

Title 1

GENERAL PROVISIONS

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Chapter 1.01

CODE ADOPTION*

Sections:

- 1.01.010 Adoption.
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*Prior legislation: Ord. 1154.

1.01.010 Adoption.

Pursuant to the provisions of Sections 50022.1 through 50022.8 and 50022.10 of the Government Code, there is adopted the “Livermore Municipal Code” as published by Code Publishing, Inc., Seattle, Washington, together with those secondary codes adopted by reference as authorized by the California State Legislature, save and except those portions of the secondary codes as are deleted or modified by the provisions of the “Livermore Municipal Code.” (Ord. 1504 § 1, 1997)

1.01.020 Title – Citation – Reference.

This code shall be known as the “Livermore Municipal Code” and it shall be sufficient to refer to said codes as the “Livermore Municipal Code” in any prosecution for the violation of any provision thereof or in any proceeding at law or equity. It shall be sufficient to designate any ordinance adding to, amending, correcting, or repealing all or any part or portion thereof as an addition to, amendment to, correction or repeal of the “Livermore Municipal Code.” Further reference may be had to the titles, chapters, sections and subsections of the “Livermore Municipal Code” and such reference shall apply to that numbered title, chapter, section or subsection as it appears in the code. (Ord. 1504 § 2, 1997)

1.01.030 Ordinances passed prior to adoption of the code.

The last ordinance included in this code was Ordinance 1478, passed June 10, 1996. (Ord. 1504 § 3, 1997)

1.01.040 Reference applies to all amendments.

Whenever a reference is made to this code as the “Livermore Municipal Code” or to any portion thereof, or to any ordinance of the city of Livermore, California, the reference shall apply to all amendments, corrections, and additions heretofore, now or hereafter made. (Ord. 1504 § 4, 1997)

1.01.050 Title, chapter and section heading.

Title, chapter and section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any title, chapter or section hereof. (Ord. 1504 § 5, 1997)

1.01.060 Reference to specific ordinances.

The provisions of this code shall not in any manner affect matters of record which refer to, or are otherwise connected with ordinances which are therein specifically designated by number or otherwise and which are included within the code, but such reference shall be construed to apply to the corresponding provisions contained within the code. (Ord. 1504 § 6, 1997)

1.01.070 Effect of code on past actions and obligations.

Neither the adoption of this code nor the repeal or amendment of any ordinance or part or portion of any ordinance of the city of Livermore shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license, fee, or penalty at said effective date due and unpaid under such ordinances, nor be construed as affecting any of the provisions of such ordinances relating to the collection of any such license, fee, or penalty, or the penal validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any ordinance and all rights and obligations thereunder appertaining shall continue in full force and effect. (Ord. 1504 § 7, 1997)

1.01.080

1.01.080 Effective date.

This code becomes effective on the date the ordinance adopting this code as the "Livermore Municipal Code" shall become effective. (Ord. 1504 § 8, 1997)

1.01.090 Maintenance.

Not less than three copies of the "Livermore Municipal Code," together with three copies of each of the secondary codes adopted by reference, shall be kept on file in the office of the city clerk for examination and use by the public. (Ord. 1504 § 9, 1997)

1.01.100 Constitutionality.

If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this code, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional, and if for any reason this code should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect. (Ord. 1504 § 10, 1997)

Chapter 1.04

GENERAL PROVISIONS

Sections:

- 1.04.010 Definitions and rules of construction.
- 1.04.020 Provisions considered continuations of existing ordinances.
- 1.04.030 Effect of repeal of provisions.
- 1.04.040 Catchlines of sections.
- 1.04.050 Severability.

1.04.010 Definitions and rules of construction.

In the construction of this code and of all ordinances of the city, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the city council, or the context clearly requires otherwise:

1. "City." The words "the city" or "this city" shall be construed as if followed by the words "of Livermore."
2. "Code." (Reserved)
3. "Computation of Time." The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded.
4. "Council" means the city council of the city of Livermore.
5. "County." "The county" or "this county" means the county of Alameda.
6. "Day" means the period of time between any 12:00 midnight and the 12:00 midnight following.
7. "Daytime" means the period of time between sunrise and sunset.
8. "Gender." The masculine gender includes the feminine and neuter.
9. "In the city" means and includes all territory over which the city now has, or shall hereafter acquire, jurisdiction for the exercise of its police powers or other regulatory powers.
10. "Joint Authority." All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.
11. "Month" means a calendar month.
12. "Nighttime" means the period of time between sunset and sunrise.
13. "Number." The singular number includes the plural, and the plural the singular.

14. "Oath" includes affirmation.

15. "Officer, Office, Employee, Board, Commission or Department." Whenever any officer, office, employee, board, commission or department is referred to, it means an officer, office, employee, board, commission or department of the city, unless the context clearly requires otherwise.

