

ORDINANCE No. 2026-03

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VISALIA TO AMEND CHAPTER 1.13 TO ENSURE CONSISTENCY RELATED TO THE ADMINISTRATIVE PROCESS FOR CORRECTING MUNICIPAL CODE VIOLATIONS, CITY WIDE

WHEREAS, Ordinance No. 2026-03 is a request to amend Chapter 1.13 to ensure consistency related to the administrative process for correcting municipal code violations, city wide; and

WHEREAS, the City of Visalia is seeking these revisions to ensure consistency is maintained and current administrative hearing procedures align with the City's current practice; and

WHEREAS, the City Council of the City of Visalia, after duly published notice, held a public hearing before said City Council regarding Ordinance No. 2026-03 on April 20, 2026, and considered said Ordinance in accordance with the City of Visalia; and

WHEREAS, the City Council of the City of Visalia finds that the project is exempt from further review under the California Environmental Quality Act (CEQA) Guidelines, Code of Regulations Section 15061(b)(3) (common sense exemption), as the proposed Ordinance will not in and of themselves have an effect on the environment.

NOW, THEREFORE, BE IT RESOLVED that the project is exempt from further environmental review pursuant to CEQA Guidelines, Code of Regulations Section 15061(b)(3).

BE IT FURTHER RESOLVED that the City Council of the City of Visalia hereby makes the following specific findings regarding Ordinance No. 2026-03:

1. That the Ordinance is needed to ensure consistency is maintained and current administrative hearing procedures align with the City's current practice.
2. That the project is exempt from further review under the California Environmental Quality Act (CEQA) Guidelines section 15061(b)(3) (common sense exemption).

NOW, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VISALIA, has identified the need to amend the existing provisions to the Visalia Municipal Code Chapter 1.13 "Code Enforcement Procedures and Penalties" of the Visalia Municipal Code. The proposed amendments are to ensure consistency and match current practices related to the administrative process for correcting violations are hereby added and/or amended as contained in Attachment "A", this Ordinance.

Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstances, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivision, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Visalia hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Construction. The City Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Effective Date. This Ordinance shall take effect thirty days after its adoption.

Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

PASSED AND ADOPTED:

BRETT TAYLOR, MAYOR

ATTEST:

LESLIE CAVIGLIA, CITY CLERK

APPROVED BY CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF TULARE) ss.
CITY OF VISALIA)

I, Leslie Caviglia, City Clerk of the City of Visalia, certify the foregoing is the full and true Ordinance 2026-03 passed and adopted by the Council of the City of Visalia at a regular meeting held on May 4, 2026 and certify a summary of this ordinance will be published in the Visalia Times Delta.

Dated:

LESLIE CAVIGLIA, CITY CLERK

By Reyna Rivera, Chief Deputy City Clerk

Ordinance No. 2026-03

Attachment “A”

Section 1. The Visalia Municipal Code shall be changed as follows.

Changes to City of Visalia Municipal Code, as specified by underline and *italics* for additions and strikeout for deletions.

Chapter 1.13

ADMINISTRATIVE CODE ENFORCEMENT PROCEDURES AND PENALTIES

- 1.13.010 Declaration and Purpose.
- 1.13.020 Adoption.
- 1.13.030 Definitions.
- 1.13.040 Judicial Review.
- 1.13.050 Administrative Enforcement Authority.
- 1.13.060 Commencement of Administrative Enforcement; Form of Order.
- 1.13.070 Service of Administrative Order.
- 1.13.080 Appeal of Administrative Order.
- 1.13.090 Administrative Order Appeal Hearing.
- 1.13.100 Form and Content of Appeal Hearing Decision.
- 1.13.110 Payment and Collection of the Administrative Penalty.

