City Council Report

Subject: Code Enforcement Ordinance

Submitted by: Steven Rudolph, City Attorney
Marc Mondell, Director of Economic & Community Development
Troy Holt, Director of Business & Neighborhood Services

Date: March 13, 2018

Staff Recommendation: Adopt an ordinance of the City Council of the City of Rocklin repealing Chapter 1.12; repealing and re-enacting Chapters 1.08 and 1.14; renumbering Chapter 1.16 as Chapter 1.22: enacting Chapters 1.16 and 1.18; amending sections 8.04.030 and 15.04.080; amending subsections 5.04.050(B), 5.30.050(A), 9.42.050(A), 12.04.200(E), 17.08.130(H), and 17.08.134(C); and repealing sections 8.04.040-8.04.200 of the Rocklin Municipal Code regarding Code Enforcement (the "Code Enforcement Ordinance")

DISCUSSION

This proposed ordinance was introduced at the City Council meeting on February 27, 2018 by a unanimous vote.

The majority of the code enforcement provisions set forth in the Rocklin Municipal Code ("RMC") were adopted between 1978 and 1999.[1] A restructuring and updating of the City's code enforcement ordinances is proposed in order to develop a more efficient and comprehensive code enforcement program.

Basically, code enforcement programs include four main components:

1. **General Code enforcement authority**. These provisions will now be found in *Chapter 1.08, Enforcement of the Rocklin Municipal Code and Other Applicable Laws*. The proposed new Chapter 1.08 provides a thorough overview of general code enforcement authorization and procedures for enforcing the RMC. Any violation of the RMC is declared a public nuisance, which streamlines judicial enforcement proceedings. Cost and fee recovery related to code enforcement efforts is authorized by this chapter.

2. **Administrative enforcement procedures**. The proposed new *Chapter 1.14, Administrative Violations and Administrative Enforcement Procedures* governs administrative enforcement of the RMC and provides a more comprehensive administrative citation process, including a cumulative remedy provision, and provisions for assessment of penalties and sanctions. In addition, the hearing procedures has been set forth in more detail, and have been revised to reflect that the hearing officer's decision is final and there is no option to appeal that decision to the City Council.

[1] ***Chapter 1.08 General Penalty*** was last updated in 1990. ***Chapter 1.12 Arrest and Citation*** was last updated in 1978, and ***Chapter 1.14 Administrative Citations*** was last updated in 1999.

3. **Civil enforcement procedures**. The proposed new ***Chapter 1.16, Additional Remedies***, includes abatement and abatement lien procedures. The lien provisions in the new chapter conform to a recent court decision which found that penalties may not be placed on code enforcement liens.

4. **Criminal enforcement procedures**. Proposed new *Chapter 1.18, Criminal Penalties*, provides more robust criminal enforcement authorization. While it is unlikely that these provisions will be used, due to the difficulty of prosecuting criminal municipal code violations, it is prudent to include the provisions in the event they are needed.

If the proposed ordinance is adopted, the following sections and subsections will require amendments to references found in those sections: 5.04.050(B), 5.30.050(A), 8.04.030, 9.42.050(A), 12.04.200(E), 15.04.080, 17.08.130(H), and 17.08.134(C). Additionally, existing ***Chapter 1.16, City Seal and Authorized Logo and Insignia***, has been renumbered as ***Chapter 1.22***.

FINANCIAL IMPACT

There is no financial impact relating to the adoption of the proposed ordinance. However, it is anticipated that the enhanced code enforcement procedures will lead to an increase in citation revenue due to more comprehensive code enforcement procedures; and a reduction in city expense for nuisance abatement due to improved cost recovery provisions.

ALTERNATIVES

1. Provide further direction to staff.
2. Choose not to update the current code enforcement ordinances.

Ricky A. Horst, City Manager
Reviewed for Content

Steven P. Rudolph, City Attorney
Reviewed for Legal Sufficiency

Attachments:

Exhibit A – Proposed Code Enforcement Ordinance

ORDINANCE NO. 1090

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ROCKLIN REPEALING CHAPTER 1.12; REPEALING AND RE-ENACTING CHAPTERS 1.08 AND 1.14; RENUMBERING CHAPTER 1.16 as Chapter 1.22; ENACTING CHAPTERS 1.16 AND 1.18; AMENDING SECTIONS 8.04.030 AND 15.04.080; AMENDING SUBSECTIONS 5.04.050(B), 5.30.050(A), 9.42.050(A), 12.04.200(E), 17.08.130(H), AND 17.08.134(C); AND REPEALING SECTIONS 8.04.040-8.04.200 OF THE ROCKLIN MUNICIPAL CODE REGARDING CODE ENFORCEMENT

The City Council of the City of Rocklin does ordain as follows:

Section 1. Purpose. The purpose of this ordinance is to improve the City of Rocklin's ("City") code enforcement regulatory framework, to improve efficiency and the effectiveness of the City's efforts to abate Municipal Code violations, and to maximize the recovery of the costs of such abatement as authorized by law.

Section 2. Authority. The City Council enacts this ordinance under the authority granted to cities by Article XI, Section 7 of the California Constitution and Government Code section 37100.

Section 3. Repeal. Chapter 1.12 of Title 1 of the Rocklin Municipal Code is hereby repealed.

