manager shall serve notice of the hearing upon the owner and any other party requesting notice. Such service will be sufficient if the notice is placed in the United States mail at least ten (10) calendar days prior to the hearing or if the notice(s) are personally delivered.

D. At the hearing, the hearing officer may take testimony, administer oaths or affirmations pursuant to California Code of Civil Procedure Section 2093(a) or any of its successor statutes, and decide upon evidence.

E. At the hearing, the hearing officer will consider all relevant evidence including, but not limited to, applicable staff reports, written or oral testimony, and the manner and time period proposed for the abatement of the nuisance. The formal rules of evidence shall not apply to such proceedings. However, the hearing officer, in his or her discretion, may sustain objections to evidence which is irrelevant or improper.

F. Such hearing may be continued from time to time.

G. Upon the conclusion of the hearing, the hearing officer shall, on the basis of the evidence presented at such hearing, determine whether all or a portion of the involved property constitutes a public nuisance, and determine whether all or a portion of the Notice and Order should be upheld. If the hearing officer finds that a public nuisance exists, the hearing officer will, by written notice, (a) provide a detailed list of needed corrections and abatement actions; (b) order that the nuisance be abated consistent with that list; and (c) provide a reasonable time period for the owner to abate the nuisance, but a period not less than five (5) calendar days, except if there is an emergency, in which even the five (5) day minimum does not apply.

H. The determination of the hearing officer is final unless appealed in the manner provided for in this chapter.

I. A copy of the hearing officer's order of abatement of the nuisance shall be served upon the owner of the property by United States mail or by personal delivery. The notice shall be deemed received

upon the earlier of personal delivery or the third (3rd) day after deposit in the United States mail.

1.12.160 Appeal of Hearing Officer's Decision.

A. The owner of property affected by the decision of the hearing officer, or any other interested party, may appeal the decision of the hearing officer to the City Council.

B. The appeal shall be made in writing and filed with the community development director within five (5) business days following receipt of the notice of the hearing officer.

C. Such appeal shall state the grounds for the appeal and provide the appropriate fee. The City Council may establish and amend the amount of the fee by resolution. If the City Council fails to pass any such resolution, the fee for the appeal shall be $500.00, unless the appellant establishes that the $500.00 constitutes a substantial financial hardship, in which event the city manager may waive all or a portion of the fee.

D. The community development director shall, upon receipt of such appeal and fee, set the matter for hearing before the City Council not less than ten (10) nor more than ninety (90) calendar days following the filing of the appeal.

E. At least ten (10) calendar days prior to hearing, the community development director shall serve notice of the hearing upon the owner and any other party requesting notice. Such service will be sufficient if the notice is placed in the United States mail at least ten (10) calendar days prior to the hearing or if the notice(s) are personally delivered.

F. At the appeal hearing, the City Council will consider all relevant evidence including, but not limited to, the hearing officer's report, applicable staff reports, written or oral testimony, and the manner and time period proposed for the abatement of the nuisance. The hearing may be continued from time to time.

G. Upon the conclusion of the public hearing, the City Council will, on the basis of the evidence presented at the hearing, determine whether the property, or any part thereof, as maintained, constitutes a public nuisance.

H. After the conclusion of the public hearing, if the City Council finds that a public nuisance exists, it will, by resolution, (a) provide a

detailed list of needed corrections and abatement actions; (b) order that the nuisance be abated consistent with that list; and (c) provide a reasonable time period for the owner to abate the nuisance, but a period not less than seven (5) calendar days, except if there is an emergency, in which event the five (5) day minimum does not apply.

I. The determination of the City Council is final.

J. If the City Council passes a resolution ordering abatement of the nuisance, a copy of the City Council's resolution will be served upon the owner of the property by United States mail or by personal delivery.