16. "Official Time." Whenever certain hours are named in this code, they mean Pacific Standard Time or Daylight Saving Time, as may be in current use in the city.

17. "Or, And." "Or" may be read "and," and "and" may be read "or," if the sense requires it.

18. "Owner." The word "owner," applied to a building or land, includes any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety of the whole or of a part of such building or land.

19. "Person" means any person, firm, association, organization, partnership, business trust, corporation or company.

20. "Personal property" means every species of property, except real property, as defined in this section.

21. "Preceding, Following." "Preceding" and "following" mean next before and next after, respectively.

22. "Process" means and includes a writ or summons issued in the course of judicial proceedings of either a civil or criminal nature.

23. "Property" means real and personal property.

24. "Real property" means lands, tenements and hereditaments.

25. "Shall, May." "Shall" is mandatory, and "may" is permissive.

26. "Signature" or "subscription" means and includes a mark when the signer or subscriber cannot write, such signer's or subscriber's name being written near the mark by a witness who writes his own name near the signer's or subscriber's name; but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names thereto.

27. "State." "The state" or "this state" means the state of California.

28. "Tenant" or "occupant," applied to a building or land, means any person holding a written or an oral lease of, or who occupies the whole or a

part of such building or land, either alone or with others.

29. "Tenses." The present tense includes the past and future tenses, and the future includes the present.

30. "Writing" means any form of a recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, statement or record is required or authorized by this code, it shall be made in writing in the English language, unless it is expressly provided otherwise.

31. "Year" means a calendar year, except where otherwise provided. (1960 code § 1.2)

1.04.020 Provisions considered continuations of existing ordinances.

The provisions appearing in this code, so far as they are the same as those of ordinances existing at the time of the effective date of this code, shall be considered as continuations thereof, and not as new enactments. (1960 code § 1.3)

1.04.030 Effect of repeal of provisions.

A. The repeal of an ordinance shall not revive any ordinance in force before or at the time the ordinance repealed took effect.

B. The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for any offense committed under the ordinance repealed. (1960 code § 1.4)

1.04.040 Catchlines of sections.

The catchlines of the several sections of this code, printed in boldface type, are intended as mere catchwords to indicate the contents of the sections and shall not be deemed or taken to be titles of such sections, nor as any part of the sections; nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted. (1960 code § 1.6)

1.04.050 Severability.

It is hereby declared to be the intention of the city council that the sections, paragraphs, sentences, clauses and phrases of this code are severable, and if any phrase, clause, sentence, paragraph or section of this code is declared unconstitutional

1.08.010

by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this code. (1960 code § 1.5)

Chapter 1.08

DATUM PLANE

Sections:

1.08.010 Datum plane established – Location.

1.08.010 Datum plane established – Location.

The “city base” of the city is established and declared to be the datum plane as adopted by the United States Geological Survey, such plane being at an elevation 486.215 feet below the level of the top of an iron pipe three inches in diameter, 12 inches above the ground, and capped with a brass plate bearing the inscription “U.S. Geological Survey, elevation above sea 486.215 feet Datum B.M.”; such pipe being distant 39 feet southerly from the center of the main track of the Southern Pacific Railroad Company and 62 feet westerly from the westerly line of Lizzie Street, all in the city. (1960 code § 1.12)

Chapter 1.12**JUDICIAL REVIEW**

Sections:

1.12.010 Code of Civil Procedure Section 1094.6 adopted.

1.12.010 Code of Civil Procedure Section 1094.6 adopted.

California Code of Civil Procedure Section 1094.6, which provides that review of any decision may be had under Code of Civil Procedure Section 1094.6 only if the petition for writ of mandate is filed within 90 days after the decision becomes final, is applicable to the city. (Ord. 1431 § 2, 1994)

Chapter 1.16**GENERAL PENALTY**

Sections:

1.16.010 Penalty for violation of code provisions – Continuing violations.
 1.16.020 Power of arrest.
 1.16.030 Public nuisance.
 1.16.040 Separate offenses – Cumulative remedies.

1.16.010 Penalty for violation of code provisions – Continuing violations.

A. Whenever in this code or in any other ordinance of the city, or in any regulation promulgated thereunder, any act is prohibited or declared to be unlawful, or the performance of an act is required and failure to perform the act is prohibited or declared to be unlawful, such violation, unless otherwise specifically stated, shall be considered an infraction. Penalties for infractions shall be as set forth in Government Code Section 36900.

