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**AGENDA ITEM NO.:** 7  
**PLANNING COMMISSION  
MEETING DATE:** October 24, 2012  
**SUBJECT:** Zoning Code Update

### **EXECUTIVE SUMMARY**

The County is working on an update to the Zoning Code and General Plan. The Planning Commission and the Board of Supervisors conducted a joint workshop on July 10, 2012 regarding the draft documents and directed staff to address two issues further before proceeding with public outreach and environmental review: (1) Code Enforcement and (2) Special Event Permits. The Commission reviewed these issues on August 22, 2012 and provided recommendations; staff is presenting a new approach to the proposal for Code Enforcement for the Commission's review.

### **PROJECT INFORMATION**

**Supervisory District:** County-wide  
**Recommended Action:** Conduct a workshop regarding code enforcement related to the Zoning Code Update and provide input to staff and the Board of Supervisors  
**Project Planner:** Joshua Hart, AICP, Planning Director

### **BACKGROUND**

One of the follow-up actions from the 2001 General Plan was to update the Zoning Code. Staff worked with Willdan to prepare updated Zoning Code sections, which were provided for review by the Board and the Planning Commission in a series of workshops last year. Staff incorporated this input into a comprehensive Zoning Code update and has prepared a related General Plan update.<sup>1</sup> The Planning Commission and the Board of Supervisors conducted a joint workshop on July 10, 2012 regarding the draft documents and directed staff to address two issues further

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<sup>1</sup> Refer to <http://inyoplanning.org/GPandZoningUpdates.htm> for more details regarding the update effort.

before proceeding with public outreach and environmental review: (1) Code Enforcement and (2) Special Event Permits. The Commission reviewed these issues on August 22, 2012 and provided recommendations. Staff is recommending a new approach to Code Enforcement for the Planning Commission's review and input.

## **ANALYSIS**

Under current practice, staff responds to written complaints regarding zoning violations and works with property owners to rectify such issues. If no resolution can be reached, staff notifies the District Attorney (DA) of the violation. Based on previous input from the Planning Commission and the Board, staff had crafted a proposal to create a Code Enforcement Committee with the power to levy fines, and transfer enforcement to the Office of County Counsel.

The Planning Commission provided input into the proposed updated Code Enforcement procedures on August 22, 2012. Upon further review, County Counsel recommended that more detail be added to the proposal as well as strengthening the language to ensure enforceability. Upon review of several jurisdictions' Code Enforcement provisions, staff revised the proposal based in part on San Bernardino County's example. The attached proposal blends the County's existing procedures, input received throughout the process, and provisions for enforceability.

Under the proposal, upon written complaint, the Planning Director shall investigate. If a violation exists, the Planning Director shall attempt to contact the property owner to alert the property owner about the violation and educate the property owner, the penalties for non-compliance, and how to bring the violation into compliance with this Title. If the property owner does not correct the violation, the Planning Director shall send written warnings to the property owner describing the violation, the penalties for non-compliance, and specifying a reasonable period of time to correct the violation. If the property owner still does not correct the violation, the Planning Director shall issue a citation as deemed appropriate, typically \$1,000.00. If the property owner wishes, he or she may appeal the citation to the Planning Commission. The County may file civil and/or criminal charges, abate the violation, and/or collect from the property owner the County's costs to process the case.

## **Alternatives**

Based on previous discussions, the following alternatives may be considered to replace or augment the current proposal:

- **Code Enforcement Committee:** previously, a Code Enforcement Committee composed of staff had been considered to issue fines and otherwise enforce the Code. Staff believes that the Planning Commission provides an existing forum to hear appeals of administrative citations, and that County resources can be conserved by utilizing an existing forum rather than creating a new hearing body.
- **Outsourcing:** the County could hire an outside firm to conduct code enforcement. A variety of models are available, ranging from completely outsourcing the activities, authorizing the County to maintain some oversight (such as override power in

extenuating circumstances), or limiting the firm's involvement to penalty collection. Profit motive could be an issue for outsourcing, including from any potential firm's ability to make a profit due to the low number of cases in Inyo County as well as the firm's motivation to issue and collect fines.