1.12.170 Abatement of Nuisance by Property Owner.

Any property owner may abate the public nuisance in accordance with the Notice and Order, hearing officer's notice, or City Council's resolution ordering abatement, as applicable, at the property owner's sole expense, provided the same is done prior to the expiration of the time set forth in the notice or resolution, as applicable. Upon compliance with the notice or resolution by the owner, the proceedings hereunder shall be deemed terminated. If such nuisance is not completely abated within the time set forth in the notice or resolution, as applicable, then the city manager, or his /her designee, may cause the Notice and Order to be recorded against the property in the Office of the County Recorder in accordance with this Chapter, and/or cause the nuisance to be abated by the City or private contract, and entry upon the premises is expressly authorized for such purposes.

1.12.180 Abatement of Nuisance by City.

A. If the city manager causes the abatement of a public nuisance pursuant to the provisions of this Chapter, the city manager will keep an accounting of the cost thereof, including incidental expenses of such abatement.

B. The term "incidental expenses" includes, but is not limited to, the actual expenses and costs to the City in the preparation of reports and notices, specifications and contracts, inspection of the work, and costs of printing and mailing required under this section.

C. Upon conclusion of such abatement, the city manager will draft an itemized statement of costs, and set the same for hearing before the City Council. The city manager will cause notice of the time and place of the hearing to be given to the owner of the property to

which the same relates, and to any other interested person who requests notice, by deposit in the United States mail or by personal delivery, at least ten (10) calendar days in advance of the hearing.

D. At the time and place set for receiving and considering the statement of costs, the City Council will hear comments on the proposed statement. The City Council will then pass a resolution as to the accuracy of the proposed statement, and whether it should be modified. Such hearing may be continued from time to time. The decision of the City Council is final.

E. The city manager will give notice of the City Council's decision to the owner of the property by deposit in the United States mail or by personal delivery within ten (10) calendar days after the City Council renders its decision.

F. The cost of abatement of a nuisance, as confirmed by the City Council, shall constitute a special assessment against the respective lot or parcel of land to which it relates. When the city manager records these costs, they shall constitute a special assessment and a lien on the property in the amount stated in the resolution. The city manager will transmit a copy to the assessor and tax collector for addition of this assessment amount to the next regular bills of taxes levied against the respective lot or parcel of land for municipal purposes. Thereafter, this amount 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 for foreclosure and sale in the case of delinquency as provided for ordinary municipal taxes.

G. No person shall obstruct, impede or interfere with any representative of the City or with the property owner, of a property which has been ordered vacated, repaired, rehabilitated or which improvements thereon have been ordered demolished and removed, whenever such representative of the City or the property owner is engaged in vacating, repairing, rehabilitating the property or demolishing and removing the improvements pursuant to the provisions of this section, or in performing any necessary act preliminary or incidental to such work as authorized or directed pursuant to this section.

1.12.190 Liability to City for its costs.

A. Whenever any person creating, causing, committing or maintaining any violation of this code has been given notice, by or on behalf of the city attorney or by any other City officer, employee or policing agent authorized to give such notice, to abate such violation or cease and desist from continuing such violation of law, and such person who was given notice fails, refuses or neglects to comply with the notice within the time specified therein, or if such a time is not specified, then within a time reasonably sufficient to enable such compliance, such non-complying person shall be liable to the City for any and all costs and expenses to the City involved in thereafter abating the nuisance and in obtaining compliance with or enforcing the law as referred to or encompassed in the notice.

B. Costs and expenses, as referred to in subsection A of this section include, but are not limited to, any and all direct costs and expenses related to such things as personnel salaries and benefits, operational overhead, rent, interest, fees for experts or consultants, legal costs or expenses, including attorneys' fees, claims against the City arising as a consequence of the nuisance or violation and procedures associated with collecting moneys due hereunder.

C. The provisions of subsection A of this section shall also apply to any person who received a notice, as specified therein, and thereafter the violation was abated, but such person subsequently allowed or was responsible for a recurrence of the violation.