B. Notwithstanding subsection A of this section, any violation occurring after a third infraction citation has been issued shall be considered as a misdemeanor. Penalties for misdemeanors shall be as set forth in Penal Code Section 19. (Ord. 1217 § 1, 1986; 1960 code § 1.7)

1.16.020 Power of arrest.

A. The following officers and their subordinates, in addition to peace officers as specified in Penal Code Section 830 et seq., shall have and are vested with the authority to arrest any person who violates the following provisions of this code in the manner prescribed by Section 836.5 of the California Penal Code:

1. Chief building inspector, LMC Title 15;
2. Director of finance, LMC Title 3, LMC Title 5;
3. Director of planning, zoning ordinance;
4. City manager, all provisions of the code;
5. Every member of the fire department, during the time of any fire, other disaster or emergency, shall have the powers of a peace officer. In that capacity, such members may arrest any person who interferes with the work of the fire department at a fire or attempts to loot any property in or about the premises where a fire, other disaster or emergency exists.

1.16.030

B. The city manager shall have the power to designate, by written order, that particular officers or employees shall be authorized to enforce particular provisions of this code in addition to those officers enumerated in subsection A of this section. Officers or employees so designated shall have the authority to arrest persons who violate any of the said provisions.

C. An officer or employee designated pursuant to subsection B of this section shall be determinative of the enforcement powers of such officer or employee notwithstanding a designation of a different officer or employee within the particular provision of this code referred to in subsection A of this section. (Ord. 1217 § 2, 1986)

1.16.030 Public nuisance.

Any violation of this code shall constitute a public nuisance. In addition to the other remedies provided by this chapter, the city may summarily abate and bring civil suit to enjoin or abate the violation. (Ord. 1217 § 3, 1986)

1.16.040 Separate offenses – Cumulative remedies.

Each day any violation of this chapter continues shall be regarded as a new and separate offense. The remedies provided in this chapter shall be cumulative and exclusive. (Ord. 1217 § 4, 1986)

Chapter 1.20

ADMINISTRATIVE CITATIONS

Sections:

- 1.20.010 Applicability.
- 1.20.020 Definitions.
- 1.20.030 Continuing violations of building and zoning issues.
- 1.20.040 Administrative citation.
- 1.20.050 Amount of fine.
- 1.20.060 Payment of the fine.
- 1.20.070 Hearing request.
- 1.20.080 Advance deposit hardship waiver.
- 1.20.090 Hearing officer.
- 1.20.100 Hearing procedure.
- 1.20.110 Hearing officer's decision.
- 1.20.120 Late payment charges.
- 1.20.130 Recovery of administrative citation fines and costs.
- 1.20.140 Right to judicial review.
- 1.20.150 Notices.

1.20.010 Applicability.

This chapter provides for administrative citations, which are in addition to all other legal remedies, criminal or civil, which the city may pursue to address a violation of this code. Use of this chapter is at the sole discretion of the city. This chapter is authorized under Government Code Sections 53069.4 and 36901.

The procedures in this chapter shall not be used to enforce a continuing violation regarding building, plumbing, electrical, or other similar structural or zoning issues, without first allowing the person in violation a reasonable time to correct the violation, consistent with the procedures set forth in LMC 1.20.030. (Ord. 1679 § 1, 2002)

1.20.020 Definitions.

For the purposes of this chapter:

“Code” means the Livermore Municipal Code and Livermore Planning and Zoning Code.

“Enforcement officer” means a city employee with the authority to enforce a provision of this code.

“Hearing officer” means the hearing officer appointed under LMC 1.20.090.

“Master fee schedule” or “schedule” means the master fee schedule resolution, adopted by resolution of the city council, containing various fees in the city. (Ord. 1679 § 1, 2002)

1.20.030 Continuing violations of building and zoning issues.

If a violation is a continuing one and pertains to a building, plumbing, electrical, or other structural or zoning issue that does not create an immediate danger to health or safety, the city shall provide a reasonable period of time for the responsible person to correct or otherwise remedy the violation before the imposition of an administrative citation or penalty. Under these circumstances, the procedures in Chapter 1.24 LMC apply. (Ord. 1679 § 1, 2002)

1.20.040 Administrative citation.

A. Authority. Whenever an enforcement officer determines that a violation of this code has occurred, the enforcement officer has the authority to issue an administrative citation to the person responsible for the violation.

B. Contents of Citation. 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 code 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 code 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.
8. The name and signature of the citing enforcement officer.

In the case of a continuing violation involving building, plumbing, electrical, or other similar structural or zoning issues identified under LMC 1.20.030, the administrative citation shall also have attached a copy of the prior notice that was sent to the responsible party.

1.20.050

C. Delivery of Citation. The administrative citation shall be delivered personally or sent by first class mail or certified mail to the person responsible for the violation.

D. 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 shall dismiss the administrative citation, cancel the hearing, and refund any administrative citation fine. (Ord. 1679 § 1, 2002)

1.20.050 Amount of fine.

A. Maximum Amount of Fine. The maximum amount of the fine imposed for each code violation under this chapter is as follows:

1. One hundred dollars per day for a first violation;
2. Two hundred dollars per day for a second violation of the same ordinance within one year; and
3. Five hundred dollars per day for each additional violation of the same ordinance within one year.