Section 4. Repeal and Re-Enact. Chapter 1.08 of Title 1 of the Rocklin Municipal Code is hereby repealed and re-enacted to read as follows:

Chapter 1.08 – Enforcement of the Rocklin Municipal Code and Other Applicable Laws

Sections:

1.08.010 Purpose and intent.

1.08.020 Definitions.

1.08.030 Public nuisance.

1.08.035 Cost and fee recovery.

1.08.040 Procedures for enforcement.

1.08.010 Purpose and intent.

The city of Rocklin hereby adopts the procedures and remedies set forth in this title for the enforcement of the Rocklin Municipal Code and Uniform Codes adopted by the city. The purpose of Chapters 1.08 through 1.18 is:

A. To provide standards for the enforcement of the Rocklin Municipal Code and other applicable laws;

B. To establish administrative sanctions for violations of the Rocklin Municipal Code and other applicable laws as an alternative to criminal or civil enforcement penalties;

C. To establish a hierarchy of administrative sanctions and a prescribed method for enforcement through administrative hearings consistent with constitutional protections;

D. To provide for administrative abatement to remedy code violations and to provide for the recovery of costs incurred in administrative abatement as allowed for by state law; and

E. To provide for judicial review of final administrative orders or decisions made pursuant to this title in accordance with the procedures set forth in Code of Civil Procedure sections 1094.5 and 1094.6.

Nothing in this chapter is intended to abridge or modify the authority of the city manager or other designated person to enforce the Rocklin Municipal Code through criminal or civil penalties where such remedies are designated by ordinance as appropriate.

1.08.020 Definitions.

For the purpose of this chapter, certain words and phrases used in this chapter are defined as follows:

A. “Administrative citation” means the notice issued by the enforcement authority of an alleged infringement of the Rocklin Municipal Code or other applicable laws.

B. "Administrative penalty" means the penalties set forth in this chapter for violation of the Rocklin Municipal Code or other applicable laws.

C. "Administrative sanctions" means the sanctions set forth in this chapter for violation of the Rocklin Municipal Code or other applicable laws.

D. "Administrative violation" means any infringement or alleged infringement of the Rocklin Municipal Code or other applicable laws for which enforcement is to be handled through the administrative procedures established in this title.

E. "Applicable laws" means any provisions of the Rocklin Municipal Code, any Uniform Code adopted by the city of Rocklin, design standards adopted by the city of Rocklin, conditions imposed on any entitlement or environmental document issued or approved by the city of Rocklin, and those state laws enforced by the city of Rocklin which also have been designated by ordinance for enforcement pursuant to the procedures established in this title.

F. “Citizen complaint” means a report of an alleged violation of the Rocklin Municipal Code or other applicable laws by any person or entity. “Citizen complaint” means and includes a complaint by a city official or city employee only to the extent such official or employee is able to demonstrate a direct effect on his/her person or property as a result of the alleged violation.

G. “Design standards” means written design standards, design guidelines or development standards that may be adopted by resolution or ordinance from time to time by the city council and/or planning commission, or that may be adopted as part of the conditions of approval on any project, that govern development of land within the city and that are on file with the city clerk.

H. “Enforcement authority” means the city manager or designated department head, building official, code enforcement officer, or public official charged with responsibility for enforcement under this title.

I. “Entitlement” means any project approval issued by the city council, the planning commission, or any other committee, commission, or department as allowed for under procedures established by the Rocklin Municipal Code.

J. “Mediation” means a meeting held between the enforcement authority and a responsible person under the supervision of an impartial third party to informally resolve issues relating to alleged violations of the Rocklin Municipal Code or other applicable laws.

K. “Notice of violation” means a notice issued by the enforcement authority for required action to achieve compliance with the Rocklin Municipal Code or other applicable laws.

L. “Reasonable time(s)” for purposes of right of entry for inspection under Section 1.14.027 means between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, inclusive, unless otherwise required by: (1) an emergency impacting the safety or preservation of life or property; or (2) the fact that the alleged violation of the Rocklin Municipal Code or other applicable laws only occurs at some other hour or on a weekend.

M. “Responsible person” means any person or entity charged with or found to have violated the Rocklin Municipal Code or other applicable laws. “Responsible person” includes the parents and/or legal guardian of any person under the age of 18 who is charged with a violation of the Rocklin Municipal Code or other applicable laws.

N. “Stop order” means a written order issued by the enforcement authority or his/her designee that any and all work on a project, improvement or other development must cease on the terms and conditions set forth in the order.

O. “Uniform Codes” means those codes that have been adopted and amended from time to time by ordinance by the Rocklin city council, as set forth in Rocklin Municipal Code section 15.04.010.

1.08.030 Public nuisance.

Any violation of any ordinance of the Rocklin Municipal Code, of any provision of any Uniform Codes adopted by the city, or of any design standards is declared to be a public nuisance, subject to redress as provided for in this title.

1.08.035 Cost and fee recovery.

Any person violating any provision of this code resulting in the city filing an administrative, civil action, or special proceeding to obtain code compliance or remedy, such violation shall be liable for the costs of such matter, including, but not limited to, costs of investigation, abatement, court costs, and costs of monitoring compliance. In addition, in any administrative, civil, or special proceeding to abate an administrative violation, the city may, at the initiation of the proceeding, seek an award of attorney's fees. If the city seeks an award of attorney's fees, the award shall be made to the prevailing party. Provided, however, that no award may be made to a prevailing party that exceeds the amount of reasonable attorney's fees incurred by the city in the action or proceeding.