D. The city manager may waive, in whole or in part, the liability of any person for the payment of the costs and expenses provided for in subsection A of this section if the failure or refusal of such person to comply with the notice therein involved was based upon a good faith and bona fide issue of law or fact specially involved in the circumstances of the case. Any determination or decision of the city manager in this regard shall be final and conclusive and shall not be subject to appeal as prescribed in Chapter 2.04 of this code.

E. Moneys due to the City pursuant to this section may be recovered in an appropriate civil action. Alternatively, such liability may be enforced by special assessment proceedings against the parcel of land upon which the nuisance existed, which proceedings may be conducted in a manner substantively similar to proceedings described in Sections 39574 *et seq.* of the Government Code of the state relating to weed abatement assessments.

1.12.200 Emergency abatement.

Any nuisance which is determined by the City to be an immediate public health hazard may be removed by the City from a property through summary abatement without notice. When the City has effected such abatement, the owner or occupant of the property shall be liable to the City for the cost of abatement, including all costs of removal and disposal.

SECTION 3. Adoption of Chapter 1.16. Chapter 1.16 entitled "Administrative Citations" is hereby added to Title 1 of Municipal Code of the City of Moorpark to read as follows:

Chapter 1.16
ADMINISTRATIVE CITATIONS

Sections:

1.16.010 Purpose.
1.16.020 Definitions.
1.16.030 Administrative citation authority.
1.16.040 Notice of violation.
1.16.050 Service procedures.
1.16.060 Administrative citation procedures.
1.16.070 Assessment of administrative citation fines.
1.16.080 Satisfaction of administrative citation.
1.16.090 Collection of unpaid fines and penalties.
1.16.100 Request for administrative hearing.
1.16.110 Administrative hearing procedure.
1.16.120 Administrative hearing decision.
1.16.130 Right to judicial review.

1.16.010 Purpose.

The enforcement of the City's municipal code is vital to the protection of the public's health, safety and quality of life. Under Government Code section 53069.4, the City is authorized to adopt an administrative citation program, which program offers an alternative method of enforcing code violations. The purpose of issuing administrative citations pursuant to this chapter is to encourage compliance with the provisions of this code and to provide a method of holding persons responsible when they fail or refuse to comply with the provisions of this code. The use of this chapter is also intended to minimize the expense and delay associated with pursuing code violations through the civil or criminal justice system.

1.16.020 Definitions.

For the purposes of this chapter, the following definitions apply to these words and phrases:

"Administrative citation" or "citation" means a written notice to a responsible person that a violation of this code has occurred and an assessment of a civil fine issued by a code compliance officer.

"city manager" means the city manager of the City of Moorpark or the manager's designee.

"Code compliance officer" means any person authorized to enforce certain provisions of this code.

"Continuing violation" means either (1) a particular violation of the code continuing for more than 24 hours without correction or abatement, or (2) a repeated, consecutive violation of the same offense without intervening days.

"Legal interest" means any interest that is represented by a deed of trust, quitclaim deed, mortgage, judgment lien, tax or assessment lien, mechanic's lien or other similar instrument, which is recorded with the county recorder.

"Notice of violation" means a written notice to a responsible person that a violation of this code has occurred and a warning that an administrative citation assessing fines will be issued unless the violation is ceased and abated.

"Responsible person" means any person or persons that a code compliance officer determines is responsible for causing or maintaining a violation of this code. The term "responsible person" includes but is not limited to a property owner, tenant, person with a legal interest in real or personal property, or person in possession or control of real or personal property.

1.16.030 General citation authority and applicability.

A. This chapter authorizes use of administrative citations that are in addition to all other legal remedies, criminal or civil, that the City may pursue to address any violation of this code.

B. The use of this chapter is at the sole discretion of the city manager, city attorney, and the City's code compliance officers.

C. Any code compliance officer, upon determining that a provision of this code which such officer is charged to enforce has been violated, has the authority to issue an administrative citation to any responsible person.

D. Any responsible person violating any provision of this code, or causing, permitting or maintaining a violation of any provision of this code may be issued an administrative citation by a code compliance officer.