1.13.010 Declaration and Purpose

The purpose of this chapter relating to administrative code enforcement is to provide alternative remedies to address acts or omissions set forth in Section 1.13.050. Violations may be corrected, abated or addressed in a number of ways. It is the intent of this section to provide the city with an administrative process for correcting violations, to penalize violators for failure to comply with city codes and ordinances, and to empower the city to abate violations that the responsible parties have failed to abate themselves. (Ord. 2006-15 § 2 (part), 2006; Ord. 9925 § 1 (part), 2000)

1.13.020 Adoption

The city council of the city of Visalia hereby finds and determines that enforcement of the Visalia Municipal Code, other ordinances adopted by the city, conditions on entitlements and terms of city agreements are matters of local concern and serve important public purposes. The city council further finds that there is a need for an alternative method of enforcement of violations of this code. The council further finds and declares that an appropriate method for enforcement for violations of the code is an administrative citation, civil penalty and abatement program. Consistent with its powers

as a charter city, the city of Visalia hereby adopts this administrative enforcement procedure provision in order to achieve the following goals:

A. To protect the public peace, health, safety and welfare of the communities in the city of Visalia;

B. To provide for an administrative process that has objective criteria for the imposition of penalties and abatement orders and provides for a fair process to appeal the imposition of administrative enforcement orders;

C. To provide a method to penalize responsible parties who fail or refuse to comply with provisions of the city code, ordinances, agreements, or conditions on entitlements in the city of Visalia;

D. To minimize the expense and delay where the sole remedy is to pursue responsible parties in the civil or criminal justice system. (Ord. 2006-15 § 2 (part), 2006; Ord. 9925 § 1 (part), 2000)

1.13.030 Definitions

As used in this chapter, the following terms are defined in this section:

Administrative abatement orders. "Administrative abatement orders" shall refer to that portion of an administrative enforcement order that directs a responsible party to take various actions to abate a condition created in violation of the City's Municipal Code or ordinances.

Administrative citation. "Administrative citation" shall refer to a specific type of administrative order, specifically when a fine is being immediately issued due to a violation of the municipal code. An administrative order and administrative citation shall have the same meaning, and the terms may be used interchangeably.

Administrative enforcement order. "Administrative enforcement order" shall refer to the order issued by an enforcement officer determining that a violation of a municipal code section or other provision as set forth in 1.13.050 has occurred, and establishing the administrative penalty to be assessed, and setting forth the administrative abatement order, if any, to be imposed.

~~Administrative penalty guidelines. "Administrative penalty guidelines" are guidelines developed and maintained by each department of city which contain sample levels of penalties for violation of the City's Municipal Code or ordinances.~~

Appeal hearing officer. "Appeal hearing officer" means any person appointed by the city manager to preside over the administrative hearings provided for in this chapter.

Calendar day. "Calendar day" includes each and every consecutive day of the calendar.

City. "City" means the city of Visalia.

Code. "Code" shall mean the Visalia Municipal Code.

Enforcement officer. "Enforcement officer" means any city employee or agent of the city with the authority to enforce any provision of this code or any code adopted by the city.

Final Administrative Enforcement Order. “Final Administrative Enforcement Order” shall refer to any administrative enforcement order that has become final either by virtue of the responsible party failing to request an appeal hearing within the time period provided, or by virtue of a decision by the appeal hearing officer to affirm the order.

Penalty. “Penalty” shall include, but not be limited to, “civil/administrative penalty” and shall mean the amount assessed for violation of this code pursuant to the administrative notice and order procedure.

Person. “Person” includes any person, firm, association, business entity, company, corporation, government entity, organization, partnership, joint venture, limited liability company, trust, or estate.

Responsible party. “Responsible party” means any of the following: (1) Any person that causes, maintains, permits, or is otherwise responsible for an act or omission that constitutes a violation under this chapter, if the person is a minor, then the parents or guardians of the minor shall be considered the responsible party; or (2) A person who has an ownership interest in real property upon which a violation exists; or (3) A person exercising possession or control of real property upon which a violation exists, including but not limited to a tenant, agent, employee, contractor, subcontractor, or other occupant.

~~shall refer to any natural person, the parent or legal guardian of any person under the age of eighteen (18) years, trust, estate, receiver, cooperative, partnership, corporation, association, business, joint venture, limited liability company, any government agency that is not statutorily exempt, or any other entity, who has done any act for which an administrative enforcement order may be imposed.~~

Violation. “Violation” means the failure to comply with any provision of the Visalia Municipal Code, ordinances adopted by the Visalia City Council, or violations of licenses, permits, entitlement, or approvals issued by the City of Visalia as stated in 1.13.050(A). Each day or any portion thereof, during which any violation continues, exists, or occurs shall be deemed a separate violation. Each distinct code section, ordinance, license, permit, entitlement, or approval violated shall give rise to a separate violation that may be cited.