- **Amount of Fine/Ticket:** the amount of the fine could vary based on how the code is crafted.
- **Enforcement:** enforcement could continue to be entirely vested in the DA's office to eliminate transferring the burden to prosecute violations to County Counsel.
- **Code Enforcement Overlay:** enforcement could vary by geographic areas of the County. This could be accomplished by an overlay zone or other similar mechanism.
- **Maintain the Status Quo:** the existing Code Enforcement procedures could continue to be implemented.

## RECOMMENDATION

Conduct a workshop regarding code enforcement related to the Zoning Code Update and provide input to staff and the Board of Supervisors.

## ATTACHMENT

Proposed Code Enforcement Provisions

Prepared and Approved By:



Joshua Hart, AICP  
Director, Inyo County Planning Department

**Draft Code Enforcement Section for Inyo County Zoning Code Update  
Inyo County Planning Commission  
October 15, 2012**

I. Purpose

This Section establishes provisions that are intended to ensure compliance with the requirements of this Title and any conditions of planning permit approval, to promote the County's planning efforts, and for the protection of the public health, safety, and welfare of the County.

II. Authority to Enforce

- a. The County Administrator, District Attorney, Planning Director, Code Enforcement Officer, Building Official, Public Works Director, or their designee, any duly authorized law enforcement officer, and any official charged with the issuance of licenses and permits (hereinafter individually and/or collectively referred to as "Authorized Official") may enforce the provisions of this Title.
- b. Whenever an Authorized Official becomes aware that a violation of this Title exists on any property located within the County, he or she shall notify the Planning Director or the Planning Director's designee of the violation and cooperate with the Planning Director in the Planning Director's enforcement efforts.

III. Conformance with Zoning Code for Other Permits, Licenses, Certificates

All officials and employees of the County vested with the authority or duty to issue permits shall conform to the provisions of this Title and shall not issue a permit, certificate or license for uses, purposes, buildings or structures in conflict with the provisions of this Title. Any such permit, certificate or license issued in conflict with the provisions of this Title shall be null and void.

IV. Authority to Inspect and Enter Property

All persons authorized to enforce the provisions of this Code are authorized to enter upon any property or premises within the unincorporated areas of the County to ascertain whether the property or premises is in compliance with this Code, and to make any inspection as may be necessary in the performance of their enforcement duties. These inspections may include the taking of photographs, samples, or other physical evidence, and the making of video and/or audio recordings. All such entries and inspections shall be done in a reasonable manner. If an owner, lawful occupant, or the respective agent, employee, or representative thereof refuses permission to enter and/or inspect, the County, acting by and through such persons authorized to enforce this Code, may seek an administrative inspection warrant pursuant to the procedures provided by California Code of Civil Procedure Section 1822.50 through 1822.59, as may be amended from time to time, or the successor provisions thereto.

V. Violation of Code Declared Public Nuisance

- a. Use of Land

Any use of land that is not allowed by this Title (either as a matter of right or through the application of the appropriate land use approval or permit) and/or which is conducted without first obtaining all permits and/or licenses otherwise required pursuant to all applicable State and/or federal laws and/or other provisions of the Inyo County Code (and thereafter maintaining each such permit and/or license so as to remain legally valid at all times) is hereby declared unlawful and a public nuisance.

b. Use, Occupancy, and Development of Structures

Any structure used or occupied in a manner not allowed by this Title (either as a matter of right or through the application of the appropriate land use approval or permit) and/or which is used or occupied without first obtaining all permits and/or licenses otherwise required pursuant to all applicable State and/or federal laws and/or other provisions of the Inyo County Code (and thereafter maintaining each such permit and/or license so as to remain legally valid at all times), and/or is abandoned or distressed, is hereby declared unlawful and a public nuisance.

c. Land Use Approval

Any property not in compliance with an applicable condition of approval imposed upon any land use approval, authorization, permit, variance, or other planning entitlement is hereby declared to be unlawful and a public nuisance.

d. Public Nuisance

Any violation of an order pursuant to this Section shall constitute a misdemeanor and a public nuisance, and shall be subject to the remedies and penalties established by the County Code and this Section.

