

**ORDINANCE NO. 1092**

**AN ORDINANCE OF THE CITY OF LOS BANOS  
AMENDING CHAPTER 11 OF TITLE 4 OF THE  
LOS BANOS MUNICIPAL CODE REGARDING  
ADMINISTRATIVE CITATIONS**

The City Council of the City of Los Banos does ordain as follows:

**Section 1.** The title to Chapter 11 of Title 4 of the Los Banos Municipal code (“Code”) shall be renamed to read “Administrative Enforcement”.

**Section 2.** A new Section 4-11.01 is added to be numbered and titled and to read as follows:

**Sec. 4-11.01 Purpose and Intent.**

The City Council has determined that the enforcement of this Code, any uniform or other code it adopts by reference, and any other ordinance of the City is an important public service and is vital to the protection of the public’s health, safety, and quality of life. The City Council has determined that there is a need for alternative methods of code enforcement and that a comprehensive code enforcement system includes criminal, civil, and administrative remedies.

**Section 3.** Section 4-11.01 of the Code is renumbered to Section 4-11.02 and amended to read as follows:

**Sec. 4-11.02 Applicability.**

(a) This chapter provides for administrative citations, which are in addition to all other legal remedies, criminal or civil, which may be pursued by the City to address any violation of this Code. Use of this chapter shall be at the sole discretion of the City.

(b) The administrative citations process set forth in this chapter does not apply to continuing violations of this Code that pertain to building, plumbing, electrical or other similar structural or zoning issues.

**Section 4.** Section 4-11.02 of the Code is renumbered to Section 4-11.03 and amended to read as follows:

### **Sec. 4-11.03 Definitions.**

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter it's most reasonable application.

(a) "Administrative citation" is a notice issued by an enforcement officer pursuant to this chapter that there has been a violation of the Code and that an administrative fine is imposed.

(b) "Appellant" is a person who seeks an administrative hearing on an administrative citation in the manner required by this chapter.

(c) "Code violation" is any violation of this Code or any other ordinance of the City, including any codes adopted by reference as permitted by law and any violation of any condition imposed upon the issuance of any permit, license, or other approval (e.g., subdivision map, use permit, variance, zoning clearance) pursuant to this Code or any other ordinance of the City.

(d) "City Manager" is the City Manager or his or her designee.

(e) "Enforcement officer" is an individual designated by the City Manager to act under this chapter.

(f) "Hearing authority" is the City Manager or his or her designee.

(g) "Issue" means to provide a notice of violation, an administrative citation, a notice of hearing, a notice of the continuance of a hearing, or a notice of decision by (i) personally serving it on a responsible person, (ii) mailing it to a responsible person by first-class mail, or (iii) posting it in a conspicuous place on the property to which it relates and mailing a copy of it to a responsible person at the address where the violation occurred.

(h) "Notice of decision" is a notice that informs a responsible person of a decision made by a hearing authority pursuant to the provisions of this chapter.

(i) "Notice of violation" is any notice that informs a person that a violation of the Code, any code it adopts by reference, or other applicable law, has occurred.

(j) "Responsible person" is any of the following:

1. A person or legal entity who, by action or inaction, causes, maintains, permits or allows a code violation.

2. A person or legal entity whose agent, employee, or independent contractor, by action or inaction, causes, maintains, permits or allows a code violation.

3. An owner of real property on which a code violation occurs.
4. A lessee or sublessee with the current right of possession of real property on which a code violation occurs.
5. A person or legal entity that uses real property on which a code violation occurs.
6. If any of the above persons are minors, the parents or guardians of such minors shall be deemed the responsible person.

**Section 5.** A new Section 4-11.04 is added to be numbered and titled and to read as follows:

**Sec. 4-11.04 General Enforcement Authority.**

Enforcement officers may issue notices of violation and administrative citations, inspect public and private property, and use whatever judicial and administrative remedies are available under this Code and other law to enforce the ordinances of the City. More specific provisions regarding administrative or other enforcement authority and procedures for particular violations may exist in this Code and shall to fullest extent permissible, be construed to complement rather than contradict this chapter.

**Section 6.** A new Section 4-11.05 is added to be numbered and titled and to read as follows:

**Sec. 4-11.05 Authority to Inspect.**

Enforcement officers are authorized to enter upon any property or premises within the City to ascertain whether the ordinances of the city are being obeyed, and to make any examination and surveys as may be necessary in the performance of their enforcement duties, in accordance with Fourth Amendment of United States Constitution and the related protections of the California Constitution. These inspections may include the taking of photographs, samples, or other physical evidence. All inspection, entries, examinations and surveys shall be performed reasonably and in accordance with law. If an owner or occupant of property or his or her agent refuses to consent to entry and inspection, an enforcement officer may seek an administrative inspection warrant pursuant to law.

**Section 7.** A new Section 4-11.06 is added to be numbered and titled and to read as follows:

**Sec 4-11.06 Warning of a Code Enforcement Violation.**

Whenever an enforcement officer charged with the enforcement of any provision of a Code determines that a violation of that provision has occurred, the enforcement officer

may issue a warning of a code enforcement violation to any responsible party for the violation. The warning shall identify the Code section(s) violated and provide a description of the violation and how it can be corrected. A warning is not a prerequisite to the issuance of a Notice of Violation or an Administrative Citation.

