

Title 1

GENERAL PROVISIONS

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Chapter 1.01

CODE ADOPTION

Sections:

- 1.01.010 Document adopted.**
- 1.01.020 Title--Citation--Reference.**
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- 1.01.100 Constitutionality.**

Section 1.01.010 Document adopted.

Pursuant to the provisions of Sections 50022.1 through 50022.8 and 50022.10 of the Government Code, there is hereby adopted the "Berkeley Municipal Code," as published by Book Publishing Company, 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 Berkeley Municipal Code. (Ord. 4970-NS § 1, 1977)

Section 1.01.020 Title--Citation--Reference.

This code shall be known as the "Berkeley Municipal Code" and it shall be sufficient to refer to said code as the Berkeley 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 Berkeley Municipal Code. Further reference may be had to the titles, chapters, sections and subsections of the Berkeley Municipal Code and such references shall apply to that numbered title, chapter, section or subsection as it appears in the code. (Ord. 4970 § 2, 1977)

Section 1.01.030 Codification authority.

This code consists of all the regulatory and penal ordinances and certain of the administrative ordinances of the City of Berkeley, California, codified pursuant to the provisions of Sections 50022.1 through 50022.8 and 50022.10 of the Government Code. (Ord. 4970-NS § 3, 1977)

Section 1.01.040 Ordinances passed prior to adoption of the code.

The last ordinance included in this code was Ordinance 4882-NS. The following ordinances, passed subsequent to Ordinance 4882-NS, but prior to adoption of this code, are hereby adopted and made a part of this code: Ordinances Nos. 4883-NS, 4886-NS, 4890-NS, 4891-NS, 4892-NS, 4895-NS, 4896-NS, 4898-N S, 4899-NS, 4901-NS, 4904-NS, 4905-NS, 4908-NS, 4909-NS, 4914-NS, 4917-NS, 4919-NS, 4920-NS, 4921-NS, 4924-NS, 4927-NS, 4929-NS, 4936-NS, 4939-NS, 4940-NS, 4942-NS, 4944-NS, 4945-NS, 4946-NS, 4947-NS, 4948-NS, 4949-NS, 4951-NS, 4952-NS, 4954-NS, 4957-NS, 4960-NS, 4961-NS and 4962-NS. (Ord. 4970-NS § 4, 1977)

Section 1.01.050 Reference applies to all amendments.

Whenever a reference is made to this code as the Berkeley Municipal Code or to any portion thereof, or to any ordinance of the City, the reference shall apply to all amendments, corrections and additions heretofore, now or hereafter made. (Ord. 4970-NS § 5, 1977)

Section 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 this code. (Ord. 4970-NS § 7, 1977)

Section 1.01.070 Title, chapter and section headings.

Title, chapter and section headings contained in the Berkeley Municipal Code 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 of this code. (Ord. 4970-NS § 6, 1977)

Section 1.01.080 Effect of code on past actions and obligations.

Neither the adoption of this code nor the repeal or amendment hereby of any ordinance or part or portion of any ordinance of the City of Berkeley shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date of the code, 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 provisions applicable to any violation thereof, nor to affect the 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. 4970-NS § 8, 1977)

Section 1.01.090 Effective date.

This code became effective on March 10, 1977, the date the ordinance adopting this code as the "Berkeley Municipal Code" became effective. (Ord. 4970-NS § 9, 1977)

Section 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 decision shall not affect the validity of the remaining portions of this code. The council hereby declares that it would have passed 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. 4970-NS § 10, 1977)

Chapter 1.04

GENERAL PROVISIONS

Sections:

- 1.04.010** **Definitions.**
- 1.04.020** **Grammatical interpretation.**
- 1.04.030** **Prohibited acts include causing, permitting, etc.**
- 1.04.040** **Effective date of ordinances.**
- 1.04.050** **No revival of repealed ordinances.**
- 1.04.060** **Repeal not to extinguish any penalty accrued.**
- 1.04.070** **Suspension of local limitations periods for action by the City Council, or any City board or commission during periods of council recess.**
- 1.04.080** **Provision due to non-business days.**

Section 1.04.010 Definitions.

In this chapter and in every ordinance and resolution of the City of Berkeley, unless from the context the contrary intention clearly appears:

1. Definitions using the word "means" shall be deemed to be exclusive or restrictive definitions.
2. Definitions using the word "includes" shall be deemed to be extensive or enlarging definitions.
3. "City/town" means the City of Berkeley, California, or the area within the territorial limits of the City of Berkeley, California, and such territory outside of the City over which the City has jurisdiction or control by virtue of any constitutional or statutory provision.
4. "Computation of time" means the time within which an act is to be done. It shall be computed by excluding the first day and including the last day; and if the last day be Sunday or a legal holiday, that day shall be excluded.
5. "Council" means the City Council of the City of Berkeley, California. "All its members" or "all councilpersons" mean the total number of councilpersons provided by the Charter of the City of Berkeley.
6. "County" means the county of Alameda, California.
7. "Law" denotes applicable federal law, the Constitution and statutes of the State of California, the Charter and ordinances of the City of Berkeley and, when appropriate, any and all rules and regulations which may be promulgated thereunder.
8. "May" is permissive in nature.
9. "Month" means a calendar month.
10. "Must" and "shall" are mandatory in nature.
11. "Oath" shall be construed to include an affirmation or declaration in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."
12. "Ordinance" means a law of the City of Berkeley.
13. "Owner" applied to a building or land includes any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety, of the whole or a part of such building or land.
14. "Person" means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, firm, organization, or the manager, lessee, agent, servant, officer or employee of any of them.
15. "Personal property" includes money, goods, chattels, things in action and evidences of debt.
16. "Preceding" and "following" mean next before and next after, respectively.
17. "Real property" includes lands, tenements and hereditaments.
18. "Sidewalk" means that portion of a street between the curblin and the adjacent property line intended for the use of pedestrians.
19. "State" means the State of California.