Working days. “Working days” are days which are neither Saturday, Sunday, nor nationally observed holidays or days that City of Visalia offices are closed. (Ord. 2006-15 § 2 (part), 2006; Ord. 9925 § 1 (part), 2000)

1.13.040 Judicial Review

All final administrative enforcement orders made pursuant to the procedures set forth in this chapter shall be subject to review only as provided in California Code of Civil Procedure Sections 1094.5 and 1094.6. Should any court of competent jurisdiction determine that the city must provide a judicial appeal to any final administrative order in a manner other than set forth in Sections 1094.5 and 1094.6, then it is the intent of the city council that the administrative enforcement process remain as provided herein and to provide that any appeal which is timely requested follow the procedures set forth in Government Code Section 53069.4. (Ord. 2006-15 § 2 (part), 2006; Ord. 9925 § 1 (part), 2000)

1.13.050 Administrative Enforcement Authority

A. In addition to criminal sanctions, civil injunctions and other remedies set forth in this code, the city may impose administrative penalties, administrative abatement orders, or issue administrative citations, in a manner consistent with the procedures set forth in this Chapter for any of the following acts or omissions:

1. All violations of the Visalia Municipal Code;
2. All violations of the city charter and other codes or ordinances adopted by the city of Visalia;
3. All violations of uniform codes adopted by the city of Visalia;
4. Failing to comply with any order issued by a commission, board, hearing officer or examiner or other body appointed by the city council and authorized to issue orders, including but not limited to the planning commission and the historic preservation advisory committee;
5. Failing to comply with any condition imposed by any entitlement, permit, contract or environmental document issued or approved by the city of Visalia.

B. Alternative Remedy. Nothing in this chapter shall prevent the city from using one or more other remedies to address violations. When the violation upon which the administrative enforcement order is based pertains to building, plumbing, electrical, structural or zoning provisions, the responsible party shall be provided a reasonable period of time to correct the violation prior to imposition of the administrative penalty, except in those cases in which there is an immediate danger to health or safety, in which case the responsible party may be ordered to take immediate action or an administrative penalty may be immediately imposed. The city may also, in addition to the administrative penalties described below, seek recovery of all administrative costs incurred by city staff in the abatement of a violation.

C. Standard Administrative Penalty. Unless a specific administrative penalty is adopted by the City Council *under an applicable municipal code provision*, the amount of the administrative penalty to be imposed shall be:

1. One hundred dollars (\$100.00) for a first violation;
2. Two hundred dollars (\$200.00) for a second violation of the same ordinance provision within one year;
3. Five hundred dollars (\$500.00) for each additional violation of the same ordinance within one year.

D. Alternative Administrative Penalty. In lieu of the standard administrative penalty schedule, the department head or his/her designee responsible for issuing an administrative penalty may establish an administrative penalty schedule providing for an administrative penalty in any amount not less than one hundred dollars (\$100.00) nor more than twenty-five thousand dollars (\$25,000.00) per violation. In determining the amount of the administrative penalty to be imposed, the department head shall consider factors including but not limited to:

1. The seriousness of the violation;
2. The responsible party's efforts to correct the violation;
3. The injury/damage, if any, suffered by any member of the public;
4. Any instances in which the responsible party has been in violation of the same or similar code provisions in the previous three years;
5. The amount of city staff time which was expended investigating or addressing the violation;
6. The amount of administrative penalties which have been imposed in similar situations;
7. Necessity to mitigate the damage to the community that is caused by a particular violation; and
8. Any other factors which justice may require.

The alternative administrative penalty schedule developed by the Department Head shall be submitted to the City Council for approval by resolution at a regularly noticed meeting.

Payment of any penalty shall not excuse the failure to correct the violation(s), nor shall it bar further enforcement action by the city.

E. Additional Penalty Provided by Ordinance. In addition to the standard administrative penalty or alternative administrative penalty, an administrative enforcement order may include an order to pay an additional civil penalty where such additional civil penalty is provided for by ordinance, or where an ordinance authorizes or directs a court of law to impose such additional civil penalty, unless such additional civil penalty is provided for within the alternative administrative penalty schedule as may be adopted.

