

ORDINANCE NO. __

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COMMERCE AMENDING CHAPTER 1.12 ("PENALTY AND ARREST PROVISIONS") OF TITLE 1 ("GENERAL PROVISIONS") BY AMENDING SECTIONS 1.12.010 AND 1.12.011 CONCERNING PENALTY FOR VIOLATIONS PROVISIONS, AND ADDING A NEW SECTION 1.12.140 ("ADMINISTRATIVE CITATIONS"); AND ADDING A NEW CHAPTER 1.13 ("ADMINISTRATIVE FINES AND CITATIONS") TO TITLE 1 ("GENERAL PROVISIONS")

WHEREAS, violations of the Commerce Municipal Code currently constitute misdemeanor offenses, infraction offenses, and/or public nuisances;

WHEREAS, the State legislature has enacted statutes (e.g., Government Code Sections 36900 and 36901) establishing the maximum judicial fines for misdemeanor and infraction offenses of a City's ordinance;

WHEREAS, the maximum judicial fine amounts currently imposed for misdemeanor and infraction offenses pursuant to the Commerce Municipal Code are not consistent with State law;

WHEREAS, the City Council finds that there is a need to make minor amendments to the City's current penalty provisions to adjust the maximum judicial fine amounts for misdemeanor and infraction offenses to be consistent with state law, and to further clean up the penalty provisions language to clarify the offenses that are subject to a violation of the Commerce Municipal Code;

WHEREAS, the State legislature has enacted other statutes (e.g., Civil Code Section 2929.3) that authorize municipalities to enforce State laws through the imposition of an administrative or civil fine/penalty;

WHEREAS, the City Council finds that there is a need for an alternative method of enforcement for violations of the Commerce Municipal Code that allows for the abatement of violations while still preserving the resources of the City and the Court; and,

WHEREAS, California Government Code Section 53069.4 authorizes local jurisdictions to enact legislation making violations of the City's laws subject to an administrative fine or penalty.

THE CITY COUNCIL OF THE CITY OF COMMERCE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Section 1.12.010 ("Penalty for violations") of Chapter 1.12 ("Penalty and Arrest Provisions") of Title 1 ("General Provisions") of the Commerce Municipal Code is hereby amended to read as follows:

1.12.010 - Penalty for violations.

No person, firm, corporation, or other responsible entity shall violate any provision, restriction, or requirement of this code or any code adopted by reference herein, any ordinance of the City, any rule or regulation promulgated pursuant thereto, or any condition of any permit, license, or other entitlement issued pursuant to this code. Each such person or entity shall be guilty of a separate offense for each and every day during any portion of which the violation or failure to comply is committed, continued, permitted, suffered, or maintained, and shall be punished accordingly.

Any person, firm, corporation, or other responsible entity who violates any provision, restriction, or requirement of this Code or any Code adopted by reference herein, any ordinance of the City, any rule or regulation promulgated pursuant thereto, or any condition of any permit, license, or other entitlement issued pursuant to this Code shall be guilty of a misdemeanor.

~~No person shall violate any of the provisions, or fail to comply with any of the requirements, of this code. Any person violating any of the provisions, or failing to comply with any of the mandatory requirements of this code, shall be guilty of a misdemeanor.~~

Any person convicted of a misdemeanor under the provisions of this code shall be punished by a fine of not more than ~~five hundred~~ one thousand dollars, or by imprisonment in the city or county jail for a period not exceeding six months, or by both such fine and imprisonment. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this code is committed, continued, or permitted by such person, and shall be punished accordingly.

In addition to the penalties hereinabove provided, any condition caused or permitted to exist in violation of any provision of this code shall be deemed a public nuisance and may be, by the city, summarily abated as such. Every day such condition continues shall be regarded as a new and separate offense.

SECTION 2: Section 1.12.011 ("Penalty for violations-Infractions") of Chapter 1.12 ("Penalty and Arrest Provisions") of Title 1 ("General Provisions") of the Commerce Municipal Code is hereby amended to read as follows:

1.12.011 - Penalty for violations—Infractions.

Notwithstanding the provisions of Section 1.12.010, the city prosecutor, in his or her sound discretion, may prosecute certain violations of this code or other ordinances of the city as an infraction, rather than as a misdemeanor, or may reduce a misdemeanor offense to an infraction if a defendant does not object. The city prosecutor shall have such authority where specifically provided in this code or in such other ordinance. Every person convicted of an infraction for violation of this code or other city ordinance shall be punished upon a first conviction by a fine not exceeding ~~fifty~~ one-hundred dollars, and for a second conviction within a period of one year by fine not exceeding ~~one~~ two-hundred

dollars, and for a third or any subsequent conviction within a period of one year by a fine not exceeding ~~two hundred fifty~~ five-hundred dollars.