20. "Street" includes all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs, or other public ways in this City which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this state.

21. "Tenant" and "occupant," applied to a building or land, includes any person who occupies whole or a part of such building or land, whether alone or with others.

22. Title of office. Use of the title of any officer, employee, board or commission means that officer, employee, department, board or commission of the City of Berkeley.

23. "Written" includes printed, typewritten, mimeographed or multigraphed.

24. "Year" means a calendar year.

25. All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

26. When an act is required by an ordinance the same being such that it may be done as well by an agent as by the principal, such requirement shall be construed as to include all such acts performed by an authorized agent. (Ord. 4863-NS § 1, 1976: Ord. 1914-NS § 1, 1935)

Section 1.04.020 Grammatical interpretation.

The following grammatical rules shall apply in the ordinances of the City of Berkeley:

A. Gender. The masculine gender includes the feminine and neuter genders, and the neuter gender includes the masculine and feminine.

B. Singular and plural. The singular number includes the plural and the plural includes the singular.

C. Tenses. Words used in the present tense include the past and the future tenses and vice versa, unless manifestly inapplicable.

D. Use of words and phrases. Words and phrases not specifically defined shall be construed according to the context and approved usage of the language. (Ord. 4863-NS § 2, 1976: Ord. 1914-NS § 2, 1935)

Section 1.04.030 Prohibited acts include causing, permitting, etc.

Whenever in the ordinances of the City any act or omission is made unlawful, it shall include causing, allowing, permitting, aiding, abetting, suffering, or concealing the fact of such act or omission. (Ord. 4863-NS § 3, 1976: Ord. 1914-NS § 3, 1935)

Section 1.04.040 Effective date of ordinances.

Every ordinance shall take effect as set forth in Section 93 of the Charter of the City of Berkeley. (Ord. 4863-NS § 4, 1976: Ord. 1914-NS § 4, 1935)

Section 1.04.050 No revival of repealed ordinances.

No ordinance or part of an ordinance repealed by another ordinance shall be revived by the repeal of the repealing ordinance, unless express provision otherwise is made. (Ord. 4863-NS § 5, 1976: Ord. 1914-NS § 5, 1935)

Section 1.04.060 Repeal not to extinguish any penalty accrued.

The repeal of an ordinance shall not release or extinguish any penalty, forfeiture, liability, obligation or right incurred under such ordinance, and for the purpose of sustaining any proper action, prosecution or proceeding for the enforcement of such penalty, forfeiture, liability, obligation or right, said ordinance shall be deemed to remain in full force and effect. (Ord. 4863-NS § 6, 1976: Ord. 1914-NS § 6, 1935)

Section 1.04.070 Suspension of local limitations periods for action by the City Council, or any City board or commission during periods of council recess.

A. Notwithstanding any other provision to the contrary in any City of Berkeley ordinance or resolution,

the time limits established by any City of Berkeley ordinance or resolution for City Council or board or commission action on any matter are deemed to be tolled during the period between the commencement of the City Council's August recess or any other recess which is specifically declared by the City Council to and through the day before the next regularly scheduled City Council or board or commission meeting following any such recess.

B. The tolling provisions of this section shall not be applicable to any deadlines applicable to the City of Berkeley which are imposed by state or federal law, if the tolling provisions of this section are preempted by such state or federal law. (Ord. 5792-NS §§ 1, 2, 1987)

Section 1.04.080 Provision due to non-business days.

A. Notwithstanding any other provision of law, if the last day for the performance of any act provided for or required by this code shall fall on a non-business day, the act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

B. As used in this section, "non-business" days include Saturdays, Sundays and holidays established by the City of Berkeley. (Ord. 7136-N.S. § 1, 2010; Ord. 6779-N.S. § 1, 2003; Ord. 6511-N.S. § 1, 1999)

Chapter 1.12

Chapter 1.12

CITY JAIL*

Sections:

1.12.010 Violators to be imprisoned in Alameda County jail.

*For provisions that persons sentenced to imprisonment may be imprisoned in the City jail or if provided by ordinance, in the county jail, see Charter § 114.

Section 1.12.010 Violators to be imprisoned in Alameda County jail.

Any person sentenced to imprisonment for a violation of the provisions of the Charter of the City or of an ordinance of the City, shall be imprisoned in the county jail of Alameda County, unless otherwise provided for in the ordinance the terms of which have been violated. (Ord. 75-NS § 1, 1910)

Chapter 1.16

RIGHT OF ENTRY FOR INSPECTION

Sections:

1.16.010 Procedures authorized when.

Section 1.16.010 Procedures authorized when.

Whenever necessary to make an inspection to enforce any ordinance or resolution, or whenever there is reasonable cause to believe there exists an ordinance or resolution violation in any building or upon any premises within the jurisdiction of the City, any authorized official of the City may, upon presentation of proper credentials, enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon him or her by ordinance. In the event the owner and/or occupant refuses entry, the official is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry. (Ord. 6687-NS § 1, 2002; Ord. 4864-NS § 1, 1976)

Chapter 1.20

GENERAL PENALTY*

Sections:

- 1.20.010** **Penalty for violation of Charter or ordinance provisions.**
- 1.20.020** **Discretion to charge violations as infractions.**
- 1.20.030** **Specific restitution required.**
- 1.20.040** **Community service--When authorized--Purposes.**
- 1.20.050** **Probation not authorized.**

*For Charter provisions making violations of City ordinances a misdemeanor, see Charter § 114.