1.08.040 Procedures for enforcement.

The city of Rocklin shall enforce the provisions of the Rocklin Municipal Code or other applicable laws through any of the following procedures:

A. Administrative action concerning an administrative violation as provided for in Chapter 1.14;

B. Criminal action prosecuted in the name of the people of the state of California when a criminal violation is expressly provided for by ordinance;

C. Civil action instituted by the city attorney in the name of the city of Rocklin; or

D. Abatement as authorized by Chapter 1.16.

Section 5. Repeal and Re-Enact. Chapter 1.14 of Title 1 of the Rocklin Municipal Code regarding Administrative Citations is hereby repealed and re-enacted as follows:

Chapter 1.14 – Administrative Violations and Administrative Enforcement Procedures

Sections:

Article I. Administrative Violations

1.14.010 Designation of administrative violations.

1.14.011 Administrative enforcement is not an exclusive remedy.

Article II. Administrative Enforcement Procedures

1.14.020 Responsibility and authority.

1.14.021 Purpose of enforcement.

1.14.022 Notice of violation and/or stop order.

1.14.023 Administrative citation.

1.14.024 Administrative penalties.

1.14.025 Sanctions for administrative violations.

1.14.026 Standards for imposition of administrative sanctions.

1.14.027 Right of entry for inspection.

1.14.028 Informal attempts to encourage compliance.

1.14.029 Service of notices.

1.14.030 Responsibility of parent(s) and/or legal guardian.

Article III. Hearings

1.14.040 Right to a hearing.

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Article V. Enforcement of Monetary Sanctions

1.14.070 When monetary sanctions are due.

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1.14.072 Failure to pay a monetary sanction.

Article I. Administrative Violations

1.14.010 Designation of administrative violations.

A. The following shall be designated as administrative violations and shall be subject to enforcement pursuant to the provisions of this chapter:

1. All violations of the Rocklin Municipal Code, unless otherwise excepted by ordinance;

2. All violations of Uniform Codes adopted by the city of Rocklin;

3. All violations of design standards adopted by the city council and/or the planning commission and on file with the city clerk;

4. All violations of conditions imposed on any entitlement, permit, contract, or environmental document issued or approved by the city of Rocklin;

5. All violations of state laws enforced by the city of Rocklin that have been designated for enforcement through this chapter by ordinance.

B. An administrative violation may only be adjudicated pursuant to the administrative enforcement procedures established in Sections 1.14.020 through 1.14.054 of this chapter. Each responsible person shall have the right to request an administrative hearing and subsequent judicial review pursuant to the procedures established in Code of Civil Procedure sections 1094.5 and 1094.6 before the city will take action to collect any administrative penalty.

1.14.011 Administrative enforcement is not an exclusive remedy.

The remedies and penalties provided by this chapter are cumulative to each other and to the remedies and penalties available under other sections of this code or under other laws. Nothing in this chapter is intended to limit or prohibit the enforcement of the Rocklin Municipal Code or other applicable laws through civil or criminal process.

Article II. Administrative Enforcement Procedures

1.14.020 Responsibility and authority.

The city manager shall have overall responsibility and authority to enforce the provisions of the Rocklin Municipal Code or other applicable laws. The city manager may delegate to appropriate subordinates the authority to enforce any of the provisions of the Rocklin Municipal Code.

1.14.021 Purpose of enforcement.

The purpose of administrative enforcement is to obtain fair and uniform compliance with the provisions of the Rocklin Municipal Code and other applicable laws.

1.14.022 Notice of violation and/or stop order.

Whenever a violation is discovered which can be corrected and the responsible person has not been issued a notice of violation or administrative citation for the same violation within the past twelve months, the enforcement authority shall issue a notice of violation in order to notify the responsible person of the violation and to order that the violation be corrected

within a reasonable time. Unless a different time period is specifically set forth in the Rocklin Municipal Code, a responsible person shall be given a reasonable time to correct any violation based upon the facts and circumstances. The notice of violation shall be in writing and shall set forth the facts that constitute the violation, the specific provisions of the law which have been violated, the specific acts required to correct the violation, the time allowed to correct the violation, and the rights to appeal the notice of violation. If the violation is related to a permit, license or other city approval of a project, the notice of violation may be accompanied by a stop order which orders the responsible person to immediately stop any and all work on the project that is subject to the permit, license or approval until the violation is corrected. The notice of violation shall be served in accordance with the provisions of Section 1.14.029.

1.14.023 Administrative citation.

An administrative citation may be issued under any of the following circumstances:

A. When the violation cannot be corrected;

B. When the violation can be corrected, a notice of violation has been served, and the specified time has passed without adequate correction of the violation;

C. When a stop order has been issued and has not been complied with by the responsible person;

D. When the same violation has been committed by the same responsible person within the past 12 months and a notice of violation or administrative citation has been served on the responsible person within that same 12 month period.

The administrative citation shall be in writing and shall set forth the facts constituting the violation, the specific provisions of the law which have been violated, the proposed sanctions for the violation as specified in Section 1.14.025 of this chapter, and the rights that the responsible person has to appeal the administrative citation. The administrative citation shall be served as provided in Section 1.14.029.

1.14.024 Administrative penalties.

A. Except as otherwise provided herein or as established by law, administrative citations, excluding accruing interest, shall not be assessed at more than one hundred thousand dollars ($100,000.00) cumulatively per calendar year for an individual parcel or separate structure thereon for any related series of violations. The citation amount for a single violation shall not exceed one hundred dollars ($100.00) for the first citation, two hundred fifty dollars ($250.00) for the second citation, and five hundred dollars ($500.00) for all subsequent citations for any related series of violations occurring within a 12 month period. Each day a

violation continues beyond the correction deadline specified in the administrative citation constitutes a separate and distinct violation.

B. The issuance of administrative citations shall cease when all violations are wholly and permanently corrected.

C. Administrative citations shall be issued in accordance with the following factors:

1. The duration and frequency of recurrence of the violation;

2. The detrimental effects of the violation on the occupants of the property and the surrounding neighborhood and the community at large;

3. The history of compliance efforts by the responsible person to correct the violation wholly and permanently;

4. The viability of the administrative citation to effect abatement of the violation wholly and permanently;

5. Other factors that serve justice.

D. Administrative penalties, as authorized under this section, shall be assessed in addition to any applicable charges, fees, abatement costs, and interest, as established in the master fee schedule of the city.