F. Establishment of Administrative Abatement Orders. An administrative enforcement order may direct a responsible party to abate a public nuisance, or any other acts or omissions enumerated in Subsection A, in accordance with any of the abatement methods set forth in the Municipal Code or in other local, state or federal law. If a responsible party fails to abate a condition as specified in the administrative enforcement order, after the order becomes final, the City may choose to abate the condition through any of the abatement methods set forth in the Municipal Code or in other local, state or federal law. Nothing contained in this Section shall be construed as limiting, prejudicing or adversely affecting the City's ability to concurrently or consecutively use any of those proceedings as the City deems applicable. (Ord. 2006-15 § 2 (part), 2006)

1.13.060 Commencement of Administrative Enforcement Order; Form of Order

A. Commencement of Administrative Enforcement. Where the city has determined that any responsible party has violated this code or other provisions as set forth in Section 1.13.050, any designated enforcement officer may commence an administrative proceeding to impose administrative penalties or administrative abatement orders by

issuing an administrative ~~enforcement~~ order, which may be in the form of an administrative citation.

B. Form of Notice of Administrative ~~Enforcement~~ Order. Upon determination that a violation has occurred, the enforcement officer shall prepare a notice of administrative ~~enforcement~~ order in a manner in conformance with the notice and order requirements that may be provided for in the sections of this code that establish the violation at issue. Unless otherwise specified, the notice of administrative ~~enforcement~~ order shall contain, at a minimum:

1. The name and address of the responsible party in violation. If the administrative ~~enforcement~~ order results from events occurring on, or the status or condition of, property, the order shall also contain the address of the property;

2. A statement from the city official responsible for issuing the order of the acts or conditions which violate the city code or other provisions as set forth in Section 1.13.050 and the specific code or provisions which have been violated;

3. A description of the action required to correct the violations, if applicable;

4. A statement requiring the violator(s) to correct the violation(s) within a specific timeframe if applicable ~~ten working days of issuance of the notice and order;~~

5. The amount of the administrative penalty the city imposes for the violation and a statement that the penalty begins to accrue immediately following receipt of notice of violation (either through separate prior notice of violation or through service of the administrative ~~enforcement~~ order), and will continue to accrue until the violation is corrected. The order may provide that each day of violation following notice of violation will be considered an additional violation for purposes of determining the applicable fine pursuant to Section 1.13.030;

6. A statement requiring the violator(s) to correct the violation(s) within a specific timeframe, if corrective action is being required as part of the administrative order; ~~ten working days of issuance of the notice and order;~~

7. A statement that at the time the appeal is filed, an appeal fee is due and payable ~~and a deposit of the penalty must be made,~~ or evidence provided that a request for an advance deposit hardship waiver has been provided ~~filed with the finance division;~~

8. A statement that the appeal be made in writing, and in compliance with the requirements of Section 1.13.080;

9. A statement that if the responsible party fails to request an appeal of the imposition of the administrative order within ten (10) working days and fails to pay the appeal fee ~~and deposit~~ or file a hardship waiver, the order imposing the penalty shall be final and immediately payable or enforceable;

10. A statement that any responsible party upon whom a final administrative ~~enforcement~~ order has been imposed may seek review of the order pursuant to California Code of Civil Procedure Sections 1094.5 ~~4094.5~~ and 1094.6. There are no appeals to city council. (Ord. 2012-15 § 3, 2012: Ord. 2006-15 § 2 (part), 2006)

1.13.070 Service of Administrative Enforcement Order

A. Persons Entitled to Service. The notice of administrative ~~enforcement~~ order shall be served upon the responsible party in violation. The failure of the city official issuing the order to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other persons duly served or relieve any such person from any duty or obligation imposed on him/her.

B. Lien/Notice. If the violation is the result of a condition existing on property in the city and the city proposes to impose a lien on the property, one copy of the notice of administrative ~~enforcement~~ order shall also be served on each of the following if known to the city official issuing the order or disclosed from official public records: (a) the holder of any mortgage or deed of trust or other lien or encumbrance of record; and (b) the owner or holder of any lease of record. The failure of the city official issuing the order to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other persons duly served or relieve any such person from any duty or obligation imposed on him/her.

C. Method of Service. Service of an administrative ~~enforcement~~ order shall be effective if any one of the service methods provided for in this Subsection C is satisfied. Provided this section is satisfied, the failure of any person to actually receive the notice of administrative ~~enforcement~~ order shall not affect the validity of any proceedings taken under this Chapter. Service by certified mail in the manner herein provided shall be effective on the date of mailing.