Section 1.20.010 Penalty for violation of Charter or ordinance provisions.

A. Unless otherwise specified by ordinance, the violation of any provision of the Charter or of any ordinance of the City shall be deemed a misdemeanor, as provided in Section 114 of the Charter. Except where a different punishment is prescribed by ordinance, any person convicted of a misdemeanor under the Charter or ordinances of the City shall be punished by a fine of not more than one thousand dollars, or by imprisonment not to exceed six months, or by both such fine and imprisonment.

B. Each and every day during any portion of which any violation of any provision of the Charter or ordinances of the City is committed, continued or permitted shall be deemed a separate offense, and may be punished accordingly. (Ord. 5715-NS § 1, 1986: Ord. 5499-NS § 1, 1982: Ord. 4869 § 1, 1976)

Section 1.20.020 Discretion to charge violations as infractions.

A. 1. Except for those violations that this code expressly requires be charged solely as either an infraction or a misdemeanor, any violation of any ordinance of the City or any provision of any ordinance may be charged, in the discretion of the enforcing officer or City Attorney, as a misdemeanor or an infraction.

2. A violation may be charged as a misdemeanor if the offender has been warned to discontinue the conduct constituting an infraction, but continues to do the conduct.

B. Penalties for Infractions. Pursuant to California Government Code Sections 36900 and 36901, the penalty by fine for infractions shall be as follows:

- 1. A fine not exceeding one hundred dollars for a first violation;
- 2. A fine not exceeding two hundred dollars for the second violation;
- 3. A fine not exceeding five hundred dollars for each additional violation of the same section of the same ordinance within one year.

C. Misdemeanors. Unless otherwise specified, upon a third or subsequent conviction of the same section of any City ordinance, designated punishable as an infraction, committed within a period of one year, the fourth violation may, at the discretion of the City Attorney, be charged as a misdemeanor punishable by a fine of not more than one thousand dollars or by imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment.

D. Person. "Person" includes any individual, firm, association, organization, partnership, business trust, joint venture, corporation, company, or any other organization or group of persons acting in concert, whether as principal, agent, employee, manager, lessee, servant, officer, or otherwise.

E. Civil Action. In addition to any other remedies provided in this section, any violation of this section may be enforced by civil action.

F. Authority to Issue Citations. In addition and supplementary to the provisions of the Penal Code relating to public offenses and the authority of peace officers, the City Council hereby designates the City Manager and the following employees who are classified (or who may hereafter be classified by some other appropriate designation with substantially the same duties) as enforcement authorities for violations of City

ordinances: chief of codes, inspection and zoning, zoning officer, building inspection supervisor, housing inspector, building inspector, project coordinator, license and collection supervisor, senior field representative, field representative, fire chief, deputy fire chief, assistant fire chief, fire marshal, deputy fire marshal, assistant fire marshal, fire inspector, parks/marina superintendent, parks/marina administrative analyst, marina supervisor, forestry supervisor, senior gardener supervisor, gardener supervisor, tree trimmer supervisor, tree topper supervisor, public works maintenance superintendent, senior public works supervisor, assistant city engineer, senior civil engineer, traffic engineer, assistant traffic engineer, associate civil engineer, assistant civil engineer, junior civil engineer, engineering inspector, recycling program administrator, refuse superintendent, senior refuse supervisor, refuse supervisor, chief of environmental health, supervising sanitarian, sanitarian, assistant sanitarian, vector control technician, animal services supervisor, animal control officer and hazardous materials specialist. Such public officers or employees may issue a citation and notice to appear in the manner prescribed by Chapter 5c of Title 3, Part 2 of the Penal Code (or as the same may hereafter be amended). It is the intent of the City Council that the immunities prescribed in Section 836.5 of the Penal Code be applicable to public officers or employees or employees acting in the course and scope of employment pursuant to this chapter.

G. Severability. If any provision of this ordinance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the ordinance shall not be invalidated. (Ord. 6845-NS § 1, 2005; Ord. 6710-NS § 1, 2002; Ord. 6296-NS § 1, 1995; Ord 5715-NS § 2, 1986; Ord. 5590-NS § 1, 1984; Ord. 5499-NS § 2, 1982)

Section 1.20.030 Specific restitution required.

A. Whenever any violation of which a person is convicted is capable of being corrected by that person, the court shall order as restitution that said person make such correction by a date certain, in addition to paying any penalty assessed pursuant to Section 1.20.020.

B. As used in this section, "correction" includes, but is not limited to, removal of an illegal physical condition or, if possible, legalization thereof by prompt application for, and issuance of, any permit that may be required under City ordinance, or obtaining any and all required permits for conducting any activity.

C. Specific restitution orders pursuant to this section may be enforced by civil or criminal contempt. (Ord. 6298-NS § 2, 1995)

Section 1.20.040 Community service--When authorized--Purposes.

A. Whenever the court finds, based on a factual showing of indigence, that a person convicted of an infraction violation of any City ordinance is unable to pay the monetary penalty assessed by the court, the court shall order that person to perform community service, as specified herein.

B. Any community service ordered pursuant to this section shall be designed to:

1. Require the defendant to either directly cure the particular violation for which he/she is convicted, or, if a direct cure is not possible, otherwise provide nonpecuniary restitution to the community for the damage caused by the illegal actions for which he/she was convicted; and

2. Deter similar illegal conduct by the defendant or others. (Ord. 6298-NS § 2, 1995)

Section 1.20.050 Probation not authorized.

This code does not authorize probation for violation of any City ordinance. (Ord. 6298-NS § 2, 1995)

Chapter 1.22

HUMAN RIGHTS POLICY

Sections:

1.22.010 Promotion of human rights policy.

Section 1.22.010 Promotion of human rights policy.