VI. Continuing and/or Repeat Violations

a. Continuing Violations

A continuing violation of this Title is deemed a separate violation for each and every day that such violation exists. Any of the violations set forth in this Title constitutes a criminal act and is punishable pursuant to ordinances of the County and the laws of the State; provided however, that the County retains any and all civil remedies including the right of civil injunction for the prevention of the violation and for the recovery of money damages therefor.

b. Repeat Violations

A repeated violation of this Title is deemed a separate violation for each and every day that such violation exists, including days during a previous violation episode. Any of the violations set forth in this Title constitutes a criminal act and is punishable pursuant to ordinances of the County and the laws of the State; provided however, that the County retains any and all civil remedies including the

right of civil injunction for the prevention of the violation and for the recovery of money damages therefor.

## VII. Remedies

All remedies provided for herein shall be cumulative and not exclusive. The conviction and punishment of any person hereunder, shall not relieve such person from the responsibility of correcting prohibited conditions or removing prohibited buildings, structures or improvements, nor prevent the enforced correction or removal thereof.

## VIII. Enforcement

### a. Notices, Orders, and Citations

This Title may be enforced through the issuance of various notices and orders pertaining to any land use; or to any addition, alteration, construction, conversion, enlargement, installation, moving, reconstruction, rehabilitation of any structure; or to any use of any structure; that is contrary to any provision of this Title as provided herein, or as otherwise provided under various provisions of the other Titles of the Inyo County Code. Such notices may include, without limitation, notice of violation, notice to correct, notice to vacate, and stop work orders. This Title may also be enforced through the use of administrative citations issued pursuant to Government Code Section 53069.4 and the provisions of the Inyo County Code adopted pursuant to the authority conferred by Government Code Section 53069.4; or through the use of criminal citations issued pursuant to Penal Code Section 836.5 and in the manner specified by any other Title of the Inyo County code.

### b. Enforcement Remedies Are Cumulative and Discretionary, Not Exclusive

All remedies contained in this Title for the handling of violations or enforcement of the provisions of this Title shall be discretionary and cumulative, and not exclusive of any other applicable provisions of the County Code or other applicable State law. The County, at its sole discretion and acting through the officials designated in this Section and in consultation with the Office of County Counsel, may enforce this Title through the application of criminal, civil, and administrative remedies as set forth in this Section. In the exercise of such discretion in selecting an appropriate code enforcement remedy, the County shall not be required to institute available code enforcement remedies in any particular order, or to prefer the application of one remedy to another.

### c. Criminal Actions

- i. Notwithstanding any other provision of the County Code, each person violating, causing, or allowing a violation of any provision of this Title or any permit or condition of approval granted pursuant thereto, shall be guilty of an infraction, unless the violation is specifically declared to be a misdemeanor.

- ii. Every violation of any provision of this Title, or of any permit issued pursuant to this Title (including any of the conditions of approval for such permit) that is prosecuted as an infraction shall be punished, upon conviction or upon a plea of nolo contendere (commonly called no contest), by:
  - (a) a base fine not exceeding \$100 for a first violation;
  - (b) a base fine not exceeding \$200 for a second violation of the same Code Section or permit (or any of the conditions of approval) occurring on the same property and committed by the same person within one year; and
  - (c) a base fine not exceeding \$500 for each additional violation of the same Code Section or permit (or any of the conditions of approval) occurring on the same property and committed by the same person within one year.