E. At the time of issuance of an administrative citation pursuant to Section 1.14.023, the enforcement authority shall evaluate in writing the criteria set forth in Section 1.14.026 to determine the appropriate sanction and shall provide written notice to the responsible person of the proposed sanction and the reasons therefor as required by Section 1.14.023.

F. Where multiple violations have occurred or are occurring, each violation of the Rocklin Municipal Code or other applicable laws shall be subject to a separate sanction.

G. The enforcement authority shall have no power or discretion to void any administrative citation until after a meeting with the enforcement authority's supervisor. If a citation is voided, the enforcement authority shall provide written justification for such action to the city manager.

1.14.025 Sanctions for administrative violations.

Any one or more of the following sanctions shall be available to redress infringement of the Rocklin Municipal Code or applicable laws.

A. Revocation and/or suspension of licenses or permits, conditional use permits or other entitlements issued by the city of Rocklin;

B. The placement of requirements for corrective action on permits, licenses or entitlements issued by the city of Rocklin as a condition to avoid revocation of the permit, license or entitlement;

C. Monetary penalties as set forth in Section 1.14.024 of this chapter;

D. Costs as set forth in Section 1.08.035 of Chapter 1.08.

E. The issuance of a compliance order setting forth corrective action;

G. Requiring a responsible person to post a performance bond, irrevocable letter of credit or other adequate security to ensure compliance with the Rocklin Municipal Code or other applicable laws.

1.14.026 Standards for imposition of administrative sanctions.

The following factors shall be considered in determining the appropriate sanctions for any administrative violation:

A. The knowledge or intent of the person/entity found to have violated the Rocklin Municipal Code or other applicable laws;

B. A final determination of prior violations of the Rocklin Municipal Code or other applicable laws within 12 months of the date of the violation. Violations of a similar nature shall be given additional weight in evaluating the appropriate sanctions as provided for in Section 1.14.024(C);

C. Efforts by the person/entity found to have violated the Rocklin Municipal Code or other applicable laws to take remedial action upon notice of a violation;

D. Any financial gain realized by a responsible person as a result of an administrative violation;

E. The extent to which the violation undermines the purpose of the ordinance violated;

F. The number of other violations existing at the time of the issuance of the administrative citation;

G. The costs incurred for remedial action taken by the enforcement authority;

H. The degree and permanence of harm to health, safety and/or the environment caused by the violation, including, but not limited to, any loss of life to person or animal;

I. The amount it would have cost the responsible person to comply with the law;

J. Where the violation consists of failure to obtain a permit or license, the financial cost to obtain a permit or license prior to engaging in the conduct that is the subject of the administrative violation. The amount of any sanction imposed for failure to obtain a license or permit shall be no less than one and one-half times the cost of obtaining such license or permit.

1.14.027 Right of entry for inspection.

A. Whenever necessary to make an inspection to enforce the Rocklin Municipal Code or other applicable laws, or whenever there is reasonable cause to believe there exists a violation of the Rocklin Municipal Code or other applicable laws 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 (as that phrase is defined in Section 1.08.020(L) of this title) to inspect the same or to perform any duty imposed by the Rocklin Municipal Code or other applicable laws.

B. Except in emergency situations or when consent of the owner and/or occupant of the building or premises to be inspected has been obtained, the city official shall give the owner and/or occupant, if he/she can be located after reasonable effort, 24 hours' written notice of the authorized official's intention to inspect through a notice of intention to inspect. The notice of intention to inspect shall state that the property owner and/or occupant has the right to refuse entry and, that in the event such entry is refused, inspection may be made only upon issuance of an administrative warrant or search warrant as allowed by law by a duly authorized judge.

C. The written notice of intention to inspect shall be served by certified mail, return receipt requested. Where the authorized official intends to inspect within the next 24-hour period, the written notice shall be hand delivered. The notice of intention to inspect may be left with any person above the age of 18 who identifies himself/herself as an occupant, tenant or owner of the premises. If no one is at the premises at the time of delivery, the notice of intention to inspect shall be posted in two conspicuous places on the premises.

D. Prior to entering the premises, the authorized official conducting the inspection shall ascertain from the owner and/or occupant whether the notice of intention to inspect has been received and shall obtain permission for entry. Unless an emergency situation exists, if the owner and/or occupant refuses entry after such a request has been made, or if no actual

contact is made with the owner and/or occupant prior to the attempt to enter, the official must seek assistance from any court of competent jurisdiction in obtaining such entry.

1.14.028 Informal attempts to encourage compliance.

Nothing in this chapter shall be interpreted to preclude an enforcement authority from informally encouraging citizens to comply with the Rocklin Municipal Code or other applicable laws. Informal oral or written requests to encourage compliance are encouraged as are attempts to informally negotiate or mediate issues relating to compliance.

1.14.029 Service of notices.

Any notices required under this chapter except a notice of intention to inspect pursuant to Section 1.14.027 shall be served by personal delivery to the responsible person or by certified mail, return receipt requested, to the last known address of the responsible person. If the responsible person is not present for personal delivery, if certified mail is refused, or if the location of a responsible person cannot be determined after diligent efforts, notices may be posted in a conspicuous place on the affected property for a period of ten calendar days and by mailing first class to the last known address. If such mailing is not returned to the City within seven days, such notice will be deemed received. When there is no affected property, such alternative service shall be accomplished by publication of any notices in a newspaper of general circulation that is most likely to give actual notice to the responsible person two times in a ten-day period and by mailing first class to the last known address.