B. Additional Amounts. Administrative costs, interest, late payment charges, costs of compliance reinspections, and collection costs are in addition to the fine. These include:

1. Administrative costs: based on time spent by code enforcement staff, supervisors and city attorney's office, at the full cost hourly rate of each employee, including salary, benefits and overhead.
2. Late payment charges: due at the rate of 10 percent per month.
3. Compliance reinspections: based on staff time at the full cost hourly rate.
4. Collection costs: actual collection costs.

C. Discretion of Enforcement Officer or Hearing Officer – Factors in Establishing Fine. In determining the amount of the fine and additional amounts, the enforcement officer or hearing officer has the discretion to set the fine lower than the maximum amount, or to reduce the additional costs, based on any or all of the following factors:

1. The duration of the violation;
2. The frequency, recurrence and number of violations, related or unrelated, by the same violator;
3. The seriousness of the violation;

4. The good faith efforts of the violator to come into compliance;

5. The economic impact of the fine on the violator;

6. The impact of the violation on the community; and

7. Such other factors as justice requires. (Ord. 1679 § 1, 2002)

1.20.060 Payment of the fine.

A. Due Date. The fine shall be paid to the city within 30 days from the date of the administrative citation. The city may suspend the imposition of fines for any period of time during which the violator has filed for necessary permits, and such permits are required to achieve compliance, and the permit applications are actively pending before the appropriate governmental agency.

B. Refund. The city shall refund a fine paid if the hearing officer determines, after a hearing held under LMC 1.20.100, that the person charged in the citation was not responsible for the violation or that there was no violation as charged.

C. Further Violations Not Excused. Payment of a fine under this chapter shall not excuse or discharge any continuation or repeated occurrence of the code violation. (Ord. 1679 § 1, 2002)

1.20.070 Hearing request.

A. Hearing Request. A person who receives an administrative citation may contest the citation on the basis that there was no violation of the code or that he or she is not the responsible party. To contest the citation, the person shall submit a request for hearing form to the city within 30 days from the date of the administrative citation. The request form may be obtained from the neighborhood preservation division of the community development department. The completed request must be submitted together with either an advance deposit of the fine or notice that a request for an advance deposit hardship waiver has been filed under LMC 1.20.080.

B. Notice of Hearing. The person requesting the hearing shall be notified of the time and place set for the hearing at least 10 days before the date of the hearing.

C. Additional Reports. 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 provided to the person requesting the hearing at least five days before the date of the hearing. (Ord. 1679 § 1, 2002)

1.20.080 Advance deposit hardship waiver.

A. Request for Waiver. A person who intends to contest an administrative citation under LMC 1.20.070(A) and who is financially unable to make the required advance deposit of the fine may file a request for an advance deposit hardship waiver under this section.

B. Filing. An advance deposit hardship waiver shall be filed with the finance department on a form provided by that department. The application submitted shall include an affidavit, together with any supporting documents or materials, demonstrating the person's actual financial inability to deposit with the city the full amount of the fine. The waiver form shall be filed within 10 calendar days of the date of the administrative citation.

C. Deposit Requirement Stayed. The requirement of depositing the fine shall be stayed unless or until the finance director makes a determination not to issue the advance deposit hardship waiver.

D. Standard for Waiver. The finance director may waive the requirement of an advance deposit under LMC 1.20.070 and issue the waiver only if the evidence submitted demonstrates to the satisfaction of the director the person's actual financial inability to deposit with the city the full amount of the fine in advance of the hearing.

E. Written Determination. The director shall issue a written determination listing the reasons for his or her determination to issue or not issue the advance deposit hardship waiver. The written determination of the director is final. The written determination shall be served upon the person who applied for the waiver.

F. Deposit Required If Waiver Denied. If the director determines not to issue a waiver, the person cited shall deposit the fine with the city within 10 days of the date of that decision or 30 days from the date of the citation, whichever is later. (Ord. 1679 § 1, 2002)

1.20.090 Hearing officer.

A. The city manager shall designate the hearing officer for the administrative citation hearing. The hearing officer shall be an impartial person such as:

1. A city employee from a department which has no involvement in code enforcement nor is from a division of the community development department; or

2. A person selected randomly from a panel of law students and/or local attorneys willing to volunteer as a hearing officer.

B. Should the person seeking the hearing reject the hearing officer selected by the city manager, then the hearing officer shall be hired from an organization which provides such hearing officer services and the cost therefor shall be shared equally by the city and the person cited.

C. The employment, performance evaluation, compensation and benefits of the hearing officer shall not be directly or indirectly conditioned upon or affected by decision rendered or the amount of administrative citation fines upheld by the hearing officer, if any. (Ord. 1728 § 1, 2004; Ord. 1679 § 1, 2002)

1.20.100 Hearing procedure.

A. Setting the Hearing. A hearing before the hearing officer shall be set for a date that is not less than 15 days nor more than 60 days from the date that the request for hearing is filed. The person requesting the hearing shall be notified of the time and place set for the hearing as soon as it is set, and at least 10 days before the hearing. If the enforcement officer submits a written report concerning the citation to the hearing officer for consideration at the hearing, then a copy of the report shall be served on the person requesting the hearing at least five days before the hearing.