Continuing and repeat violations are separate violations as set out in [REDACTED] above. Any court costs that the court may otherwise be required to impose pursuant to applicable state law or local ordinance shall be imposed in addition to the base fine. Notwithstanding the above, a first or subsequent violation of this Title may be charged and prosecuted as a misdemeanor.

- iii. A misdemeanor shall be punished, upon conviction or upon a plea of nolo contendere (commonly called no contest), by a base fine of not less than \$500 and not more than \$1,000, or by imprisonment in the County jail for a period of not more than six months, or by both such base fine and imprisonment. Any court costs that the court may otherwise be required to impose pursuant to applicable state law or local ordinance shall be imposed in addition to the base fine.
- iv. The conviction and punishment of any person of an offense as described in this Section or the payment of a criminal fine by or on behalf of the person convicted, shall not relieve that person from the responsibility for correcting, removing, or abating the violation that resulted in the conviction; nor prevent the enforced correction, removal or abatement thereof by the County. The correction, removal, or abatement of a violation begun after the issuance of a criminal citation or the filing of a criminal complaint shall not be a defense to the infraction or misdemeanor so charged and, following a conviction or plea of nolo contendere, shall not be grounds for the dismissal of the action or the waiver, stay, or reduction of any fine established in this Section.

b. Civil Actions

i. Injunctive Relief and Abatement

At the request of any person authorized to enforce this Title, the County Counsel or District Attorney may commence proceedings for the abatement, removal, correction and enjoinder of any act or omission that constitutes or will constitute a violation of this Title or any permit or land use approval granted pursuant thereto, and for an order requiring the violator(s) to pay civil penalties and/or abatement costs. Where multiple violators are involved, they shall be jointly and severally liable for the civil penalties and/or abatement costs.

ii. Civil Remedies and Penalties

Any person, whether acting as principal, agent, employee, owner, lessor, lessee, tenant, occupant, operator, contractor, or otherwise, who violates any provision of this Title or any permit or any condition of land use approval granted pursuant thereto, shall be liable for a civil penalty not to exceed \$1,000.00 per violation for each day or any portion thereof, that the violation continues to exist. In determining the amount of civil penalty to be imposed, both as to the daily rate and the subsequent total amount for any given violation, the court shall consider all relevant circumstances, including, but not limited to, the extent of the harm caused by the conduct constituting the violation, the nature and persistence of such conduct, the length of time over which the conduct occurred or was repeated, the assets, liabilities, and net worth of the violator, whether a corporate entity or an individual, and any corrective action taken by the violator.

iii. Attorney's Fees

In any civil action, administrative proceeding [excluding administrative citations issued pursuant to [REDACTED] (Administrative Actions)], or special proceeding to abate a public nuisance, whether by seeking injunctive relief and/or an abatement order, or other order; attorney's fees may be recovered by the prevailing party and shall not exceed the amount of reasonable attorney's fees incurred by the County in that action or proceeding (Government Code Section 25845).

c. Abatement

Once the Director follows the procedures set forth herein and the time for compliance has lapsed, if the violations remain, the nuisance conditions may be abated by County personnel or by a private contractor. The Director shall provide ten (10) days written notice by certified mail or other method to verify delivery to the property owner prior to commencing abatement operations.

d. Administrative Actions

i. Application

All violations of any provision of this Title or any permit or land use approval granted pursuant thereto are subject to enforcement through the use of administrative citations in accordance with Government Code Section 53069.4 and this Section. The following



procedures shall govern the imposition, enforcement, collection, administrative, and judicial review of administrative citations and penalties.

ii. Pre-Administrative Citation Correction

(a) Verbal Warning

The Planning Director shall attempt to contact the property owner via telephone or other means, to inform the property owner about the violation, educate the property owner about the consequences of continuing to violate this Title, and direct the property owner to cease the violation.