A. With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among the people of this City and region, based on respect for the principle of equal rights of people, the City of Berkeley shall promote:

1. Higher standards of living, full employment, and conditions of economic and social progress and development;
2. Solutions of local economic, social, health and related problems; and regional cultural and educational cooperation;
3. Universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

B. The City of Berkeley pledges to take joint and separate action in cooperation with Alameda County, Association of Bay Area Governments, the State of California and the United States Government for the achievement of the purpose set forth in subsection A above, and in cooperation with the United Nations where appropriate. (Ord. 5985-NS §§ 1, 2, 1990)

Chapter 1.24

ABATEMENT OF NUISANCES

Sections:

1.24.010	Applicability.
1.24.015	Recovery of enforcement costs.
1.24.020	Definitions.
1.24.030	Notice to abate nuisance.
1.24.040	Summary abatement.
1.24.050	Summary abatement by City.
1.24.060	Warrants.
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1.24.200	Costs of assessment as special assessment against parcel.
1.24.205	Costs of assessment as nuisance abatement lien against parcel.
1.24.210	Remedies.
1.24.220	Severability.

Section 1.24.010 Applicability.

A. The provisions in this chapter regarding pre-abatement notice and hearing requirements are hereby made applicable to all ordinances requiring the abatement of nuisances which are silent as to the procedures to be followed for the pre-abatement notice, summary abatement and/or hearing requirements, and to any other subsequently enacted ordinance declaring additional acts or omissions a nuisance.

B. The provisions in this chapter pertaining to the recovery of costs are applicable to the recovery of costs for all nuisance abatements effected by the City through its employees or by contract pursuant to any ordinance of the City unless an alternate procedure is specified in said ordinance or by other applicable law. (Ord. 6347-NS § 1, 1996; Ord. 6156-NS § 1, 1992)

Section 1.24.015 Recovery of enforcement costs.

This chapter provides authority for the City to recover the costs of inspection, enforcement and correction of violations of laws and ordinances to the full extent permitted by Government Code Section 54988 as it may be amended from time to time. Accordingly, provisions of this chapter which specify the process for creating, recording and collecting liens for abatement of nuisances may also be used for the recovery of said costs of inspection, enforcement and correction as well. (Ord. 6530-NS § 1, 2000)

Section 1.24.020 Definitions.

A. The term "incidental expenses" as used in this chapter shall include, but not be limited to, the actual

expenses and costs of the City in the conduct of proceedings under this chapter, preparation of notices, specifications and contracts, inspection of work, the costs of printing and mailings and administrative staff costs.

B. "Nuisance abatement lien" as used in this chapter means a lien on real property which may be foreclosed upon by the City in any court action.

C. "Owner" as used in this chapter, includes any person in possession of the affected premises, and any person having or claiming to have, any legal or equitable interest in the premises.

D. "Special assessment lien" as used in this chapter means a tax lien which may be recovered in the same manner as delinquent municipal taxes. (Ord. 6156-NS § 2, 1992)

Section 1.24.030 Notice to abate nuisance.

Whenever the City determines that property in the City is maintained as a nuisance and declares said property a public nuisance pursuant to the appropriate Berkeley Municipal Code section or other law, the City shall:

A. Provide written notice to abate to the owner in the manner and in the form provided in this chapter.

B. The notice shall state the proper street address of the subject property and should be served personally or by first class mail, postage prepaid. Additionally, one copy of the notice shall be conspicuously posted on the property.

C. The notice shall advise the owner of a reasonable time limit, in no event less than seven calendar days, in which the owner shall take corrective action to remedy the nuisance, except as set forth in Section 1.24.040 of this chapter.

D. The notice shall specify the Berkeley Municipal Code sections or statute violated and state all the facts constituting the nuisance.

E. The notice shall specify the corrective action required, including temporary corrective action when appropriate.

F. The notice shall advise the property owner that failure to correct the violation will result in the City's correcting the violation and collecting the charges by billing or by lien on the property.

G. The notice shall advise the owner of the right to file an appeal within 15 calendar days if the owner seeks to challenge the charge that a nuisance exists.

H. The notice shall advise the owner he/she must either correct the violation or request a hearing in order to avoid City abatement and liability for cost of abatement.

I. The notice shall advise the owner that failure to appeal shall constitute waiver of the right to an administrative hearing to contest the charge of nuisance. (Ord. 6530-NS § 2, 2000: Ord. 6156-NS § 3, 1992)

Section 1.24.040 Summary abatement.

A. Any nuisance which the City reasonably determines to be imminently dangerous to the life, limb, health, or safety of the occupants of the property or to the public may be summarily abated in accordance with the procedures set forth in this section.

B. Actions taken to abate imminently dangerous property nuisances may include but are not limited to repair, removal or demolition of the condition creating the danger and/or the restriction from use or occupancy of the property on which the dangerous condition exists or any other abatement action determined by the City to be necessary.

C. Whenever the City determines that summary abatement is justified by an imminently dangerous condition, circumstance, or occurrence, the City shall give written notice to the property owner as to the nuisance. If the property owner cannot be located or the owner fails to take prompt appropriate action to abate the nuisance, the City may proceed to take abatement action authorized in this chapter to the extent necessary to remedy the immediate danger without further notice or right to a prior hearing.

D. Once summary abatement action has been completed, the property owner may contest the need for and cost of abatement action in the manner provided in this chapter. (Ord. 6156-NS § 4, 1992)

Section 1.24.050 Summary abatement by City.

A. In the event the owner shall fail, neglect or refuse to comply with the notice to abate, within the prescribed time, and if no appeal has been filed, the City shall abate the nuisance.