No hearing shall be held unless the fine has been deposited in advance, under LMC 1.20.070(A), or an advance deposit hardship waiver has been issued under LMC 1.20.080.

B. Failure To Appear. The failure of the person requesting the hearing to appear at the hearing shall constitute a forfeiture of the fine and a failure to exhaust his or her administrative remedies.

C. At the Hearing. The administrative citation and any additional report submitted by the enforcement officer shall constitute prima facie evidence of the respective facts contained in those documents. At the hearing, the party contesting the citation shall be given the opportunity to testify and to present evidence concerning the citation.

1.20.110

D. Continuances. The hearing officer may continue the hearing and may request additional information from the enforcement officer or the person receiving the citation before issuing the decision. (Ord. 1679 § 1, 2002)

1.20.110 Hearing officer's decision.

A. Decision. After considering the testimony and evidence presented at the hearing, the hearing officer shall issue a written decision to uphold, dismiss or modify the administrative citation. The hearing officer shall state the reasons for the decision and shall send a copy of the decision to the person requesting the hearing and to the enforcement officer. The decision of the hearing officer is final, and may not be appealed.

B. Status of Fine. If the citation is upheld, then the fine amount on deposit with the city shall be retained by the city. If the fine has not been deposited because there was an advance deposit hardship waiver, the hearing officer shall set forth in the decision a payment schedule for the fine.

If the citation is dismissed, the city shall promptly refund the amount of any fine deposited, together with interest at the average rate earned on the city's portfolio for the period of time that the fine was held by the city. (Ord. 1679 § 1, 2002)

1.20.120 Late payment charges.

A person who fails to pay to the city the fine imposed under this chapter on or before the date that fine is due is also liable for the payment of the applicable late payment charges set forth in LMC 1.20.050(B). (Ord. 1679 § 1, 2002)

1.20.130 Recovery of administrative citation fines and costs.

A. Costs of Securing Payment. 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 attorney's fees. Such collection costs are in addition to any fines, interest, and late charges.

B. Other Costs. In addition to the administrative citation fine, the city may collect its administrative costs, interest, late payment charges, costs of compliance reinspections, and collection costs.

C. Collection. The city may collect any past due administrative citation fine and other costs and charges by any available legal means. (Ord. 1679 § 1, 2002)

1.20.140 Right to judicial review.

A person aggrieved by the hearing officer's decision on an administrative citation may obtain review of the decision by filing a petition for review with the Superior Court in Alameda County within 20 days after service of the final decision in accordance with the timelines and provisions set forth in California Government Code Section 53069.4. (Ord. 1679 § 1, 2002)

1.20.150 Notices.

A. Method of Service. The administrative citation and all notices required to be given by this chapter shall be served on the responsible party either by personal service, by first class mail, or by certified mail, return receipt requested.

B. Real Property. When real property is involved in the violation, the original notice, the administrative citation and all notices required to be given by this chapter shall be served on the responsible party and, if different, to the property owner at the address as shown on the last equalized county assessment roll. If personal service or service by mail on the property owner is unsuccessful, a copy of each notice and the citation shall be conspicuously posted at the property which is the subject of the violation. The city may, in its discretion, also serve notice on a tenant, a mortgagor or any other person having an interest in the property.

C. Failure To Receive Notice. The failure of a person to receive a required notice shall not affect the validity of any proceedings taken under this chapter. (Ord. 1679 § 1, 2002)

Chapter 1.24

COMPLIANCE ORDERS

Sections:

- 1.24.010 Applicability.
- 1.24.020 Definitions.
- 1.24.030 Compliance order.
- 1.24.040 Method of providing notice.
- 1.24.050 Hearing officer.
- 1.24.060 Hearing – Notice – Purpose.
- 1.24.070 Conduct of hearing – Decision.
- 1.24.080 Administrative order – Agreement to correct violations.
- 1.24.090 Administrative penalties.
- 1.24.100 Reserved.
- 1.24.110 Failure to pay.
- 1.24.120 Right of judicial review.
- 1.24.130 Lien procedure – Hearing – Recordation.

1.24.010 Applicability.

A. This chapter applies to the enforcement of a continuing violation of the municipal code which pertains to a building, plumbing, electrical, or other structural or zoning issue that does not create an immediate danger to health or safety. It is intended to provide the person responsible a reasonable period of time to correct or otherwise remedy the violation.