1. Personal Service or Certified Mail. Service of an administrative ~~enforcement~~ order may be made upon all persons entitled thereto either by personal delivery or by certified mail, return receipt requested. Service *by mail* on any owner in violation is deemed complete *five (5) working days from the date it is mailed by the city to* the address listed by the owner on the latest equalized assessment roll of Tulare County, or as known to the city official issuing the order.

2. Service In Property-Related Offense Cases. In the case of a violation resulting from an event occurring on, or a condition existing on, property, service may be accomplished either by personal service as provided in subsection 1 above, or by either of the following alternative methods:

(i) By posting the property with the administrative ~~enforcement~~ order and mailing a copy of the order to the responsible party in violation, *by first-class mail* at the address of the property on which the violation has occurred or is occurring; or

(ii) Where the responsible party has a property manager or rental agency overseeing the premises, by personally serving the notice upon the property manager or rental agency in the manner set forth in subsection 1 above.

3. Substituted Service. In the event that service cannot be effected pursuant to subparagraphs 1 or 2 above, service may be made by substituted service. Substituted service may be accomplished as follows:

(i) By leaving a copy during usual business hours in the recipient's business with the person who is apparently in charge, and by thereafter mailing by first-class mail a copy to the recipient at the address where the copy was left; or

(ii) By leaving a copy at the recipient's dwelling or usual place of abode, in the presence of a competent member of the household, *and* thereafter mailing by first-class mail a copy to the recipient at the address where the copy was left.

4. Service on Parties Residing Out of State. If the responsible party resides or has his/her/its business address out of state then service may be made by certified mail, return receipt requested. If the responsible party resides where certified mail service is not available, then service may be made by first class mail. Service by mail on parties residing out of state is deemed complete ten (10) working days from the date it is mailed by the city to the address listed by the owner on the latest equalized assessment roll of Tulare County, or as known to the city official issuing the order. ~~mail, then service may be made by first-class mail.~~

5. Service by Publication. If the responsible party in violation or other person entitled to service cannot be located or service cannot be effected as otherwise set forth in this section, service may be made by publication in a Visalia newspaper of general circulation which is most likely to give actual notice to the owner. Service shall be deemed sufficient when it is accomplished pursuant to Government Code Section 6063, i.e. once a week for three successive weeks in a newspaper regularly published once a week or oftener, with at least five calendar days intervening between the respective publication dates not counting such publication dates. (Ord. 2006-15 § 2 (part), 2006)

1.13.080 Appeal of Administrative Enforcement Order

A. Request for Appeal. Any responsible party against whom an administrative ~~enforcement~~ order has been imposed may appeal the imposition of the order by filing a written notice of request for appeal by the methods set forth in the administrative ~~enforcement~~ order within ten (10) ~~calendar~~ working days of service of the notice of administrative ~~enforcement~~ order. If no request for appeal is filed with the office of community development within ten (10) ~~calendar~~ working days of service, appeal rights shall be deemed waived and the administrative ~~enforcement~~ order shall become final. The written appeal request shall contain:

1. A brief statement setting forth the interest the appealing party has in the matter relating to the imposition of the penalty;

2. A brief statement, in ordinary and concise language, of the material facts which the appellant claims support his/her/its contention that no administrative penalty should be imposed or that an administrative penalty of a different amount is warranted; and

3. An address at which the appellant agrees notice of any additional proceeding or an order relating to the imposition of the administrative penalty may be received by first class mail.

B. Payment of Appeal Fee. Any responsible party seeking to appeal the imposition of an administrative penalty shall be required to pay to the city clerk or designee, at the time the appeal is requested, a non-refundable appeal fee. The amount of the appeal fee may be increased or decreased by resolution of the City Council. Absent such

resolution, the appeal fee shall be \$100. The appeal fee is intended to cover the costs, expenses and city employees' time incurred by the city in processing, preparation for, and hearing of the appeal. No appeal request is valid unless accompanied by the appeal fee, unless otherwise waived pursuant to subsection D. below. In the event ~~an~~ the deposit of the appeal fee is waived and the administrative enforcement order is upheld, the appeal fee shall be added to the penalty due. In the event the appeal fee is paid and the administrative enforcement order is not upheld, the appeal fee shall be returned together with any fines that have been deposited in advance ~~paid~~.