B. Said abatement shall be pursued by City personnel or private contractor. The costs of abatement, including administrative and incidental expenses, shall be billed to the owner and shall be due and payable within 30 days thereafter.

C. The Council finds that an actual emergency exists, and that there is an urgent necessity for the preservation of life, health or property, whenever the City Manager summarily abates a public nuisance. In such cases, the City Manager may expend such sums as are necessary to abate the nuisance without the necessity of complying with the competitive bidding requirements of Section 67.4 of the City Charter, provided that nothing in this section changes or exempts the City Manager from any expenditure limit established by Chapter 7.18. (Ord. 6552-NS § 1, 2000: Ord. 6156-NS § 5, 1992)

Section 1.24.060 Warrants.

In the event that the owner fails to consent to the City entering his or her property for the purposes of inspecting and/or abating a nuisance under this chapter, the City shall apply and be granted said warrants from the municipal court if cause exists pursuant to Code of Civil Procedure Section 1822.50 to issue said warrant. (Ord. 6156-NS § 6, 1992)

Section 1.24.070 Appeal procedure--Administrative hearing.

The owner may appeal the nuisance determination to the City by filing an appeal within 15 calendar days of the date of mailing of the notice to abate. The appeal shall identify the property and state the objections together with all material facts in support thereof. (Ord. 6156-NS § 7, 1992)

Section 1.24.080 Service of notice of hearing.

A. In the event the owner appeals the nuisance determination, the City shall schedule an administrative hearing before a hearing officer designated by the City.

B. Notice of hearing shall be served personally or by first class mail, postage prepaid. The notice shall specify the time and place when and where the designated hearing officer will hear and decide upon the objections raised by the owner. Such notice shall be served not less than five days, exclusive of Saturdays, Sundays, and holidays, prior to the time set for the hearing. Service shall be deemed complete at the time notice is personally served or deposited in the mail. (Ord. 6156-NS § 8, 1992)

Section 1.24.090 Waiver of hearing.

Failure of the owner to appear at the hearing after notice has been served shall be deemed a waiver of the hearing and an admission by said owner of the nuisance charge. In the event of such failure to appear, the City may order that the nuisance be abated immediately thereafter. (Ord. 6156-NS § 9, 1992)

Section 1.24.100 Hearing on objections.

The hearing officer shall hear and rule on objections to abatement of the nuisance. The owner may appear at the hearing by counsel. The formal rules of evidence shall not apply. All witnesses shall be sworn and each party shall have the right to cross-examine adverse witnesses. The hearing may be continued from time to time. The ruling shall either allow or overrule the objections, or make such other determinations as are consistent with this chapter and shall be final except as provided in Section 1.24.130. (Ord. 6530-NS § 3, 2000: Ord. 6156-NS § 10, 1992)

Section 1.24.110 Notice of decision.

The hearing officer shall notify the owner of his or her determination in writing, and may direct the owner to abate the nuisance at his or her expense within a specified time period to the extent the nuisance has been found to exist. The time period specified shall be subject to the limitations set forth in Section 1.24.030.C. (Ord. 6530-NS § 4, 2000: Ord. 6156-NS § 11, 1992)

Section 1.24.120 City to perform abatement after hearing decision.

A. If the nuisance is not abated within the time specified in the notice of decision, the City shall have the power to abate such nuisance without further notice, including the power to condemn, destroy, or demolish any property constituting the nuisance if the nuisance cannot feasibly be abated without destruction of such property. If the property owner fails to consent to the City's entry on his or her property to abate the nuisance and has a reasonable expectation of privacy therein, the City shall seek an abatement warrant as set forth in Section 1.24.060.

B. Except as provided in Section 1.24.050.C, if sealed bids or proposals are required under Section 67 of the Charter to perform any abatement authorized by this section or any other provision of this code which authorizes abatement of nuisances or violations, the City may advertise for said bids by posting advertisements in the same manner and at the same location as required for ordinances, for five consecutive days. (Ord. 6552-NS § 2, 2000: Ord. 6530-NS § 5, 2000: Ord. 6156-NS § 12, 1992)

Section 1.24.130 Judicial review.

Review of the hearing decision shall be subject to judicial review pursuant to Ordinance No. 6087-N.S. (Chapter 2.96 of the Berkeley Municipal Code) and Code of Civil Procedure Sections 1094.5 and 1094.6. (Ord. 6156-NS § 13, 1992)

Section 1.24.140 Abatement costs made nuisance abatement lien or special assessment lien.

A. Notwithstanding any other provision of local law to the contrary, the costs incurred by the City in the abatement of a nuisance subject to the provisions of this chapter may be placed against the affected property as either a nuisance abatement lien or a special assessment lien pursuant to Government Code Section 38771, et seq. as amended from time to time or a lien pursuant to Government Code Section 54988 as amended from time to time.

B. The City may enforce a lien under this chapter in any manner permitted by law, including filing a civil action to either foreclose on its liens or to obtain a money judgment or both, or pursuing non-judicial foreclosure.

C. The City may elect, upon 30 days notice to all known and record owners of the affected property, to convert any nuisance abatement lien authorized by this chapter to a special assessment lien, or vice versa. Costs recoverable under this chapter shall include those categories of costs and fees set forth in Civil Code Section 3496, regardless of the type of nuisance involved. (Ord. 6776-NS § 1 (part), 2003: Ord. 6546-NS § 1, 2000: Ord. 6530-NS § 6, 2000: Ord. 6347-NS § 2, 1996: Ord. 6156-NS § 14, 1992)

Section 1.24.150 Itemized report of expenses.