B. This chapter provides for administrative remedies, which are in addition to all other legal remedies, criminal or civil, which may be pursued by the city to address a violation of this code. Use of this chapter is at the sole discretion of the city. (Ord. 1679 § 2, 2002)

1.24.020 Definitions.

For purposes of this chapter:

“Administrative order” means an order issued under LMC 1.24.080 for failure to comply with an administrative citation.

“Code” means the Livermore Municipal Code and Livermore Planning and Zoning Code.

“Compliance order” means an order issued under LMC 1.24.030 for a violation of the code.

“Director” means the head of any city department which is charged with responsibility for enforcement of a provision of this code, or the enforcement officer as defined in LMC 1.20.020.

“Hearing officer” means the hearing officer appointed under LMC 1.24.050. (Ord. 1679 § 2, 2002)

1.24.030 Compliance order.

A. Authority To Issue Compliance Order. Whenever the director determines that a violation of a provision of this code within the director’s responsibility is occurring or exists, the director may issue a written compliance order to the person responsible for the violation.

B. Contents of Compliance Order. A compliance order issued under this chapter shall contain the following information:

1. The date and location of the violation.
2. The section of the code violated and a description of the violation.
3. The actions required to correct the violation.
4. The time period after which administrative penalties will begin to accrue if compliance with the order has not been achieved.
5. Either a copy of this chapter or an explanation of the consequences of noncompliance with this chapter and a description of the hearing procedure and appeal process.

C. Dismissal of Order. If the director determines that all violations have been corrected within the time specified in the compliance order, that there was no violation as charged in the compliance order, or that the wrong person was identified as the responsible person, the director shall notify the original recipient in writing. (Ord. 1679 § 2, 2002)

1.24.040 Method of providing notice.

A. Notices Generally. A notice required by this chapter shall be provided either by personal delivery to the person to be notified or by deposit in the United States mail, in a sealed envelope postage prepaid, addressed to the person to be notified at the person’s last known business or residence address as it appears in the public records or other records pertaining to the matter.

B. Real Property. Where real property is involved, written notice shall also be provided to the property owner at the address as shown on the last equalized county assessment roll available on the date the notice is prepared.

1.24.050

C. Posting. Where personal service or service by mail upon the property owner is unsuccessful after one week, a copy of the order shall be conspicuously posted at the property which is the subject of the order.

D. Failure To Receive. The failure of a person to receive a notice required under this chapter shall not affect the validity of any proceedings taken under this chapter. (Ord. 1679 § 2, 2002)

1.24.050 Hearing officer.

A. The city manager shall designate the hearing officer for the administrative remedies hearing. The designated hearing officer shall be an impartial person, such as:

1. A city employee from a department which has no involvement in code enforcement; or
2. Someone selected randomly from a panel of law students and/or local attorneys willing to volunteer as a hearing officer; or
3. Someone hired from an organization which provides hearing officers, in which case the cost will be shared equally by the city and the person cited.

B. The employment, performance evaluation, compensation and benefits of the hearing officer shall not be directly or indirectly conditioned upon or affected by the amount of administrative citation fines upheld by the hearing officer. (Ord. 1679 § 2, 2002)

1.24.060 Hearing – Notice – Purpose.

A. Hearing Set. If full compliance is not achieved within the time specified in the compliance order, the director shall advise the city clerk to set a hearing before the hearing officer.

B. Notice of Hearing. The city clerk shall cause a written notice of hearing to be served on the violator and, where real property is involved, a notice of hearing shall be provided to the property owner. The notice of hearing on a compliance order shall contain the date, time and place of the hearing.

C. Purpose of Hearing – Failure To Appear. The purpose of the hearing is to provide an opportunity for the person subject to a compliance order to object to the determination that a violation has occurred, that he or she is responsible, and/or that the violation has continued to exist. The failure of

a person subject to a compliance order to appear at the hearing constitutes a failure to exhaust administrative remedies. (Ord. 1679 § 2, 2002)

1.24.070 Conduct of hearing – Decision.

A. Conduct of Hearing. At the time and place set forth in the notice, the hearing officer shall conduct a hearing on the compliance order issued under LMC 1.24.030. The hearing officer shall consider any written or oral evidence regarding the violation and compliance. The hearing officer may continue the hearing from time to time.

B. Written Determination. Within 10 working days following the conclusion of the hearing, the hearing officer shall make written findings and issue its determination regarding: (1) the existence of the violation; and (2) the failure of the violator or owner to take required corrective action within the required time period. The findings shall be supported by evidence received at the hearing.

C. Administrative Order. If the hearing officer finds that a violation has occurred and that the violation was not corrected within the time period specified in the compliance order, the hearing officer shall issue an administrative order. (See LMC 1.24.080.)