E. Each and every day a violation of this code exists constitutes a separate and distinct offense and will be subject to a separate fine. A single citation may charge a violation for one or more days on which a violation exists, and for the violation of one or more code sections. Continuing violations will automatically accrue fines beginning on the date the citation is issued until verification of abatement pursuant to Section 1.16.080(C).

F. The owner of any property, building or structure within the City has the responsibility for keeping such property, building or structure free of violations related to its use or condition. The owner of such property, building or structure is a responsible person and is separately liable for violations committed by tenants or occupants relative to the use or condition of the property.

1.16.040 Notice of violation.

A. Whenever a code compliance officer determines that a violation of this code exists, the code compliance officer may issue a notice of violation to a responsible person prior to issuing an administrative citation. The notice of violation serves as a written warning of responsibility and requires immediate action by the responsible person to cease and abate the violation. The notice of violation must include the information set forth in Section 1.16.060(B)(1)-(5) and a date by which the violation can reasonably be ceased and abated. If the violation is not ceased or abated by the end of the correction period stated in the notice, the code compliance officer may issue an administrative citation.

B. In accordance with Government Code section 53069.4, no responsible person will be assessed an administrative fine under this chapter for a continuing violation pertaining to a building, plumbing, electrical or similar structural or zoning issue that does not create an immediate danger to the public health or safety without first receiving a notice of violation and a reasonable

opportunity to correct or otherwise remedy the violation. In such circumstance, the stated period available to correct the violation prior to the assessment of a fine must be appropriate to the violation as determined by the code compliance officer, but in no event less than seven (7) calendar days. If, after the correction period stated in the notice, the violation is not ceased or abated, the code compliance officer may issue an administrative citation.

C. Any responsible person receiving notice for a continuing violation may petition the city manager for an extension of time to correct the violation so long as the petition is received before the end of the correction period. The city manager may grant an extension of time to correct the violation if the responsible person has supplied sufficient evidence showing that the correction cannot reasonably be made within the stated period.

D. The requirement of a reasonable opportunity to cure a violation does not apply in instances where, in the discretion of the city manager, a code violation poses an immediate danger to the public health or safety.

1.16.050 Service procedures.

A. Except as otherwise provided in this chapter, whenever notice is required to be given under this chapter, it must be given in one of the following ways:

1. Personal service.

2. Certified mail, postage prepaid, return receipt requested. Concurrently, the same notice should be sent by regular mail. If a notice that is sent by certified mail is returned unsigned, then service will be deemed effective by regular mail, provided that notice is not returned. Service by mail will be effective on the date of mailing; or

3. Posting the notice conspicuously on or in front of the affected property or any other real property within the City in which the City has knowledge that the responsible person has a legal interest.

B, The failure of any interested person to receive any notice served in accordance with this section will not affect the validity of any proceedings taken under this chapter.

C. The notice procedures in this section do not apply to an initial notice of violation, which may be sent by regular mail or personally served. Service of a notice of violation by mail is effective on the date of mailing.

1.16.060 Administrative citation procedure.

Upon determining that a violation of this code exists, a code compliance officer may issue an administrative citation to any responsible person on a form authorized by the city attorney.

1.16.070 Assessment of administrative citation fine.

A. The amount of the fine will be assessed according to a schedule of fines adopted by City council resolution. The schedule may include escalating fine amounts for repeat violations occurring within specified periods of time, and fines may vary depending on the particular code provision violated.

B. Where no amount is specified by resolution of the City council, the following fines will apply:

1. A fine not exceeding $100.00 per day for a first violation.

2. A fine not exceeding $200.00 per day for a second violation of the same code provision or permit within the previous twelve (12) months.

3. A fine not exceeding $500.00 per day for each additional violation of the same code provision or permit within the previous twelve (12) months.

C. A penalty of 10% will be added on any delinquent fines on the last day of each month after the due date.

D. In addition to the late penalty provided by this section, delinquent fines will accrue interest at the rate of 1% per month, exclusive of penalties, from the due date.