(b) Written Correction Notices

If the verbal warning does not result in correction of the violation in a reasonable period of time, typically one (1) month, the Planning Director shall notify the property owner by certified mail or other appropriate means to confirm receipt to educate the property owner about the violation and the consequences of continuing to violate this Title, and direct the property owner to cease the violation. The Planning Director shall specify a reasonable period of time to correct the violation, based on the specific circumstances of the case, after which an Administrative Citation will be issued.

iii. Administrative Citation

In the event the violation has not been corrected after the Planning Department has complied with [REDACTED], above, the Planning Director may issue an administrative citation, which shall be issued on a form prepared in consultation with County Counsel. The administrative citation shall contain the following information:

- (a) Date and location of the violation and the approximate time, if applicable, that the violation was observed.
- (b) Identity of each violation by the applicable section number of this code and by either the section's title or a brief descriptive caption; or by reference to the applicable permit or land use approval and describing the condition violated.
- (c) Description of the action required to correct the violation(s).
- (d) Requirement that the responsible party immediately correct the violation and an explanation of the consequences of failure to correct the violation.

- (e) Impose a penalty for the violation unless it is a "warning only" citation, and state the amount of the penalty including any payment of fees pursuant to [REDACTED] of this Code. Multiple violations may be listed on the same citation form. In the event of multiple violations, the administrative citation shall list the penalty amount for each violation and the total amount of all of the penalties.
- (f) A notation box for the enforcement officer to indicate whether or not the citation is issued as a "warning only" and without penalty. The administrative citation shall also include a notation box for the enforcement officer to indicate that the penalty will be waived if the violation is corrected by the compliance deadline date indicated on the citation form.
- (g) Explanation of how the penalties shall be paid and the time period by which it shall be paid, and the consequences of failure to pay the penalty within this time period.
- (h) All appeal rights and instructions on how to appeal the citation.
- (i) The printed name and the signature of the enforcement officer and the signature of the responsible party, if he/she can be located, as set forth in subsection (c) below.

iv. Service of Citation

- (a) If the responsible party is present at the scene of the violation, the enforcement officer shall attempt to obtain their signature on the administrative citation and shall deliver a copy of the administrative citation to them.
- (b) If the responsible party is a business, and the business owner is on the premises, the enforcement officer shall attempt to deliver the administrative citation to the business owner. If the enforcement officer is unable to serve the business owner on the premises and the enforcement officer can only locate the manager or on-site supervisor, the administrative citation may be issued in the name of the business and a copy given to the manager or on-site supervisor. A copy of the administrative citation shall also be mailed to the business owner by certified mail, return receipt requested. If a copy of the administrative citation that is sent by certified mail is returned by the United States Postal Service unsigned or marked "unclaimed" and/or "refused", then service by first class mail shall be deemed effective.

- (c) If no one can be located at the property, then a copy of the administrative citation shall be posted in a conspicuous place on or near that property and a copy mailed by certified mail, return receipt requested, to each responsible party at their last known addresses as they appear on the last County equalized assessment role, or other available public records related to title or ownership of the property that is the subject of the administrative citation. If the copy of the administrative citation sent by certified mail to a responsible party is returned by the United States Postal Service with the mail receipt unsigned, or marked "unclaimed" and/or "refused", then service by first class mail shall be deemed effective.
- (d) The failure of any responsible party to receive a copy of the administrative citation shall not affect the validity of the proceedings.