The City shall keep an itemized account of the expenses, including incidental expenses, incurred by the City in the abatement. Upon completion of the abatement, the City will prepare a report specifying the work done, the itemized and total cost of the work, a description of the real property upon which the abatement was located and the names and addresses of the owner or owners. (Ord. 6156-NS § 15, 1992)

Section 1.24.160 Time limit for payment of costs by owner.

If the owner fails to pay the total costs demanded by the City for the abatement within 45 days after the demand for payment was mailed, the City may proceed to recover its costs pursuant to this chapter. (Ord. 6530-NS § 7, 2000: Ord. 6156-NS § 16, 1992)

Section 1.24.170 Notice of intent to place lien--Opportunity to request hearing.

A. If the owner fails to pay the total costs due within the time limit provided for in Section 1.24.160, the City shall provide the owner with a written notice:

1. of the proposed lien;
2. a description of the basis for the amounts comprising the lien;
3. giving the owner a minimum of 45 days to pay costs; and
4. notice that if the owner contests the costs, he/she has ten calendar days from the date of service of the notice to file objections to the costs and request a hearing on the reasonableness of the costs.

B. The failure of the owner to request a hearing within ten calendar days of the date of service of the notice shall constitute a waiver of the owner's right to a hearing.

C. Service of notice under this section shall be by first class and certified mail to the last known address of the owner of the property, and may also be by any other means reasonably calculated to provide actual notice, including but not limited to fax, personal delivery, posting a copy thereof in a conspicuous place upon the property for a period of ten days and publication thereof in a newspaper of general circulation published in the county in which the property is located pursuant to Government Code Section 6062, or any other comparable manner. (Ord. 7126-NS § 1, 2010: Ord. 6546-NS § 2, 2000: Ord. 6530-NS § 8, 2000: Ord. 6156-NS § 17, 1992)

Section 1.24.180 Hearing on owner's objections.

A. If the owner files objections and requests a hearing in a timely fashion, a hearing shall be held before the City Council.

1. At least ten days prior to the date of the hearing, the City shall mail by certified mail, postage prepaid, the owner notice of the date, time and location of the hearing.

2. The City Council shall hear and pass upon the owner's objections or protests.

3. The City Council's decision shall be final and conclusive and subject to review pursuant to Code of Civil Procedure Sections 1094.5 and 1094.6. The City Clerk shall prepare and preserve a full record of the proceeding for 120 days after the close of the hearing. (Ord. 6156-NS § 18, 1992)

Section 1.24.190 Lien procedure.

A. If the City Council determines that the proposed lien shall become a lien, it may also cause a notice of lien to be recorded. This lien shall attach upon recordation in the office of the County Recorder of the county in which the property is situated and shall have the same force, priority, and effect as a judgment lien, not a tax lien.

B. The notice shall, at a minimum, identify the record owner or possessor of the property, set forth in the last known address of the record owner or possessor, set forth the date upon which the lien was created against the property, and include a description of the real property subject to the lien and the amount of the lien.

C. The notice shall be served by any means reasonably calculated to provide actual notice, including but not limited to first class mail, fax or personal delivery. If the owner of record, after diligent search cannot be found, then notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten days and publication thereof in a newspaper of general circulation published in the county in which the property is located pursuant to Government Code Section 6062.

D. A nuisance abatement lien may be foreclosed by an action brought by the City.

E. The City may recover from the property owner all costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien. (Ord. 6530-NS § 9, 2000: Ord. 6156-NS § 19, 1992)

Section 1.24.200 Costs of assessment as special assessment against parcel.

In addition to any other remedy, the City may recover the costs of the abatement by making the costs of the abatement a special assessment against the property on which the nuisance was abated pursuant to Government Code Section 38773.5. (Ord. 6546-NS § 3, 2000: Ord. 6156-NS § 20, 1992)

Section 1.24.205 Costs of assessment as nuisance abatement lien against parcel.

In addition to any other remedy, the City may recover the costs of the abatement by making the costs of the abatement a nuisance assessment lien against the property on which the nuisance was abated pursuant to Government Code Section 38771, et seq. as amended from time to time. (Ord 6776-NS § 1 (part), 2003: Ord 6546-NS § 4, 2000)

Section 1.24.210 Remedies.

The City Attorney may bring an action under this section on behalf of the City for injunctive relief, including an action for public sale of the property to pay any outstanding liens. In any such action, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs; provided, that, pursuant to Government Code Section 38773.5, attorneys' fees shall only be available in an action or proceeding in which the City has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding. (Ord. 7172-NS § 1, 2011: Ord. 6156-NS § 21, 1992)

Section 1.24.220 Severability.

If any part or provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this chapter are severable. (Ord. 6156-NS § 22, 1992)

Chapter 1.26

VIOLATIONS DECLARED PUBLIC NUISANCE

Sections:

- 1.26.010** **Certain violations of City ordinances declared public nuisances--Abatement by injunction.**
- 1.26.020** **City Attorney authorized to file civil actions to abate public nuisances.**
- 1.26.030** **Civil penalties for serious offenders.**
- 1.26.040** **Recovery of costs of abatement and attorneys' fees.**

Section 1.26.010 **Certain violations of City ordinances declared public nuisances--Abatement by injunction.**

A. Violations of all City ordinances and codes which relate to the use of land and buildings, the construction and alteration of buildings, the maintenance and habitability of housing, fire safety, public health and environmental health, and which result in a physical change to land or buildings, are hereby declared to be public nuisances. In addition, violations of City ordinances regulating noise are hereby declared to be public nuisances.

B. In addition to any other remedies or penalties which may be available, any violation described in the preceding paragraph shall be subject to abatement by the City, as well as any other remedies that may be permitted by law for public nuisances, and may be enforced by an injunction issued by the Superior Court in a civil action, based upon a showing by the City that said violation exists.