**Section 8.** A new Section 4-11.07 is added to be numbered and titled and to read as follows:

**Sec. 4-11.07 Notice of Violation.**

Whenever an enforcement officer determines that a violation exists, the enforcement officer may issue a notice of violation to any responsible persons. The notice of violation must include the following information:

1. The Code section(s) or other ordinances violated.
2. A description of the condition creating or constituting the violation(s).
3. The address where the violation(s) occurs.
4. The name of the responsible person and any other involved persons known to the enforcement officer.
5. The date and, if relevant, time at which the violation was observed.
6. If applicable, a list of any corrections necessary to bring the property into compliance.
7. A deadline by which to correct the violation(s).
8. The signature of the enforcement officer issuing the notice of violation.
9. The date the notice of violation is issued.

**Section 9.** Section 4-11.03 of the Code is renumbered to Section 4-11.08 and amended to read as follows:

**Sec. 4-11.08 Administrative Citations.**

(a) Regardless of whether a responsible person has received a Notice of Violation whenever an Enforcement Officer charged with the enforcement of any provision of this Code determines that a violation of that provision has occurred, or if a responsible person(s) fails to correct a code violation within the time prescribed in a notice of violation, the Enforcement Officer shall have the authority to issue an administrative citation to any responsible person.

(b) Each administrative citation shall contain the following information:

- (1) The name of the responsible person and any other involved persons known to the enforcement officer.
- (2) The date and, if relevant, time at which the violation was observed;
- (3) The address or a definite description of the location where the violation occurred;
- (4) The section of this Code violated and a description of the violation;
- (5) The amount of the fine for the Code violation;
- (6) 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;
- (7) An order prohibiting the continuation or repeated occurrence of the Code violation described in the administrative citation;
- (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
- (9) The name and signature of the citing Enforcement Officer.

**Section 10.** A new Section 4-11.09 is added to be numbered and titled and to read as follows:

**Sec. 4-11.09 Administrative Fines and Penalties**

(a) Any violation of a provision of this Code, any code it adopts by reference, or other applicable law, may be subject to an administrative fine or penalty pursuant to this chapter. (This also includes any violation of any condition imposed upon the issuance of any permit, license, conditional use permit, or other approval (e.g. subdivision map, special use permit, variance, zoning clearance) pursuant to this Code.

(b) Each and every responsible person is joint and severally liable, in accordance with notice and procedures of this chapter, for all fines or penalties imposed for the violation(s).

(c) A violation that exists for more than one day shall be considered a separate and distinct violation for each day that it exists. Each daily violation may be subject to the maximum fine or penalty permitted under this chapter.

(d) An administrative citation may charge a code violation for one or more days on which a violation exists and for violation of one or more code sections.

(e) The administrative fines and penalties delineated in this chapter are in addition to, and do not preclude imposition of, any other remedies, criminal, civil, or administrative, available to the City. Imposition of administrative fines or penalties shall be at the sole discretion of the City.

**Section 11.** Section 4-11.04 of the Code is renumbered to Section 4-11.10 and amended to read as follows:

**Sec. 4-11.10 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 thirty-six (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.

(d) For any violation of this code for which there is no specific administrative penalty established in this code or by separate resolution of the city council, the fine shall be in the amount of one hundred dollars (\$100) for the first violation; two hundred dollars (\$200) for a second violation of the same provision of this code occurring during the immediately following consecutive twelve month period; and five hundred dollars (\$500) for each additional violation of the same provision of this code occurring during the immediately following consecutive twelve month period.

**Section 12.** Section 4-11.05 of the Code is renumbered to Section 4-11.11 and amended to read as follows:

**Sec. 4-11.11 Payment of fine.**

(a) The fine shall be paid to the City within thirty (30) days from the date of the administrative citation.

(b) Any administrative citation fine paid pursuant to subsection (a) shall be refunded in accordance with Section 4-11.16 if it is determined, after a hearing, that the person charged in the administrative citation was not responsible for the violation or that there was no violation as charged in the administrative citation.

(c) Payment of a fine under this chapter shall not excuse or discharge any continuation or repeated occurrence of the Code violation that is the subject of the administrative citation.

**Section 13.** Section 4-11.06 of the Code is renumbered to Section 4-11.12 and amended to read as follows:

**Sec. 4-11.12 Administrative Hearing.**

(a) A recipient of an administrative citation may request an administrative hearing. Such request must be filed within twenty (20) calendar days of the issuance of the first administrative citation. Failure to request a hearing before the deadline, or failure to comply with all the terms for requesting a hearing, constitutes an abandonment of such request and a failure to exhaust administrative remedies.

(b) A request for an administrative hearing shall be made in writing and filed with the City Clerk, and shall include any grounds which the responsible person wishes the City to consider. A request for hearing form may be obtained from the department specified on the administrative citation. The request shall be accompanied by a deposit of the full amount of the fine, plus any penalties imposed by the administrative citation in the event the fine has not yet been paid.