D. No Violation. If the hearing officer finds that no violation has occurred, that the violation was corrected within the time period specified in the compliance order, or that the wrong person was identified as responsible, the hearing officer shall issue a written finding of those facts. (Ord. 1679 § 2, 2002)

1.24.080 Administrative order – Agreement to correct violations.

A. Administrative Order. If the hearing officer determines that a violation occurred which was not corrected within the time period specified in the compliance order, the hearing officer shall issue an administrative order consistent with LMC 1.24.070 imposing any or all of the following:

1. An order to correct, including a schedule for correction where appropriate.
2. Administrative penalties as provided in LMC 1.24.090(A).
3. Administrative costs as provided in LMC 1.24.090(B).

B. Agreement To Correct Violations. As an alternative to the administrative order, if the person in violation agrees, the city and the person in violation may enter into a written agreement specifying the nature of the violation, the required measures for correction, the schedule for correction, and the amounts and payment schedule for administrative penalties and costs, if any. The agreement must be signed by the person responsible for the violation (generally, the property owner) and the city manager. (Ord. 1679 § 2, 2002)

1.24.090 Administrative penalties.

A. Maximum Penalty. The hearing officer may impose administrative penalties for the violation of any provision of this code. The maximum amount of the penalty imposed for each code violation, per day, under this chapter is as follows:

1. One hundred dollars per day for a first violation;
2. Two hundred dollars per day for a second violation of the same ordinance within one year; and
3. Five hundred dollars per day for each additional violation of the same ordinance within one year.

B. Additional Amounts. The hearing officer shall assess administrative costs against the violator when it finds that a violation has occurred and that compliance has not been achieved within the time specified in the compliance order. The administrative costs may include all costs incurred by the city in connection with the matter before the hearing officer including, but not limited to, costs of investigation, staffing costs incurred in preparation for the hearing and for the hearing itself, costs for all reinspections necessary to enforce the compliance order, and later-incurred collection costs. These include:

1. Administrative costs: based on time spent by code enforcement staff, supervisors and city attorney's office, at the full cost hourly rate of each employee, including salary, benefits and overhead.
2. Late payment charges: due at the rate of 10 percent per month.
3. Compliance reinspections: based on staff time at the full cost hourly rate.
4. Collection costs: actual collection costs.

C. Discretion of Enforcement Officer or Hearing Officer – Factors in Establishing Penalty. In determining the amount of the penalty and additional amounts, the hearing officer has the discretion to set the penalty lower than the maximum amount, or to reduce the additional costs, based on any or all of the following factors:

1. The duration of the violation;
2. The frequency, recurrence and number of violations, related or unrelated, by the same violator;
3. The seriousness of the violation;
4. The good faith efforts of the violator to come into compliance;
5. The economic impact of the fine on the violator;
6. The impact of the violation on the community; and
7. Such other factors as justice requires.

D. Accrual – Due Date. An administrative penalty imposed by the hearing officer shall accrue from the date specified in the compliance order and shall cease to accrue on the date the violation is corrected as determined by the director or the hearing officer. An administrative penalty assessed by the hearing officer is due by the date specified in the administrative order.

If the violation is not corrected as specified in the hearing officer's administrative compliance order, administrative penalties shall continue to accrue on a daily basis until the violation is corrected.

E. Suspension of Penalties While Permits Pending. The hearing officer, in the hearing officer's discretion, may suspend the imposition of applicable penalties for any period of time during which:

1. The violator has filed for necessary permits; and
2. Such permits are required to achieve compliance; and
3. Such permit applications are actively pending before the city, state or other appropriate governmental agency.

F. Debt Collection. An administrative penalty and additional costs assessed by the hearing officer is a debt owed to the city and, in addition to all other means of enforcement, if the violation is

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located on real property, may be enforced by means of a lien against the real property on which the violation occurred. (Ord. 1679 § 2, 2002)

1.24.100 Reserved. (Ord. 1679 § 2, 2002)

1.24.110 Failure to pay.

Failure to pay the assessed administrative penalties and administrative costs specified in the administrative order of the hearing officer may be enforced as: (1) a personal obligation of the violator; and/or (2) if the violation is in connection with real property, a lien upon the real property. The lien shall remain in effect until all of the administrative penalties, interest and administrative costs are paid in full.

The city may collect the assessed administrative penalties and administrative costs by use of all available legal means, including recordation of a lien pursuant to LMC 1.24.130. (Ord. 1679 § 2, 2002)

1.24.120 Right of judicial review.

A person aggrieved by an administrative order may obtain review of the administrative order in the superior court by filing with the court a petition for writ of mandate under Code of Civil Procedure Section 1094.6. (Ord. 1679 § 2, 2002)

1.24.130 Lien procedure – Hearing – Recordation.

A. Lien Procedure.

1. Whenever the amount of an administrative penalty and/or administrative cost imposed by the hearing officer under this chapter in connection with real property has not been satisfied in full within 90 days or has not been successfully challenged by a timely writ of mandate, this obligation may constitute a lien against the real property on which the violation occurred.