SECTION 3: A new Section 1.12.140 ("Administrative citations") is hereby added to Chapter 1.12 ("Penalty and Arrest Provisions") of Title 1 ("General Provisions") of the Commerce Municipal Code to read as follows:

1.12.140 - Administrative citations.

Upon a finding by a city official vested with the authority to enforce the provisions of this Code that a violation exists, such city official may issue an administrative citation under Chapter 1.13 of Title 1 of this Code. Payment of an administrative citation fine shall not excuse the failure to correct the violation nor shall it bar further enforcement action by the City.

SECTION 4: A new Chapter 1.13 ("Administrative Fines and Citations") is hereby added to Title 1 ("General Provisions") of the Commerce Municipal Code to read as follows:

Chapter 1.13 - ADMINISTRATIVE FINES AND CITATIONS

1.13.010 - Findings and Purpose.

The City Council of the City of Commerce finds and declares as follows:

A. Enforcement of the Commerce Municipal Code and adopted codes, ordinances, and laws throughout the City is an important public service in order to protect the health, safety, and welfare of the public. Although it is always the goal of the City to obtain voluntary compliance with its laws, the City Council recognizes that there will be instances where compliance must be compelled by administrative or judicial means when persons responsible for violations of the Code fail or refuse to voluntarily comply with applicable laws.

B. Government Code Section 53069.4 authorizes local jurisdictions to enact legislation making a violation of any local ordinance subject to an administrative fine or penalty. The State Legislature has also enacted other provisions of California law that allow local governments to impose administrative or civil fines/penalties for violations of specified provisions of State law. The City Council intends, pursuant to this statute, to establish an administrative citation program that:

1. Imposes a non-judicial administrative fine and/or penalty for offenses of the Commerce Municipal Code (including, but not limited to, any other code, ordinance or law adopted therein) and other State laws as authorized by statute;

2. Encourages prompt abatement or correction of prohibited conditions, uses or activities in the City; and,

3. Creates deterrence against future violations of the City's laws.

C. The administrative citation remedy is not intended to replace any other remedy allowed by the Commerce Municipal Code or state law. It is intended to provide an alternative and/or additional means by which the City's laws may be enforced.

1.13.020 – Definitions.

As used in this Chapter, the following words are defined as follows:

A. "Administrative fine" and/or "administrative penalty" shall mean the monetary penalty established by resolution of the City Council that is imposed upon a Responsible Person by means of a Citation, which shall be payable to the City of Commerce.

B. "Citation" shall mean an administrative citation that is issued to a Responsible Person pursuant to this Chapter.

C. "Citee" shall mean a Responsible Person to whom a citation is issued.

D. "City" shall mean the City of Commerce, California.

E. "City Administrator" shall mean the chief administrative official of the City as appointed by the City Council.

F. "Code" shall include: (i) the entire Commerce Municipal Code and any other code, ordinance, law, rule, or regulation incorporated therein by adoption or reference, (ii) any uncodified ordinance adopted by the City Council of Commerce, (iii) any rule or regulation promulgated pursuant to the provisions of the Commerce Municipal Code, (iv) any condition of any permit, license, or other entitlement issued pursuant to this Code, and (v) other State laws as authorized by statute.

G. "Enforcement Officer" and "Officer" shall mean any City official and employee, or agent of the City, or their designees, authorized to enforce this Code.

H. "Hearing officer" shall include a private entity, organization, association or person, or a public official, or duly constituted reviewing authority or commission

that the City Administrator designates or appoints to consider all timely requests for an administrative hearing upon issuance of a citation.

I. "Owner " shall mean and include any person having legal title to any real property in the City, including all persons shown as owners on the last equalized assessment roll of the Los Angeles County Assessor's Office. Owners include persons with powers of attorney, executors of estates, trustees, or who are court-appointed administrators, conservators, guardians or receivers. An owner of personal property shall be any person who has legal title, charge, control, responsibility for, or possession of such property.

J. "Person" shall mean and includes any individual, partnership of any kind, a corporation of any kind, limited liability company, association, joint venture or other organization or entity, however formed, as well as fiduciaries, trustees, heirs, executors, administrators, or assigns, or any combination of such persons. "Person" also includes any public entity or agency that acts as an owner in the City.

K. "Property" or "Premises-" shall mean any real property, or improvements thereon, or portions thereof, as the case may be. "Property" includes any parkway or unimproved public easement abutting such real property. "Property" shall also include all forms of personal property or animals, where applicable.