1.14.030 Responsibility of parent(s) and/or legal guardian.

Whenever the responsible person is a person under the age of 18, the enforcement authority shall provide copies of all notices and orders specified in this title to the parent(s) and/or legal guardian. Any administrative sanctions levied under this chapter may be levied against the juvenile and the parent(s) and/or legal guardian of the juvenile. The parent(s) and/or legal guardian shall have the right to a hearing and judicial review as set forth in this chapter. In addition to any other defenses that may be raised to the administrative violation, the parent(s) or legal guardian may raise a defense that the parent(s) or legal guardian have exercised good faith efforts to control the behavior of the minor but have been unsuccessful in achieving such control.

Article III. Hearings

1.14.040 Right to a hearing.

Any person issued a notice of violation or stop order, and who wishes to contest the violation or stop order may request a hearing by filing a request for hearing within ten calendar days of the date of the service of the notice of violation or stop order.

Any person issued an administrative citation, and who wishes to contest the violation or the proposed sanction may request a hearing by filing a request for hearing within 30 calendar days of the date of the service of the administrative citation.

1.14.041 Preservation of status quo pending hearing.

Any stop order issued pursuant to Section 1.14.022 shall remain in effect until the time of the hearing and any subsequent judicial review. Any additional compliance obligations that may be imposed as the result of a notice to correct, stop order or administrative citation shall also be stayed if a timely request for hearing is filed and until a final decision after the hearing is completed unless an emergency situation affecting the safety or preservation of life or property exists. The enforcement authority shall provide written justification for invoking an emergency situation exception under this section to the responsible person within 24 hours of taking action to correct the emergency situation.

1.14.042 Request for hearing and fee—Notice of denial of hearing based on untimely appeal.

The request for hearing shall be filed with the city clerk on a form provided by the city clerk and shall include reference to the notice which is being appealed, shall state all of the grounds for the appeal, and shall be accompanied by payment of: (1) an advance deposit of the fine set forth in the citation; or (2) if no sanctions are issued, a hearing fee which may be established by resolution of the city council. The city clerk shall not accept any request for hearing unless it is accompanied by the required advance deposit for the fine, unless a hardship waiver has been granted by the city manager or his or her designee. If the city clerk determines that the request for a hearing is untimely, the city clerk shall advise the responsible person of that determination in writing and shall mail a notice of denial of hearing based on untimely appeal to the responsible person by first class mail. The responsible person shall then have the right to judicial review of that determination as provided for in Sections 1.14.060 through 1.14.062 of this chapter. Upon a showing of good cause for the delay in filing a request for hearing, the city clerk may refer the issue of the right to an appeal to an administrative hearing officer pursuant to the procedures set forth in this chapter. The hearing officer shall determine whether there

was good cause for the delay in filing the request for hearing before proceeding to the merits of the appeal.

1.14.043 Meeting with enforcement authority.

Persons issued a notice of violation or administrative citation under this chapter are encouraged to meet with the enforcement authority and/or the appropriate department head or his/her designee prior to requesting a hearing to seek resolution of the matter. Such a meeting may be requested before or after the request of hearing is filed, but a request for the meeting shall not extend the time for filing the request for hearing.

1.14.044 Timely hearing.

The hearing shall be held within 45 calendar days of the filing of a request for hearing unless both parties agree to a postponement of the hearing or the hearing officer rules that there is good cause to postpone the hearing. After the hearing has started, it may be continued with the consent of all parties or upon a showing of good cause for such continuance.

1.14.045 Notice of time and place of hearing.

The city clerk shall mail by first class mail to all parties written notice of the time and place of the hearing at least ten calendar days prior to the date set for the hearing. Such notice shall also include a description of the rights of the parties in the hearing. Hearings shall be conducted in the city.

1.14.046 Hearing officer.

The city manager or his or her designee shall appoint an impartial hearing officer for each hearing, who may not be an employee of the city. The person appointed to conduct the hearing shall not have had any personal involvement in the case to be heard.

1.14.047 Ex parte communications.

The hearing officer shall have no communications with any party, any city employee or official, or any potential witness concerning the substance of the case. Having such communications outside the presence of a party may be grounds for disqualification of the hearing officer from conducting the hearing. All communications concerning the case between the hearing officer and any person shall be revealed to the parties in the matter.

1.14.048 Rights of the parties.

The parties to a hearing shall have the following rights:

A. Timely and adequate notice of the time and place of the hearing, their rights during the hearing, and the issues that are to be the subject of the hearing;

B. The right to present evidence and witnesses;

C. The right to present argument;

D. The right to be represented. The representative need not be an attorney;

E. The right to open disclosure of all evidence presented to the hearing officer in the case, subject to redaction of information regarding complainants;

F. The right to confront and cross-examine adverse witnesses;

G. The right to subpoena witnesses or documents;

H. The right to a decision based upon the evidence in the record of the hearing;

I. The right to an impartial hearing officer;

J. The right to a written decision setting forth the reasons for the decision and the evidence relied upon.

1.14.049 Hearing procedure.

The hearing shall be informal and the hearing officer will have an affirmative obligation to seek the truth concerning the issues at the hearing. The hearing officer may ask questions of any witness and may establish the procedure for the presentation of evidence. The hearing officer may, on his or her own motion, call or subpoena a witness. The hearing officer may order the exclusion of a witness during the testimony of other witnesses.

1.14.050 Oath.

All testimony shall be given under oath. Hearing officers have the authority to administer such oaths.

1.14.051 Quantum and burden of proof.

All facts must be established by a preponderance of the evidence. The enforcement authority will have the burden to prove that a violation occurred and that the proposed sanction is appropriate. The enforcement authority shall be required to present its case first.