(c) The person requesting the hearing shall be notified in writing of the time and place set for the hearing at least ten (10) calendar days prior to the date of the hearing.

(d) A cited person may request one continuance of a hearing provided he or she does so in writing before the date of the hearing and states a reasonable basis for the request. Unless the City issues a written notice of continuance, the hearing shall take place on the date, time and location specified in the notice of hearing transmitted to the cited person. A cited person's failure to attend a hearing shall constitute an abandonment of the request for the hearing and a failure to exhaust administrative remedies.

**Section 14.** Section 4-11.07 of the Code is renumbered to Section 4-11.13 and amended to read as follows:

**Sec. 4-11.13 Advance deposit hardship waiver.**

(a) Any person who intends to request a hearing to contest that there was a violation of the Code or that he or she is the responsible party and who is financially unable to make the advance deposit of the fine as required in Section 4-11.12(b) may file a request for an advance deposit hardship waiver.

(b) The request shall be filed with the Department of Finance on an advance deposit hardship waiver application form, available from the Department of Finance, within ten (10) days of the date of the administrative citation.

(c) The requirement of depositing the full amount of the fine as described in Section 4-11.12(b) shall be stayed unless or until the Director of Finance makes a determination not to issue the advance deposit hardship waiver.

(d) The Director may waive the requirement of an advance deposit set forth in Section 4-11.12(b) and issue the advance deposit hardship waiver only if the cited party submits to the Director a sworn affidavit, together with any supporting documents or materials, demonstrating 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) If the Director determines not to issue an advance deposit hardship waiver, the person shall remit the deposit to the City within ten (10) days of the date of that decision or thirty (30) days from the date of the administrative citation.

(f) 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 shall be final.

(g) The written determination of the Director shall be served upon the person who applied for the advance deposit hardship waiver.

**Section 15.** Section 4-11.08 of the Code is renumbered to Section 4-11.14.

**Section 16.** Section 4-11.09 of the Code is renumbered to Section 4-11.15 and amended to read as follows:

**Sec. 4-11.15 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 4-11.12(b) or an advance deposit hardship waiver has been issued in accordance with Section 4-11.13.

(b) A hearing before the Hearing Officer shall be set for a date that is not less than fifteen (15) days and not more than sixty (60) days from the date that the request for hearing is filed in accordance with the provisions of this chapter.

(c) The hearing shall be conducted by the hearing officer on the date, time, and location specified in the notice of hearing transmitted to the cited person.

(d) 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.

(e) At the hearing, the cited person shall be given the opportunity to testify and to present evidence concerning any code violation specified in the administrative citation.

(f) The enforcement officer or other representatives of the City may, but are not required, to attend the hearing.

(g) The failure of any recipient of an administrative citation to appear at the administrative citation hearing shall constitute a forfeiture of the fine and a failure to exhaust their administrative remedies.

(h) The Hearing Officer may continue the hearing and request additional information from the Enforcement Officer or the recipient of the administrative citation prior to issuing a written decision.

(i) A hearing need not be conducted in accordance with the technical rules of evidence. Any relevant evidence may be admitted if it is evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might consider such admission improper in a civil action. Irrelevant or unduly repetitious evidence shall be excluded.

**Section 17.** Section 4-11.10 of the Code is renumbered to Section 4-11.16.

**Section 18.** Section 4-11.13 of the Code is renumbered to Section 4-11.17 and amended to read as follows:

**Sec. 4-11.17 Judicial review.**

A cited person may seek judicial review of the hearing authority's decision by filing a petition for review with the Superior Court, pursuant to Government Code Section 53069.4 within twenty (20) calendar days after service of a copy of the notice of decision. In any such action, the prevailing party shall have the right to recover reasonable attorney fees and cost.

**Section 19.** Sections 4-11.11 and 4-11.14 of the Code are renumbered to Sections 4-11.18 and 4-11.20 respectively.

Section 20. Section 4-11.12 of the Code is renumbered to Section 4-11.19 and is retitled as follows:

**Sec. 4-11.19 Collection of Administrative Fines and Costs.**

**Section 20.** To the extent that the terms and provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior City ordinance, motion, resolution, rule or regulation governing the same subject, the terms of this Ordinance shall prevail with respect to the subject matter thereof and such inconsistent

or conflicting provisions of prior ordinances, motions, resolutions, rules or regulations are hereby repealed.

**Section 21.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

**Section 22.** This Ordinance shall go into effect and be in full force and operation thirty (30) days after its final passage and adoption. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

Introduced by Council Member Sousa and seconded by Council Member Villalta on the 21<sup>st</sup> day of April, 2010.

Passed on the 5<sup>th</sup> day of May, 2010 by the following vote:

AYES: Council Members Faria, Sousa, Stone, Villalta, Mayor Jones  
NOES: None  
ABSENT: None

APPROVED:

/s/ Tommy Jones  
Tommy Jones, Mayor

ATTEST:

/s/ Lucille L. Mallonee  
Lucille L. Mallonee, City Clerk