v. Administrative Penalties

- (a) Unless otherwise provided in this code, the amount of penalty to be imposed for a violation of this code and assessed by means of an administrative citation shall be one hundred dollars (\$100.00) for the first occurrence of a violation; two hundred dollars (\$200.00) for the second occurrence of the same violation occurring on the same property; and five hundred dollars (\$500.00) for the third and each subsequent occurrence of the same violation occurring on the same property. Continuing and repeat violations are separate violations as set out in [REDACTED] above. Notwithstanding this paragraph, the amount of penalty to be assessed by means of an administrative citation may be established by resolution of the Board of Supervisors.
- (b) If the violation is not corrected, additional administrative citations may be issued for the same violation. The amount of the penalty shall increase at the rate specified above.
  - (i) Payment of the penalty shall not excuse failure to correct the violation nor shall it bar further enforcement action by the County.
  - (ii) The penalties assessed shall be payable to the County by the compliance deadline indicated on the Administrative Citation.
  - (iii) Except as provided below, any person who fails to pay to the County any penalty imposed pursuant to the provisions of this Chapter on or before the date

that the penalty is due shall also be liable for the payment of any applicable late payment charges as established by the Board.

- (iv) The County may collect any past due administrative citation penalty or late payment charge by use of any available legal means, including without limitation, the filing of a notice of lien, describing the real property affected and the amount of the costs, penalties or damages to the County Auditor, who shall place the amount thereof on the assessment role as a special assessment to be paid with County taxes, unless sooner paid. The County may also recover its collection costs. A judgment or award of such costs, penalties or damages may also be enforced in other manner provided by law.
- (v) The County may also recover administrative costs for defending the citation at the appeal hearing.

vi. Appeal of Administrative Citation

(a) Notice of Appeal.

A responsible party may appeal the administrative citation by filing a written notice of appeal with the department that issued the administrative citation. The written notice of appeal must be filed within fifteen (15) calendar days of the date the administrative citation was served in a manner set forth in [REDACTED]. Failure to file a written notice of appeal within this time period shall constitute a waiver of the right to appeal the administrative citation. The notice of appeal shall contain the following information:

- (i) A brief statement setting forth the appealing responsible party's (hereinafter appellant) interest in the proceedings;
- (ii) A brief statement of the material facts, which the appellant claims supports their contention that no administrative penalties should be imposed or that an administrative penalty of a different amount is warranted under the circumstances;
- (iii) An address at which the appellant agrees that notice of any additional proceeding, or an order relating to the imposition of an administrative citation penalty, shall be received by the appellant by mail;

(iv) The signature of the appellant.

vii. Administrative Hearing

Upon a timely, written notice of appeal by the appellant, an administrative hearing shall be held as follows:

(a) Hearing Date

The date of the hearing shall be set for the next Planning Commission meeting. Payment of the penalty will be tolled from the date of the notice of appeal until a decision is issued by the Planning Commission.

(b) Notice of Hearing

Notice of the administrative hearing shall be given at least 10 calendar days before the hearing to the appellant. The notice may be delivered to the appellant or mailed by first class mail to the address listed in the notice of appeal.

(c) Planning Commission

The administrative hearing shall be held the Planning Commission.

viii. Conduct of the Hearing

(a) The contents of the Planning Department's file in the case shall be admitted as prima facie evidence of the facts stated therein. The Planning Commission shall not be limited by the technical rules of evidence. The Planning Department shall bear the burden of proof at the administrative hearing to establish the existence of a violation of this code by a preponderance of the evidence.

(b) If the appellant requesting the administrative hearing fails to appear at the hearing, the Planning Commission shall make its determination based on the information contained in the Planning Department's file in the case and the appellant's notice of appeal.

(c) The only evidence that shall be permitted at the administrative hearing and considered by the Planning Commission in reaching a decision is that evidence which is relevant to the proof or disproof of:

(i) Ownership of the subject property, when applicable;

- (ii) Whether a person noticed by the issuing department as a responsible party is, in fact, a responsible party;
- (iii) Whether a violation of this code occurred and/or continues to occur on the date or dates specified in the administrative citation;
- (iv) Whether the responsible party has committed, caused, maintained, or permitted a violation of this code on the date or dates specified on the administrative citation.
- (v) The reasonableness of any penalty and costs and the responsible party's ability to pay the penalty and costs.