~~C. Advance Deposit of Fine. Any responsible party seeking to appeal the imposition of an administrative penalty shall be required to pay the city clerk or designee, at the time the appeal is lodged, a deposit of the fine assessed in the administrative penalty notice and order. If the responsible party is unable to make the required deposit, the responsible party shall provide evidence that a request for an advance deposit hardship waiver has been filed pursuant to subsection D. below.~~

~~D. Advance Deposit Hardship Waiver. Any responsible party who is financially unable to pay the appeal fee or make the advance deposit of the full amount of the fine as required in subsections B. and C. above, and who intends to appeal the administrative enforcement order, may file a request for an advance deposit hardship waiver to waive all or part of the advance deposit and of the appeal fee. A request for advance deposit hardship waiver request must be filed with the city clerk or designee on an advance deposit hardship waiver application form available from the city clerk within ten working days of the date of the administrative penalty notice and order and must include a sworn declaration and any other supporting documents or materials showing the responsible party's actual financial inability to deposit the full amount of the fine appeal fee in advance of the hearing. The responsible party bears the burden of demonstrating to the satisfaction of the city clerk or designee the responsible party's actual inability to deposit the full amount of the fine in advance of the hearing the hearing fee. If the city clerk or designee determines not to issue an advance deposit hardship waiver, the responsible party shall remit the advance deposit of the advance deposit amount and the appeal fee to the city within ten working days. Failure to timely remit the advance deposit and appeal fee shall terminate the request for an appeal and the amount of the fine shall become immediately due and payable. The requirement of depositing the full amount of the fine and the appeal fee as required by Section 1.13.062(C) shall be stayed while the city clerk or his or her designee makes a determination whether to issue the advance deposit hardship waiver. (Ord. 2006-15 § 2 (part), 2006)~~

1.13.090 Administrative Enforcement Order Appeal Hearing

A. Hearing Officer. All administrative appeals of an administrative enforcement order shall be heard by a hearing officer appointed by the city manager or his or her designee to hear administrative appeals. The hearing officer shall not be a city employee. Any claim that a hearing officer is biased shall be raised to the city manager, or their designee, and it shall be determined by the city manager, or their designee, whether a different hearing officer should be appointed.

B. ~~Setting Administrative Enforcement Order Appeal Hearing.~~ The administrative ~~enforcement order~~ appeal hearing shall be set by the city clerk or designee, and notice of the appeal hearing shall be sent to the appellant by first class mail at the address provided with the written appeal request. ~~The administrative penalty hearing shall be set for an appeal hearing no sooner than twenty (20) working days following a request for an appeal hearing. Notice of the appeal hearing shall be mailed at least fifteen (15) working days before the date set for the hearing.~~ The hearing date shall be scheduled and notice of the hearing date shall be provided within sixty days from the date the request for an appeal is received, unless the enforcement officer determines that good cause exists for an extension of time, then the hearing date may be set for more than sixty days from the date that the request for an appeal is received.

C. Failure to Attend Hearing. Failure of the person seeking the appeal, also referred to as the appellant, to attend the scheduled administrative ~~enforcement order~~ appeal hearing shall constitute a waiver of rights to an administrative hearing and adjudication of the notice and order or any portion thereof, alternatively the hearing officer may proceed to hear the matter based on the written statements received from the responsible party and testimony or written statements received from the city.

D. Rules Applicable to Conduct of the Administrative ~~Enforcement Order~~ Appeal Hearing. The following rules shall govern the conduct of the administrative ~~enforcement order~~ appeal hearing.

1. Testimony at the Hearing. At the time set for the administrative ~~enforcement order~~ appeal hearing the hearing officer shall proceed to hear testimony from the representative of the city, the appellant and any other competent persons with respect to imposition of an administrative penalty.

2. Record of Oral Evidence at Hearing. The proceedings at the hearing shall be reported ~~by a tape recorder~~ recorded by a digital device or tape recorder. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the requesting party's own expense.