1.16.080 Satisfaction of administrative citation.

A. Upon receipt of a citation, the responsible person must do the following:

1. Pay the fine within thirty (30) calendar days from the date of the administrative citation. All fines assessed are payable to

the City. Payment of a fine does not excuse or discharge the failure to correct the violation nor will it bar further enforcement action by the City.

2. Cease and abate the violation. If the offense is a continuing violation and the responsible person fails to properly cease and abate the violation, fines will accrue for each day until the abatement is properly verified. Additionally, subsequent administrative citations may be issued for the same violation. The amount of the fine for failure to correct the violation will increase at the rate specified in this chapter or as established by City council resolution.

B. At any time following thirty (30) calendar days after the issuance of the citation, the City may deliver a collection bill to the responsible person requiring payment for all outstanding amounts owed for the violation, including the amount due for the initial violation and any accrual of daily fines from the date the citation was issued to the date the abatement of the offense is properly verified (if applicable) plus any appropriate late payment charge, less any amount remitted pursuant to subsection (A) of this section.

C. The abatement of a continuing violation must be verified by a code compliance officer. The responsible person must contact the phone number designated on the citation and schedule an inspection by a code compliance officer. Fines will accrue until the abatement is verified, less any days delayed by action of the City in scheduling such inspection.

1.16.090 Collection of unpaid fines and penalties.

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

B. In addition to any other legal remedy, the City may place a lien on property that is the subject of a citation if the citation has been issued to the property owner. The following procedure will apply:

1. The city manager may initiate proceedings to record a lien against the subject property.

2. Before recording the lien, the city manager shall draft a report stating the amounts due and owing. The report may include a fee, as established by City council resolution, for the administrative costs associated with the preparation and recordation of the lien.

3. The city manager shall fix a time, date, and place for a hearing before the city manager to consider the report and any protests or objections to it.

4. The city manager must serve the property owner with a hearing notice not less than ten (10) calendar days before the hearing date. The notice must set forth the amount of the delinquent administrative fine, and any penalties and interest that is due. Notice must be delivered first-class mail, postage prepaid, addressed to the property owner's address as it appears on the last equalized assessment roll or supplemental roll of the county of Ventura, whichever is more current. Service by mail is effective on the date of mailing and failure of property owner to actually receive notice does not affect its validity.

5. At the conclusion of the hearing, the city manager may adopt a report confirming, discharging, or modifying the lien amount.

6. Following the adoption of the report imposing a lien, the city manager shall cause the lien to be filed in the county recorder's office.

7. After confirmation and recordation, the City shall present a copy of the lien to the county tax collector to add the amount of the lien to the next regular property tax bills levied against the parcel for municipal purposes. This amount will be collected at the same time and in the same manner as ordinary property taxes are collected, and will be subject to the same penalties and procedures under foreclosure and sale as provided for with ordinary municipal taxes. Or, after

recording, the lien may be foreclosed by judicial or other sale in the manner and means provided by law.

8. Once the City receives full payment for outstanding principal, penalties, and costs related to a lien, the city manager will cause to be recorded a notice of satisfaction or provide the property owner with a notice of satisfaction for recordation at the county recorder's office. This notice of satisfaction will cancel the City's lien.

1.16.100 Request for administrative hearing.

A. Any person receiving an administrative citation may contest the citation by completing a request for hearing form and returning it to the City within ten (10) calendar days after the issuance date of the administration citation. Any request for hearing must be accompanied by an advance deposit of the fine assessed by the citation for the initial violation, unless waived by subsection (C) of this section. If it is determined, after a hearing, that there was no violation as charged in the administrative citation, the advance deposit will be refunded.

B. A request for hearing will not postpone or avoid the requirement of a responsible person to abate a violation nor toll the daily fines accruing for a continuing violation until the abatement of the offense is properly verified. In the event the hearing officer upholds the citation, the responsible person will be liable for the total fines accrued from the issuance of the citation to the date the abatement is properly verified.