ix. Planning Commission's Decision

- (a) After considering all the testimony and evidence submitted at the hearing, the Planning Commission shall promptly issue a written decision ("Administrative Citation Appeal Ruling") to uphold or cancel the administrative citation and shall list in the decision the reasons for that decision.
- (b) If the Planning Commission determines that the administrative citation should be upheld, it may modify or reduce any penalty assessed in the administrative citation but shall have no authority to waive any action which may be necessary to correct the violation. The Planning Commission may modify or reduce any fees required by [REDACTED], however those fees shall not fall below the level of fees mandated by [REDACTED].
- (c) If the administrative citation has been upheld, the Planning Commission may allow payment of the administrative penalty in installments, if the appellant has provided evidence satisfactory to the Planning Commission of an inability to pay the penalty in full.
- (d) If the Planning Commission denies the administrative citation, then no penalty shall be assessed and any penalty otherwise deposited with the issuing department shall be promptly refunded to the appellant.
- (e) The appellant shall be served with a copy of the Planning Commission's written decision either at the conclusion of the hearing or by first class mail. The Planning Commission's written decision shall become final when served and if mailed, on the date of mailing.

- (f) The Planning Commission's written decision shall contain instructions for obtaining judicial review of the decision pursuant to California Government Code Section 53069.4, as that section may be from time to time amended, or the successor provision thereto.
  - (g) If the administrative citation is upheld, the Planning Commission shall award the costs of the County's enforcement and defense of the citation as outlined in full in an itemized summary of costs presented at the hearing, including cost of the actual time spent to conduct the hearing.
- x. Judicial Review of Administrative Planning Commission's Decision
- (a) Notice of Appeal  

Within 20 calendar days of the date of the delivery or mailing of the Planning Commission's decision to the appellant, the appellant (hereafter "contestant") may contest that decision by filing an appeal to be heard by the Superior Court, and paying the filing fee set forth at Government Code Section 53069.4, or the successor provision thereto. The failure to file the written appeal and to pay the filing fee within this period shall constitute a waiver of the right to an appeal and the decision shall be deemed confirmed. The contestant shall serve a copy of the notice of appeal in person or by first class mail upon the Planning Department.
  - (b) The Superior Court Appeal Hearing  

The conduct of the appeal before the superior court is a subordinate judicial duty and may be performed by traffic trial commissioners and other subordinate judicial officers at the direction of the presiding judge at the superior court. The appeal shall be heard de novo, except that the contents of the Planning Department's file in the case shall be received in evidence. A copy of the document or instrument of the Planning Department providing notice of the violation and imposition of the administrative penalty (i.e., the administrative citation) shall be admitted into evidence as prima facie evidence of the facts stated therein. The court shall request that the Planning Department's file in the case be forwarded to the court, to be received within 15 calendar days of the request.
  - (c) Judgment

The court shall retain the filing fee regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the Planning Department. Any deposit of the administrative penalty shall be refunded by the Planning Department in accordance with the judgment of the court. If the administrative penalty has not been deposited and the decision of the court is against the contestant and in favor of the Planning Department, the Planning Department may proceed to collect the penalty pursuant to the procedures set forth in this Chapter, or in any other manner provided by law.

(d) Filing of a Notice of Pendency

Whenever the County institutes a judicial action or proceeding to enforce this Title, a Notice of Pendency of the action or proceeding may be filed with the County Recorder's Office. The notice shall be filed at the time of the commencement of the action or proceeding, and upon recordation of the notice as provided in this Section, shall have the same effect as a notice recorded in compliance with Section 409 of the State Code of Civil Procedure.