2. Interest shall accrue on the principal amount of the judgment remaining unsatisfied pursuant to law.

3. Before recording any such lien, the finance director shall prepare and file with the city clerk a report stating the amounts due. The city clerk shall fix a time, date and place for a city council hearing on the report and any protests or objections to it. The finance director shall provide

written notice to the property owner not less than 10 days before the hearing. The notice shall be served as provided in LMC 1.24.040.

B. Hearing.

1. A person whose real property may be subject to a lien may file a written protest with the city clerk and/or may protest orally at the city council meeting. Each written protest or objection must contain a description of the property in which the protesting party is interested and the grounds of the protest or objection.

2. The city council, after the hearing, shall adopt a resolution confirming, discharging or modifying the amount of the lien. The lien may carry additional administrative charges as set forth in the council's resolution.

C. Recordation.

1. Thirty days after the adoption of a resolution by the city council imposing a lien, the city clerk shall file it as a judgment lien in the office of the county recorder of Alameda County, California. The lien shall have no effect until recorded with the county recorder. Once recorded, the administrative order shall have the effect and priority of a judgment lien governed by Code of Civil Procedure Section 697.340 and may be renewed as provided in Code of Civil Procedure Sections 683.110 to 683.220, inclusive.

2. Once payment in full is received by the city for outstanding penalties and costs, the finance director shall either record a notice of satisfaction or provide the property owner or financial institution with a notice of satisfaction so they may record this notice with the office of the county recorder. The notice of satisfaction shall cancel the city's lien. (Ord. 1679 § 2, 2002)

Chapter 1.26**CITY SEAL**

Sections:

- 1.26.010 Livermore city seal designated.
- 1.26.020 City logotype.
- 1.26.030 City marketing materials.
- 1.26.040 Custodian.
- 1.26.045 Limit on use.
- 1.26.050 Violations – Penalties – Damages.

1.26.010 Livermore city seal designated.

A seal consisting of a circular disc one and eleven-sixteenths inches in diameter and having thereon the following inscription: “CORPORATE SEAL OF the City of Livermore, Ca.” surrounding a plow and sheaf of wheat shall be the seal of the city. (Ord. 1728 § 2, 2004)

1.26.020 City logotype.

The city council may establish or create, from time to time, a city logotype or insignia. The city claims all right and title, including copyrights and/or trademarks, to such city logotype or insignia, and claims every right to control the use of any such city logotypes or insignias. At the time of the first adoption of this chapter the existing city logotype consists of a circle with the inscription “CITY OF LIVERMORE, CALIFORNIA County of Alameda” surrounding representations of a rodeo rider, nuclear symbol with the letter “L” within the symbol and a cluster of grapes with the further inscription “Incorporated 1876.” (Ord. 1728 § 2, 2004)

1.26.030 City marketing materials.

The city council may establish or create, from time to time, city marketing materials including city symbols, letterhead, images, insignia, photographs and all other forms of materials developed by the city to market, advertise, represent and communicate the image, character and community of Livermore. The city claims all right and title, including copyrights and/or trademarks, to such city marketing materials, and claims every right to control the use of any such marketing materials. (Ord. 1728 § 2, 2004)

1.26.040 Custodian.

The city clerk shall be the custodian of the city seal described in LMC 1.26.010. The city manager shall be the custodian of the city logotype and marketing materials described in LMC 1.26.020 and 1.26.030. (Ord. 1728 § 2, 2004)

1.26.045 Limit on use.

The city name, seal, logotype, insignia and marketing materials shall not be used by a person, firm, corporation or organization without the express prior written permission of the city manager. The city manager, however, shall not, under any circumstances, permit the city name, seal, logotype, insignia or marketing materials to be used for any for-profit or political purpose. The city council may permit the city name, seal, logotype, insignia or marketing materials to be used for a for-profit purpose by adoption of a written resolution following a noticed public hearing thereon. The city name, seal, logotype, insignia or marketing materials may not be used for political purposes except for identifying informational flyers or brochures prepared by the city in relation to ballot measures in accordance with the provisions of law. (Ord. 1728 § 2, 2004)

1.26.050 Violations – Penalties – Damages.

Any person, firm, corporation or organization violating any provision of this chapter shall be guilty of an infraction and upon conviction thereof shall be punishable in accordance with Chapters 1.16 and 1.20 LMC. A person, firm, corporation or organization shall be deemed guilty of a separate offense for each day during any portion of which a violation of this chapter is committed, continued or permitted by the person, firm, corporation or organization and shall be punishable as provided in this section. In addition to such penal damages the city shall be entitled to collect from any person, firm, corporation or organization violating this chapter, and the same shall be paid forthwith upon demand by the city, any and all revenues received by said person, firm, corporation or organization from the wrongful use of the city seal, logo or other marketing materials developed and claimed by the city regardless of the costs associated therewith. (Ord. 1728 § 2, 2004)