3. Continuances. ~~The hearing officer may,~~ Upon request of the responsible party against whom a penalty is to be imposed, or upon request of the city, ~~grant~~ the hearing date may be continued ~~continuance from time to time for good cause shown, or upon his/her own motion no more than twice, if a request is submitted at least twenty four hours to the city clerk, or designee, prior to the hearing. The hearing officer, in their sole discretion, may grant additional continuances if the hearing officer determines the request to further continue the hearing is based on good cause.~~

4. Oaths -- Certification. ~~The hearing officer or certified shorthand reporter shall administer the oath or affirmation. There shall be an oath or affirmation signed by everyone providing testimony at the administrative penalty hearing.~~

5. Evidence Rules. The hearing is intended to be informal in nature. Formal rules of evidence and discovery do not apply. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. Hearsay evidence

may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. Government Code Section 11513, subsections (a), (b) and (c), as it exists on the effective date of the ordinance adopting these provisions, or as hereafter amended, shall apply to all administrative penalty hearings.

6. Rights of Parties. Parties may represent themselves, or be represented by an attorney licensed to practice in the State of California. A party may be represented by a non-attorney representative so long as the party executes a notarized consent to said representation, and submits same to the City prior to the administrative hearing. If a party does not proficiently speak or understand the English language, he/she may provide an interpreter, at that party's own cost, to translate for the party. An interpreter shall not have had any personal involvement in the issues of the case prior to the hearing. The City may be represented by the City Attorney.

7. Official Notice. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or which may appear in any of the official records of the city or county, or any of their departments. Copies of the reports and records of any governmental agency, division, or bureau will be accepted as evidence in lieu of the original.

8. Subpoenas. The hearing officer shall have the authority to issue subpoenas for orders to appear and produce testimony or subpoenas duces tecum for orders to produce documents, or shall issue a subpoena upon a showing of reasonable necessity by the requesting party, in accordance with the requirements and conditions of Article 11 of Chapter 4.5 of Part of Division 3 of the California Government Code. Failure to comply with any subpoena may be considered by the hearing officer in making his/her decision regarding the imposition of administrative penalties.

9. Inspection of Premises. In the case of a violation related to property in the city, the hearing officer may inspect the building and premises involved in the hearing prior to, during, or after the hearing, provided that:

(i) Notice of such inspection shall be given to the parties before the inspection is made; and

(ii) The parties consent, and are given an opportunity to be present during the inspection. Upon completion of an inspection, the hearing officer shall state for the record during the hearing, or file a written statement after the hearing for inclusion in the hearing record, the material facts observed and the conclusion drawn therefrom. Each party shall have a right to rebut or explain the matters so stated by the hearing officer either for the record during the hearing or by filing a written statement after the hearing for inclusion in the hearing record. Inspections may be made without notice to the responsible parties if the property can be inspected from areas to which the general public has access.

10. Standard of Proof. The standard of proof to be used by the hearing officer in deciding the issues at an administrative penalty hearing is by a preponderance of the evidence.

(Ord. 2006-15 § 2 (part), 2006)

1.13.100 Form and Content of Appeal Hearing Decision

A. Factors in Hearing Officer's Decision. The hearing officer may affirm the administrative ~~enforcement~~ order imposed by the city, reduce the penalty, amend the abatement order, or find that the imposition of the penalty or abatement order is not warranted or is not in the interest of justice and vacate the order. In making his/her decision regarding the administrative ~~enforcement~~ order, the hearing officer shall consider evidence presented by all witnesses, the seriousness of the violation, the responsible party's efforts to correct the violation, the injury or damage, if any, suffered by any member of the public, any instances in which the responsible party has been in violation of the same or similar code provisions in the previous three years, and the amount of city staff time which was expended investigating and addressing the violation.

B. Format for Hearing Officer's Decision. A statement of decision of the administrative ~~enforcement~~ order appeal hearing officer shall be issued within thirty (30) calendar days of the hearing. The statement of decision shall be in writing, and shall contain a statement of the determination as to whether the administrative ~~enforcement~~ order is affirmed, amended or vacated, and the findings of fact supporting the determination. In addition, if the determination is to uphold or amend the administrative ~~enforcement~~ order, the statement decision must contain the following items:

1. A statement indicating the administrative ~~enforcement~~ order is now a final administrative ~~enforcement~~ order and that any appeal of the hearing officer's decision must be filed with a court of competent jurisdiction pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6.