C. Notwithstanding any provision in this code to the contrary, this section does not define the term "nuisance" as it is used in, or for purposes of, Code of Civil Procedure Section 1161(4). (Ord. 7080-NS § 1, 2009; Ord. 6660-NS § 1, 2001; Ord. 6297-NS § 2 (part), 1995)

Section 1.26.020 **City Attorney authorized to file civil actions to abate public nuisances.**

The City Attorney is authorized to initiate civil actions to remedy public nuisances as defined in this chapter as may be permitted by law. (Ord. 7080-NS § 2, 2009; Ord. 6297-NS § 2 (part), 1995)

Section 1.26.030 **Civil penalties for serious offenders.**

A. In addition to any other remedy or penalty which may be available, any person who is found by any court of competent jurisdiction to have committed three wilful violations described in Section 1.26.010.A within any twelve-month period, shall be subject to a fine of ten thousand dollars. An additional fine of ten thousand dollars shall be assessed for each succeeding violation adjudged to have occurred within the same twelve-month period.

B. For purposes of this chapter only, a continuing violation shall be deemed a single violation.

C. The fines established by this section shall be awarded upon entry of judgment in any civil action initiated pursuant to this chapter. (Ord. 6297-NS § 2 (part), 1995)

Section 1.26.040 **Recovery of costs of abatement and attorneys' fees.**

In any civil action filed pursuant to this chapter, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs; provided, that, pursuant to Government Code Section 38773.5, attorneys' fees shall only be available in an action or proceeding in which the City has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding. (Ord. 7173-NS § 1, 2011; Ord. 6297-NS § 2 (part), 1995)

Chapter 1.28

ADMINISTRATIVE CITATIONS

Sections:

1.28.010	Purpose and applicability.
1.28.020	Enforcement officer--Defined--Authority.
1.28.030	Administrative citation.
1.28.040	Amount of fines.
1.28.050	Payment of the fine.
1.28.060	Hearing request.
1.28.070	Advance deposit hardship waiver.
1.28.080	Hearing officer.
1.28.090	Hearing procedures.
1.28.100	Hearing officer's decision.
1.28.110	Late payment charges.
1.28.120	Recovery of administrative citation fines and costs.
1.28.130	Right to judicial review.
1.28.140	Notices.

Section 1.28.010 Purpose and applicability.

- A. This chapter provides for administrative citations as provided in Government Code Section 53069.4.
- B. The remedies provided by this chapter are in addition to all other legal remedies, criminal or civil, which may be pursued by the City to address any violation of this code.
- C. Use of this chapter shall be at the sole discretion of the City. (Ord. 6710-NS § 2, 2002)

Section 1.28.020 Enforcement officer--Defined--Authority.

- A. For purposes of this chapter, "enforcement officer" shall mean any City employee or agent of the City with the authority to enforce any provision of this code.
- B. Enforcement officers shall have authority to issue administrative citations pursuant to this chapter. (Ord. 6710-NS § 2, 2002)

Section 1.28.030 Administrative citation.

- A. Whenever an enforcement officer charged with the enforcement of any provision of this code determines that a violation of that provision has occurred, the enforcement officer may issue an administrative citation to any person responsible for the violation.
- B. 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. An order to correct the code violation described in the administrative citation if said violation is correctable as described in Section 1.20.030;
 8. A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request for hearing form to contest the

administrative citation may be obtained and an advance deposit waiver; and

9. The name and signature of the citing enforcement officer.

C. In addition to the administrative citation and penalty authorized by this chapter, an order to correct a violation under subdivision B.7 of this section may be enforced as set forth in the chapter applicable to that violation.

D. 1. In cases involving a continuing violation pertaining to building, plumbing, electrical, or other similar structural or zoning issues that do not create an immediate danger to health or safety, a reasonable time not to exceed six months shall be provided to remedy or correct the violation prior to imposition of fines or penalties. In determining what is a reasonable time, the City may consider the estimate of local professionals including licensed contractors. In the case of such violations, the time within which the violation must be corrected in order to avoid a fine shall also be specified on the administrative citation.

2. In cases where a citation is based solely on a person's failure to have obtained a permit or license from the City other than for a regulated business activity, and the person has not previously been cited for the same violation, the citation shall specify a reasonable time to obtain the permit or license, and the penalty shall not exceed \$50.00 if the cited person shows proof of correction to the enforcing officer within the time established for obtaining the permit or license. This subdivision shall apply to violations of Title 23 only at the option of the enforcement officer. (Ord. 6836-NS § 1 (part), 2005; Ord. 6710-NS § 2, 2002)

Section 1.28.040 Amount of fines.

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

B. The schedule of fines shall specify any increased fines for repeat violations of the same code provision by the same person within 36 months from the date of an administrative citation.

C. The schedule of fines shall specify the amount of any late payment charges imposed for the payment of a fine after its due date. (Ord. 6710-NS § 2, 2002)

Section 1.28.050 Payment of the fine.

A. The fine shall be paid to the City within 30 days from the date of the administrative citation.

B. Payment of a fine under this chapter shall not excuse or discharge any continuation or repeated occurrence of the code violation that is the subject of the administrative citation. (Ord. 6710-NS § 2, 2002)

Section 1.28.060 Hearing request.

A. Any recipient of an administrative citation may contest the existence of a violation of the code, that he or she is the responsible party or any order issued under Section 1.28.030.B by completing a request for hearing form and returning it to the City within 21 days from the date of the administrative citation, together with an advance deposit of the fine or notice that a request for an advance deposit hardship waiver has been filed pursuant to Section 1.28.070.