- (i) The County Recorder shall record and index the Notice of Pendency of action or proceeding in the Grantor/Grantee Index.
- (ii) Any Notice of Pendency of action or proceeding filed in compliance with this Section may, upon motion of a party to the action or proceeding, be vacated upon an appropriate showing of need therefore by an order of a judge of the court in which the action or proceeding is pending.
  - A. A certified copy of the "Order to Vacate Notice of Pendency" may be recorded with the County Recorder's Office, and upon the recordation, the Notice of Pendency of the action or proceeding shall not constitute constructive notice of any of the matters contained therein nor create any duty of inquiry in any person thereafter dealing with the property described therein.
  - B. An "Order to Vacate Notice of Pendency" shall not be appealable, but the party aggrieved by the order may, within 20 days after service of written notice of the order, or within additional time not exceeding 20 days as the court may, within the original 20 days



allow, but in no event later than 60 days after entry of the order, petition the proper reviewing court to review the order by Writ of Mandate.

- C. No "Order to Vacate Notice of Pendency" shall be effective, nor shall it be recorded with the County Recorder's Office, until the time within which a petition for the filing of a Writ of Mandate has expired in compliance with this Section.

(e) Filing Notice of Action

Whenever an enforcement action is initiated and prior to filing a Notice of Pendency, the Planning Department may pursuant to Government Code Section 27280, file with the County Recorder's Office a notice of action identifying the enforcement action taken for violation of this Title or other applicable law.

(f) Recovery of Administrative Penalties and Costs

This Section establishes procedures for the recovery of penalties imposed for violations as provided for in this Section and for costs, including Planning Department and other County staff time, including the District Attorney and County Counsel staff time, materials, equipment, and other costs, including abatement costs, expended on the enforcement of the provisions of this Title to correct a violation. The intent of this Section is to recover County costs reasonably related to enforcement.

(i) Record of Costs

The Planning Department shall maintain records of all costs incurred by responsible County departments associated with the processing of violations and enforcement of this Title, and shall recover the costs from the property owner in compliance with this Section.

(ii) Summary of Costs and Notice

At the conclusion of the case, the Director shall calculate the costs of the case relative to the fines received. If the costs exceed the fines, the Planning Director shall send a summary of costs associated with enforcement to the owner and/or person having possession or control of the property by certified mail or other method that ensures

receipt. The summary shall include a notice in a form approved by the County Counsel, advising the responsible party of their right to appeal the decision as provided for in this Title, and that if no request for hearing is filed, the responsible party will be liable for the charges. In the event that no request for hearing is timely filed or, after a hearing the Planning Commission affirms the validity of the costs or determines alternative costs, the property owner or person in control shall be liable to the County in the amount stated in the summary.

(iii) Method of Recover of Administrative Penalties

The County may collect any past due administrative citation penalty or late payment charged by use of any available legal means, including without limitation, the filing of a notice of lien, describing the real property affected and the amount of the costs, penalties or damages to the County Auditor, who shall place the amount thereof on the assessment role as a special assessment to be paid with County taxes, unless sooner paid. The County may also recover its costs. A judgment or award of such costs, penalties or damages may also be enforced in other manner provided by law.

(iv) Attorney's Fees

In any action or administrative proceeding or special proceeding to abate a nuisance, whether by seeking injunctive relief and/or an abatement order, or other order; attorney's fees may be recovered by the prevailing party and shall not exceed the amount of reasonable attorney's fees incurred by the County in that action or proceeding (Government Code Section 25845).

(v) Request for Hearing on Costs

Any property owner, or other person having possession and control of the subject property, who receives a summary of costs shall have the right to an appeal before the Planning Commission on their objections to the proposed costs.

A. A written request for hearing shall be filed with the Department as required for an appeal, and the case shall be processed as an appeal.

- B. In determining the validity of the costs, the Planning Commission shall consider whether total costs are reasonable in the circumstances of the case. Factors to be considered include:
- (I) Whether the present owner created the violation(s);
  - (II) Whether there is a present ability to correct the violation(s);
  - (III) Whether the owner promptly corrected the violation(s);
  - (IV) The degree of cooperation provided by the owner; and
  - (V) Whether reasonable minds can differ as to whether a violation(s) exists.