1.14.052 Rules of evidence.

The rules of evidence adopted by state or federal law shall not apply. All relevant evidence shall be admissible and hearsay evidence may be used for the purpose of supplementing and explaining other evidence.

1.14.053 Subpoenas.

The hearing officer shall have the authority to issue subpoenas (order to appear and give testimony) and subpoenas duces tecum (order to produce document(s) or paper(s)). The hearing officer may only issue subpoenas and subpoenas duces tecum upon a showing of reasonable necessity by the requesting party.

1.14.054 Written decision.

The hearing officer shall prepare and forward to the parties a written decision within 30 calendar days of the close of the hearing. The decision shall be mailed by first class mail. If the hearing officer grants the appeal, the hearing officer shall have the discretion to order the refund of the fee charged to the responsible person for the appeal.

Article IV. Judicial Review

1.14.060 Final administrative decision.

The decision of the hearing officer shall constitute the final administrative decision and shall not be appealable to the city council or any committee or commission of the city.

1.14.061 Judicial review.

Appeal shall be through judicial review of the final administrative decision by filing a petition for a writ of mandate with the Superior Court in accordance with the provisions of Sections 1094.5 and 1094.6 of the California Code of Civil Procedure. Such writs must be filed within 90 calendar days from the date of the final administrative decision.

1.14.062 Review standard.

The court may not change the findings of fact of the hearing officer unless there is no substantial evidence to support those findings.

Article V. Enforcement of Monetary Sanctions

1.14.070 When monetary sanctions are due.

Monetary sanctions levied against a responsible person are due at the following times:

A. If a request for hearing is not filed in relation to the administrative citation, the monetary sanction set out in the notice shall be due and payable ten calendar days after service of the administrative citation.

B. If a request for hearing is filed within the time limits proscribed by Section 1.14.040 and there is no appeal of the hearing decision to the court pursuant to Section 1.14.061, the monetary sanction shall be due and payable 90 calendar days after the date of a hearing decision, an order by the hearing officer dismissing the request for hearing, or the date the hearing request is withdrawn by the responsible party. The amount of sanction payable shall be the amount set by the hearing officer in a decision after hearing, or the amount set forth in the administrative citation if there is no hearing decision.

C. If there is judicial review of the hearing decision pursuant to Section 1.14.061, the monetary sanction shall be due and payable 30 calendar days after the date of the final court order in relation to that review. The amount due shall be the amount ordered by the hearing officer unless a court modifies the amount of monetary sanction.

1.14.071 Place for payment of monetary sanctions.

All monetary sanctions shall be paid to the city as specified in the Administrative Citation, the decision of the hearing officer, or the court decision. All payments shall be accompanied by a copy of the administrative citation, or the decision of the hearing officer or the court decision establishing the amount of the monetary sanction. The finance department shall prepare a receipt documenting the payment of the monetary sanction and shall forward one copy of the receipt to the enforcement authority and one copy of the receipt to the city clerk. The city clerk shall thereafter verify that the sanction has been paid in full. If the sanction has been paid in full, the city clerk shall so note in the records pertaining to the administrative violation. If the sanction has not been paid in full, the city clerk shall notify the enforcement authority and responsible person in writing.

1.14.072 Failure to pay a monetary sanction.

If the responsible party does not pay the monetary sanction within the times provided under Section 1.14.070, or if the responsible party fails to pay the required monetary sanction in full within the times provided under Section 1.14.070, any unpaid portion shall bear interest at the

rate of ten percent per annum from the date such payment was due until paid in full and the city may take any of the following actions to collect the monetary sanction.

A. Liens. The amount of unpaid costs, excluding penalties, plus interest plus a reasonable administrative fee established by the city council from time to time to cover the cost of collection constitutes and may be declared a lien on any real property owned by the responsible party within the city.

1. 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.

2. The lien shall attach when the city manager or his/her designee records a lien listing delinquent unpaid sanctions with the Placer 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 recorded owner of the parcel.

3. 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 subsection (A)(1) of this section shall be recorded by the city clerk.

B. Special Assessments. The amount of the unpaid costs, excluding penalties, plus interest plus a reasonable administrative fee established by the city council from time to time to cover the cost of collection may be declared a special assessment against any real property owned by the responsible person within the city to the extent the responsible person owns more than one parcel within the city. 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 Placer 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 subjected to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes.

C. Withholding Entitlements. The city may withhold issuance of licenses, permits, and other entitlements to a responsible person until payment is received.

D. Civil Action Authorized. The city may commence civil action to recover unpaid costs, or penalties.

E. 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 Judgments Law, California Code of Civil Procedure section 680.010, et seq.

Section 6. Renumber Chapter 1.16. Chapter 1.16 of Title 1 of the Rocklin Municipal Code, City Seal and Authorized Logo and Insignia, is hereby renumbered as Chapter 1.22.

Section 7. Enact Chapter 1.16. Chapter 1.16 of Title 1 of the Rocklin Municipal Code is hereby enacted as follows:

Chapter 1.16 – Additional Remedies

Sections:

1.16.010 Abatement by city.

1.16.020 Procedure for creation of nuisance abatement lien.

1.16.030 Treble damages for subsequent abatement judgments.

1.16.010 Abatement by city.

Pursuant to California Government Code section 38773, the city may abate any nuisance at the expense of the persons creating, causing, committing or maintaining the nuisance and any and all expenses of abatement, including reasonable attorney's fees incurred, shall constitute a lien against the property on which the nuisance is maintained and such debt becomes a personal obligation against the property owner.