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

C. If the enforcement officer submits an additional written report concerning the administrative citation to the hearing officer for consideration at the hearing, a copy of this report also shall be served on the person requesting the hearing at least five days prior to the date of the hearing. (Ord. 6836-NS § 2 (part), 2005; Ord. 6710-NS § 2, 2002)

Section 1.28.070 Advance deposit hardship waiver.

A. Any person who intends to request a hearing under Section 1.28.060 and who is financially unable to make the advance deposit of the fine as required in Section 1.28.060.A may file a request for an advance deposit hardship waiver.

B. The request shall be filed with the City on an advance deposit hardship waiver application form within ten days of the date of the administrative citation.

C. The requirement of depositing the full amount of the fine as described in Section 1.28.060.A shall be stayed unless or until the City makes a determination not to grant the advance deposit hardship waiver.

D. The City may grant the advance deposit hardship waiver only if the cited party submits a sworn declaration, together with any supporting documents or materials, which demonstrates his or her financial inability to deposit with the City the full amount of the fine in advance of the hearing.

E. If the City determines not to issue an advance deposit hardship waiver, the cited party shall remit the deposit to the City within ten days of the date of that decision or 30 days from the date of the administrative citation, whichever is later.

F. The City shall issue a written determination of its reasons for granting or denying an advance deposit hardship waiver. This written determination shall be final.

G. The written determination shall be served upon the applicant for the advance deposit hardship waiver by first class mail. (Ord. 6710-NS § 2, 2002)

Section 1.28.080 Hearing officer.

The City Manager shall designate the hearing officer for administrative citation hearings. (Ord. 6710-NS § 2, 2002)

Section 1.28.090 Hearing procedures.

A. No hearing to contest an administrative citation before a hearing officer shall be held unless the fine has been deposited in advance in accordance with Section 1.28.060 or an advance deposit hardship waiver has been granted in accordance with Section 1.28.070.

B. A hearing before the hearing officer shall be set for a date that is not less than 15 days and not more than 30 days from the date that the request for hearing is filed in accordance with the provisions of this chapter.

C. At the hearing, the party contesting the administrative citation shall be given the opportunity to testify and to present evidence concerning the administrative citation.

D. The failure of any recipient of an administrative citation to appear at the administrative citation hearing shall constitute a forfeiture of the fine, a failure to exhaust his or her administrative remedies and consent to any order issued pursuant to Section 1.28.030.B.6 and B.7.

E. 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. If the party contesting the citation presents evidence to the contrary, the burden of proof shall shift to the enforcement officer.

F. The hearing officer may continue the hearing and request additional information from the enforcement officer or the recipient of the administrative citation prior to issuing a written decision. (Ord. 6836-NS § 3 (part), 2005; Ord. 6710-NS § 2, 2002)

Section 1.28.100 Hearing officer's decision.

A. After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision to uphold, reduce or cancel the administrative citation and shall list in the decision the reasons for that decision. The decision of the hearing officer shall be final.

B. If the hearing officer determines that the administrative citation should be upheld, then the fine amount on deposit with the City shall be retained by the City.

C. If the hearing officer determines that the administrative citation should be upheld and the fine has not been deposited pursuant to an advance deposit hardship waiver, the hearing officer shall set forth in the decision a payment schedule for the fine.

D. If the hearing officer determines that the administrative citation should be canceled or reduced and the fine was deposited with the City, then the City shall promptly refund the amount of the deposited fine or the amount paid in excess of the reduced fine, together with interest at the average rate earned on the City's portfolio for the period of time that the fine or excess fine amount was held by the City.

E. The recipient of the administrative citation shall be served with a copy of the hearing officer's written decision.

F. The employment, performance evaluation, compensation and benefits of the hearing officer shall not be directly or indirectly conditioned upon the amount or number of administrative citation fines upheld by the hearing officer. (Ord. 6710-NS § 2, 2002)

Section 1.28.110 Late payment charges.

Any person who fails to pay to the City any fine imposed pursuant to the provisions of this chapter on or before the date that fine is due also shall be liable for the payment of any applicable late payment charges set forth in the schedule of fines, as well as interest at the legal rate. (Ord. 6710-NS § 2, 2002)

Section 1.28.120 Recovery of administrative citation fines and costs.

The City may collect any past due administrative citation fine or late payment charge by use of all available legal means, including, but not limited to, means available for the collection of judgments, liens and actions for recovery of money. The City also may recover its collection costs. (Ord. 6710-NS § 2, 2002)

Section 1.28.130 Right to judicial review.

A. 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 seeking review in accordance with Government Code Section 53069.4.

B. The City is prohibited from seeking review of an administrative decision of a hearing officer on an administrative citation pursuant to Government Code Section 53069.4.

C. No administrative decision of a hearing officer on an administrative citation shall estop the City Council or any other board or commission or officer or employee of the City from exercising his, her or its independent authority and judgment in any other forum within or outside the City. (Ord. 7081-NS § 1, 2009; Ord. 6710-NS § 2, 2002)

Section 1.28.140 Notices.

A. Whenever a notice or report is required to be given or provided under this chapter, unless different provisions herein are otherwise specifically made, such notice may be given either by personal delivery thereof to the person to be notified or by deposit in the United States Mail, in a sealed envelope postage prepaid, addressed to such person to be notified at his last-known business or residence address as the same appears in the public records or other records pertaining to the matter to which such notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in a U.S. mail box.

B. Failure to receive any notice specified in this chapter does not affect the validity of proceedings conducted hereunder.

C. Proof of giving any notice may be made by the certificate of any officer or employee of the City, or by affidavit of any person over the age of 18 years, which shows service in conformity with this code or other provisions of law applicable to the subject matter concerned. (Ord. 6710-NS § 2, 2002)