2. If an advance deposit hardship waiver has been granted pursuant to VMC 1.13.080 062(D), then a statement in the decision shall be included advising the responsible party that if the administrative penalty and appeal fee are not paid within the time specified, they shall be made a personal obligation of the owner, may be made a lien against the property owned by the responsible party against whom the penalty was imposed, and may be collected by special assessment.

3. In the case of an administrative abatement order, a statement that if the action identified is not taken within the time indicated, the City may perform the abatement itself, and the costs of the City's abatement shall be added to the penalty.

C. Service of the Hearing Officer's Decision. Upon issuance of the decision, the city shall serve a copy on the appellant by first class mail to the address provided by appellant in the written notice of appeal. The hearing officer's decision shall be deemed served two calendar days after the date it is mailed to the address provided by the appellant.

D. Appeal of the Hearing Officer's Decision. Any administrative penalty imposed against a responsible party pursuant to this chapter must be appealed in the manner and within the time provided in California Code of Civil Procedure Sections 1094.5 and 1094.6.

E. Payment. Any responsible party against whom an administrative penalty has been imposed ~~who was granted an Advance Deposit Hardship Waiver pursuant to Section 1.13.060(D)(4)~~ shall pay the administrative penalty and appeal fee if an advance deposit hardship waiver was granted to delay the appeal fee requirement to the city within ~~twenty-five (25)~~ thirty (30) calendar days of a final order or decision of the hearing officer. Any ~~deposit made by responsible party pursuant to Section 1.13.060(D)(3)~~ shall be applied toward the payment of the administrative penalty imposed by the hearing officer. Any ~~deposit in excess of the amount imposed by the hearing officer shall be refunded to responsible party within a reasonable time. (Ord. 2006-15 § 2 (part), 2006)~~

1.13.100 Payment and Collection of the Administrative Penalty

A. The city may take the actions set forth in this section to collect any unpaid penalty. The failure of any person to pay any penalty assessed by administrative order within the time specified on the administrative order shall result in the assessment of an additional late fee to be charged. The amount of the late fee shall be ten percent of the total amount of the civil penalty due and owing. An administrative penalty shall may accrue interest at the same annual rate as any civil judgment. ~~Interest shall accrue commencing on the 26th day following service of the hearing officer's decision.~~

B. Civil Action. The City may commence a civil action or small claims court action to collect the administrative penalty, and in such event, the city shall be entitled to recover reasonable attorney's fees and all costs associated with collection of the penalty. Costs include, but are not limited to, staff time incurred in the collection of the penalty and those set forth in Code of Civil Procedure Section 1033.5.

C. Lien. The amount of the unpaid administrative penalty, plus late charge, plus interest, plus any other costs as provided in this chapter, may be declared a lien on any real property owned by the responsible party within the city of Visalia against whom an administrative penalty has been imposed. Notice shall be given to the responsible party prior to the recordation of the lien, and shall be served in the same manner as a summons in a civil action pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. The lien shall attach when the city manager or his/her designee records a lien listing delinquent unpaid administrative penalties with the Tulare County Recorder's Office. The lien shall specify the amount of the lien, the date of the code violation(s), the date of the final administrative decision, the street address, legal description, and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the record owner of the parcel. In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in this section shall be recorded by the city clerk or designee.

D. Special Assessment. The amount of the unpaid administrative penalty, plus late charges, plus interest, plus any other costs as provided in this chapter, may be declared a special assessment against any real property owned by the responsible party within the city of Visalia against whom an administrative penalty has been imposed. The city council may impose the special assessment on more than one parcel. However, the amount of the assessment shall not exceed the penalty imposed for the administrative

violation. The city manager or his/her designee may present a resolution to the city council to declare a special assessment, and upon passage and adoption thereof shall cause a certified copy thereof to be recorded with the Tulare County recorder's office. The assessment may then be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes or, after recording, the lien may be foreclosed by judicial or other sale in the manner and means provided by law.

E. Withholding Future Entitlements. The city may withhold issuance of licenses, permits and other future entitlements to a responsible party or any project, property, or application of any kind whenever any administrative penalty, including but not limited to cost recovery charges for abatement of a nuisance, and fines, remains unpaid.

F. Other Enforcement Procedures. The city may take such other actions as are allowed for enforcement of a civil judgment as provided for pursuant to the enforcement of judgment law, Sections 680.010, et. seq. of the California Code of Civil Procedure.