1.16.020 Procedure for creation of nuisance abatement lien.

A. Notice Requirement. Whenever a responsible person refuses to abate a nuisance and the owner or person occupying the property refuses to consent to abatement by the city, the enforcement authority shall serve a written notice to abate such nuisance upon the owner of the property (as shown on the last equalized assessment roll or the supplemental roll, whichever is most current), and on any persons known to be possessing such property.

B. Contents of Notice. The notice shall include the following information:

1. The street address, legal description or other description sufficient to identify the affected property;

2. A statement that the property owner and/or person in possession of the property has a reasonable period of time from the date of the notice to voluntarily abate the nuisance. The time period for correction shall be determined by the enforcement authority;

3. A statement that the property owner and/or person in possession of the property, may, during the period of voluntary abatement, (1) file a written request for a hearing with the city clerk as provided for in Section 1.14.040 of this chapter if there is an objection to the demand to abate the nuisance, or (2) present written evidence to the enforcement authority to show that the property owner or person in possession of the property had no responsibility for creating or maintaining the nuisance on the property and that to be required to remove or abate such nuisance will cause financial or physical hardship; and

4. A statement that if the nuisance is not voluntarily abated within the stated period, and the property owner and/or person in possession of the property fails to present the information set forth in subsection (B)(3) of this section or to file a timely written request for a hearing, all persons served with such notice shall be deemed to have consented to the abatement of the nuisance and that, at the election of the city, the city will abate the nuisance and the costs for such abatement may be charged against the premises and may be recorded as a lien against the premises.

C. Service of Notice. The notice to abate the nuisance shall be served in the same manner as a summons in a civil action in accordance with Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. If the owner of record, after diligent search, cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten days. The failure to make or attempt such service on any person as required herein shall not invalidate any proceedings under this chapter as to any other person duly served.

D. Failure to Pay Costs—Authority to Record Lien or to Declare Lien a Special Assessment Against Parcel.

1. If all or any portion of the costs and expenses incurred by the city in abating the nuisance and accounted for by the enforcement authority remain unpaid after 30 days, pursuant to authority created by law, including Government Code section 38773, et seq., such portion thereof as remains unpaid shall constitute and shall be declared to constitute a lien on the real property which was the subject of notice to abate.

2. Prior to recordation of the lien, notice shall be given to the land owner. If the land owner, after a diligent search cannot be found, the notice may be served by

posting a copy of the notice upon the property subject to the lien, in a conspicuous place, for a period of ten days. The notice shall also be published in a newspaper of general circulation in the city.

3. The lien shall attach when the city manager or his/her designee records a lien listing delinquent unpaid nuisance abatement costs with the Placer County recorder's office. The lien shall specify the amount of the lien, the date of the abatement order, 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 recorded owner of the parcel.

4. In addition to the recordation of a lien, the amount of the costs and expenses incurred by the city in abating the nuisance plus a reasonable administrative fee established by the city council from time to time to cover the cost of collection may be declared a special assessment against any real property owned by the responsible person within the city to the extent the responsible person owns more than one parcel within the city. 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 Placer 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 subjected to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes.

5. In the event that the lien or special assessment is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in subsection (D)(1) of this section shall be recorded.

1.16.030 Treble damages for subsequent abatement judgments.

Pursuant to California Government Code section 38773.7, upon the entry of a second or subsequent civil or criminal judgment within a two-year period that finds an owner of property responsible for a condition that may be abated in accordance with California Government Code section 38773.5, a court may order the owner to pay treble the costs of the abatement. These costs shall not include conditions abated pursuant to California Health and Safety Code section 17980.

Section 8. Enact Chapter 1.18. Chapter 1.18 of Title 1 of the Rocklin Municipal Code regarding criminal penalties is hereby enacted as follows:

Chapter 1.18 – Criminal Penalties

Sections:

1.18.010 Violations—General penalty.

1.18.020 Violation—Separate offense.

1.18.030 Authorization for issuance of citations by public officers and employees.

1.18.040 Issuance of notice to appear.

1.18.050 Designation of employees authorized to act pursuant to this chapter.

1.18.060 Training.

1.18.010 Violations—General penalty.

Whenever in this code or in any ordinance or resolution of the city, any act is prohibited or is made or declared to be unlawful or an offense, or the doing of any act is required, or the failure to do any act is declared to be unlawful, the violation shall be punished as follows:

A. For those acts or omissions designated as misdemeanors, the same shall be punished according to the punishment prescribed for a misdemeanor in the general laws of this state;

B. For any act of omission which is charged as an infraction, the same shall be punished by a fine not exceeding five hundred dollars ($500.00);

C. For any act or omission for which no penalty is specified, the same shall be punished as a misdemeanor pursuant to the provisions of subsection A of this section.

1.18.020 Violation—Separate offense.

Each day a violation continues, it constitutes a separate and distinct offense.

1.18.030 Authorization for issuance of citations by public officers and employees.

Pursuant to Penal Code section 836.5, the city council authorizes public officers and employees of the city, who have the duty to enforce a statute or ordinance of the Rocklin Municipal Code, to arrest a person without a warrant whenever any such official or employee has reasonable cause to believe that the person to be arrested has committed a violation of such statute or ordinance in the presence of the public official or employee.

1.18.040 Issuance of notice to appear.

In any case in which a person is arrested pursuant to this chapter and the person arrested does not demand to be taken before a magistrate or judge, the public official or employee making the arrest shall prepare a written notice to appear and shall thereafter release such person on his or her written promise to appear in court, pursuant to Penal Code section 853.6.

1.18.050 Designation of employees authorized to act pursuant to this chapter.

The city manager shall designate in writing the classification or job title of the city officials and employees designated to exercise such arrest and citation authority. No officer or employee shall be allowed by his or her supervisor to exercise the arrest and citation authority herein conferred, unless such officer or employee is within such designation.