C. A person seeking an administrative hearing may request a hardship waiver of the fine deposit by filing with the city manager a completed City form, which must be signed under penalty of perjury. The request must be submitted along with the request for hearing. The person requesting the waiver bears the burden of establishing that such person does not have the financial ability to make the deposit. The request will be decided by the city manager within three (3) business days from date the request is received, and the city manager's decision is final. The applicant will be notified by telephone, facsimile, or in person of the decision on the request. The filing of a request for hardship waiver does not extend the time to file for an administrative hearing or pay the fine when due. If the request for hardship waiver is denied, an administrative hearing will not be scheduled unless the fine deposit is paid within

five (5) business days following the city manager's determination on the request for a hardship waiver.

D. The failure to submit a timely and complete request for hearing will terminate a person's right to contest the citation and result in a failure to exhaust administrative remedies, and the order of the citation will serve as a final determination and conclusive evidence of the named responsible person's liability for the citation.

E. The city manager shall set a hearing before a City hearing officer on a date that is not less than fifteen (15) and not more than sixty (60) calendar days from the date that the request for hearing is filed in accordance with the provisions of this section. The City shall notify the person requesting the hearing by regular mail of the date, time and place set for the hearing at least ten (10) calendar days prior to the date of the hearing and give that person any additional written reports filed concerning the violation that are provided to the hearing officer.

1.16.110 Administrative hearing procedure.

Administrative hearings shall be conducted in accordance with the procedures as set forth in Chapter 1.12.

1.16.120 Administrative hearing decision.

A. After considering all of the testimony and evidence submitted at the hearing, the hearing officer must issue a written decision within a reasonable time after the hearing to uphold or deny the administrative citation and must list in the decision the reasons for that decision. The hearing officer will use preponderance of evidence as the standard of evidence in deciding issues. The decision of the hearing officer will be final.

B. If the hearing officer determines that the administrative citation should be upheld, then any applicable fine amount on deposit with the City will be retained by the City. The hearing officer may also impose conditions and deadlines to correct the violation or require payment of any outstanding fines, penalties, and interest.

C. If the hearing officer determines that the administrative citation should be canceled or reduced because of an error in calculating the fine, the City will promptly refund the applicable amount of the deposited fine.

D. The City shall serve the recipient of the administrative citation with a copy of the hearing officer's written decision by certified mail.

1.16.130 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 Ventura County Superior Court in accordance with the timelines and provisions set forth in California Government Code section 53069.4.

SECTION 4. Amendment of Section 15.04.060. Section 15.04.060 of the City of Moorpark Municipal Code entitled "Violations and Penalties" is hereby amended in its entirety to read as follows:

A. It is unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any land, building or structure, building service equipment, machine or equipment; or cause or permit the same to be done in violation of this code or applicable building codes.

B. It is unlawful for any person to remove, deface, alter or obstruct from view a posted notice of the building official or duly appointed representative when such notice constitutes a stop work order or a warning of substandard or hazardous conditions or prohibits or restricts the occupancy or use of a building, structure or building service equipment regulated by this code or applicable building codes.

SECTION 5. Severability. If any section, subsection, subdivision, sentence, clause, or portion of this ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have adopted this ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 6. Effective Date. This Ordinance shall become effective thirty (30) days after its passage and adoption.

SECTION 7. Publication. The City Clerk shall certify to the passage and adoption of this ordinance; shall enter the same in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted; and shall,

within fifteen (15) days after the passage and adoption thereof, cause the same to be published once in the Moorpark Star a newspaper of general circulation, as defined in Section 6008 of the Government Code, for the City of Moorpark, and which is hereby designated for that purpose.

PASSED AND ADOPTED this _____ day of_____, 2006.

_____
Patrick Hunter, Mayor

ATTEST:

_____
Deborah S. Traffenstedt, City Clerk