1.18.060 Training.

Every public official or employee designated to act under this chapter shall be provided with such training as is established in Penal Code section 832, and such other training as may be required by the city manager. The training program shall include instruction regarding the provisions of the statutes and ordinances to be enforced, the evidentiary prerequisites to proper prosecution for violations thereof, the appropriate procedures for making arrests or otherwise prudently exercising such arrest and citation authority, and the legal and practical ramifications and limitations attendant thereto. Any such officer or employee shall be appropriately instructed to deposit executed citations or notices within three days for filing with the court after review for legal sufficiency.

Section 9. Amend Subsection 5.04.050(B). Subsection 5.04.050(B) of Title 5 of the Rocklin Municipal Code is hereby amended to read as follows:

5.04.050(B)

Any person so violating any of the provisions of this chapter or knowingly or intentionally misrepresenting to any officer or employee of this city any material fact in procuring the certificate herein provided for shall be guilty of a misdemeanor, punishable as provided in Chapter 1.18 of this code.

Section 10. Amend Subsection 5.30.050(A). Subsection 5.30.050(A) of Title 5 of the Rocklin Municipal Code is hereby amended to read as follows:

5.30.050(A)

Anyone violating any provision of this chapter shall be subject to an administrative citation and fine as set forth in Chapter 1.14 of this code.

Section 11. Amend Section 8.04.030. Section 8.04.030 of Title 8 of the Rocklin Municipal Code is hereby amended to read as follows:

8.04.030 Declaration of public nuisance.

Any property found to be maintained in violation of the foregoing section is declared to be a public nuisance and shall be abated by rehabilitation, removal, demolition or repair pursuant to the procedures set forth in Chapters 1.08 through 1.18 of Title 1 of this code.

Section 12. Repeal Sections 8.04.040 – 8.04.200. Sections 8.04.040 through 8.04.200 of Title 8 of the Rocklin Municipal Code are hereby repealed.

Section 13. Amend Subsection 9.42.050(A). Subsection 9.42.050(A) of Title 9 of the Rocklin Municipal Code pertaining to civil enforcement and penalties for violations is hereby amended to read as follows:

9.42.050(A)

Any person found to be in violation of any provision of this chapter shall be subject to an administrative citation as set forth in Chapter 1.14 of this code. The enforcement officers for this chapter shall be city of Rocklin police officers and code enforcement officers.

Section 14. Amend Subsection 12.04.200(E). Subsection 12.04.200(E) of Title 12 of the Rocklin Municipal Code is hereby amended to read as follows:

12.04.200(E)

A violation of this chapter is subject to administrative citation and fine under Chapter 1.14.

Section 15. Amend Section 15.04.080. Section 15.04.080 of Title 15 of the Rocklin Municipal Code is hereby amended to read as follows:

15.04.080 - Penalty and enforcement.

Notwithstanding any other provision of any code adopted herein, any person who violates any provision of any code, or modification thereto, is guilty of a misdemeanor, as the same is now, or may hereafter be defined, by the laws of the state of California. For purposes of Chapter 1.18 of this code, the official or officials designated as the enforcing authority under each code adopted hereby, and/or the city manager, shall be the enforcing authority.

The fire chief or his/her designee is hereby designated the enforcing authority for all standards promulgated by the Office of the State Fire Marshal.

Section 16. Amend Subsection 17.08.130(H). Subsection 17.08.130(H) of Title 17 of the Rocklin Municipal Code pertaining to off-street parking of accessory vehicles is hereby amended to read as follows:

17.08.130(H)

Violation of this section is deemed to be an infraction and is punishable as such pursuant to Chapter 1.14 of this code, or at the discretion of the enforcement official or city attorney, may be punishable by the use of any other civil or administrative remedy or penalty authorized by, or set forth in, the Rocklin Municipal Code.

Section 17. Amend Subsection 17.08.134(C). Subsection 17.08.134(C) of Title 17 of the Rocklin Municipal Code pertaining to off-street parking of accessory vehicles is hereby amended to read as follows:

17.08.134(C)

Violation of this section is deemed to be an infraction and is punishable pursuant to Chapter 1.18 of this code, or by administrative citation pursuant to Chapter 1.14 of this code.

Section 18. Effective Date. This ordinance shall take effect 30 days after the date of its adoption.

Section 19. Environmental. The City Council hereby finds that this ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060, subdivision (c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061, subdivision (b)(3) (there is no possibility the activity in question may have a significant effect on the environment).

Section 20. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions to be declared invalid or unconstitutional.

Section 21. Publication. Within 15 days of passage of this ordinance, the City Clerk shall cause the full text of the ordinance, with the names of those City Councilmembers voting for and against the ordinance, to be published in the *Placer Herald*. In lieu of publishing the full text of the ordinance, the City Clerk, if so directed by the City Attorney and within 15 days, shall cause a summary of the ordinance, prepared by the City Attorney and with the names of the City Councilmembers voting for and against the ordinance, to be published in the *Placer Herald*, and shall post in the office of the City Clerk a certified copy of the City Councilmembers voting for and against the ordinance. The publication of a summary of the ordinance in lieu of the full

text of the ordinance is authorized only where the requirements of Government Code section 36933(c)(1) are met.

INTRODUCED at a regular meeting of the City Council of the City of Rocklin held on February 27, 2018, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ABSTAIN: Councilmembers: None

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Rocklin held on March 13, 2018, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

_____

Kenneth Broadway, Mayor

ATTEST:

_____

Barbara Ivanusich, City Clerk

First Reading: 2/27/18
Second Reading: 3/13/18
Effective Date: 4/12/18