L. "Responsible Person" shall mean any individual or entity who an Enforcement Officer determines is responsible for allowing, causing, creating, maintaining, suffering, or permitting a violation of the Code to exist or continue, by any act or the omission of any act or duty. A Responsible Person shall include, but is not limited to, an owner or an agent, manager, or representative of an owner, or otherwise, or any person who leases, rents, occupies or has charge, control or possession of, or responsibility for any real property in the City upon which a violation exists, or of any personal property that constitutes a violation.

M. "Violation" shall mean an act or omission of any act or use or condition that constitutes an offense of the Code, as well as a breach or violation of any condition of a permit, approval, license, or entitlement issued pursuant to the Code.

1.13.030 - Applicability and Scope.

A. Use of this Chapter shall be at the sole discretion of the City and is one remedy that the City has to address violations of the Commerce Municipal Code or other applicable provisions of State law. By adopting this Chapter, the City does not intend to limit its discretion or ability to utilize any administrative, civil, criminal, or other remedy available at law or equity, or any combination thereof, to address violations of the City's laws.

B. This Chapter makes a violation of any provision, restriction, or requirement of this Code or any code adopted by reference herein, any ordinance or law of the City, any rule or regulation promulgated pursuant thereto, or any condition of any permit, approval, license, or other entitlement issued pursuant to

this Code subject to an administrative fine.

C. This Chapter establishes the administrative procedures for the imposition, enforcement, collection, and administrative review of administrative fines and/or penalties pursuant to Government Code Section 53069.4.

D. An administrative fine in an amount adopted by resolution of the City Council shall be imposed by means of an administrative citation issued by an Enforcement Officer and shall be paid directly to the City of Commerce (or authorized agent thereof). Payment of a fine shall not excuse a failure to correct a violation, nor shall it bar concurrent or further enforcement actions by the City.

E. The City Administrator, or a designee thereof, may dismiss a citation at any time if a determination is made that it was issued in error, in which event any deposit of a fine shall be refunded. Notice of such action shall be given to the Citee in writing.

F. The City Administrator, or a designee thereof, is authorized to promulgate procedural rules and regulations governing the provisions in this Chapter.

1.13.040 - Issuance of Administrative Citation; Contents Thereof.

A. Whenever an Enforcement Officer determines that a violation of the Code has occurred, the Enforcement Officer may issue a Citation on a City-approved form imposing an administrative fine or fines to the Responsible Person(s) in accordance with the provisions of this Chapter.

B. When the violation pertains to building, plumbing, electrical or other similar structural or zoning that creates an immediate danger to health or safety, a Citation may be issued forthwith. In the absence of an immediate danger, a Citation for a violation pertaining to building, plumbing, electrical, or other similar structural or zoning issues shall not be issued pursuant to this Chapter unless the Responsible Person has first been provided with a reasonable period, as determined by the Officer, in which to complete the abatement or compliance actions.

C. An Officer may issue a Citation for a violation not committed in the Officer's presence if the Officer has determined, through investigation, that the Citee did commit, or is otherwise responsible for, the violation.

D. Each day, or any portion thereof, that a prohibited condition, use or activity under the Code is committed, continued or permitted, shall constitute a separate violation for which an administrative fine may be imposed. A single Citation may charge multiple violations of the Code, however, each violation is subject to a separate and distinct administrative fine.

E. Each Citation shall contain the following information:

1. Name and mailing address of the Responsible Person.
2. The issuance date of the Citation.
3. The address or description of the location of the violation.
4. The date and approximate time of the commission of the violation(s), or detection thereof by an Officer.
5. The relevant provision(s) or section(s) of the Code alleged to have been violated.
6. A description of the violation(s).
7. Amount of the fine for each violation, the procedure and place to pay the fine(s) and/or re-inspection fees, and any late penalty and/or interest charge(s), if not timely paid.
8. When appropriate, the action(s) required to correct the violation(s), and, if applicable, any deadlines or time limitations for commencing and completing such action(s).
9. A description of the administrative citation review process and the manner by which a hearing on a Citation may be obtained (including the form to be used, where it may be procured from, and the period in which a request must be made in order to be timely).
10. The name and signature of the Officer, and the signature of the Citee, only if the Citee is physically present and willing to sign the Citation at the time of its issuance. The refusal of a Citee to sign a citation shall not affect its validity or any related subsequent proceeding, nor shall signing a Citation constitute an admission that a person has committed a violation of the Code.
11. A statement that the failure to correct any violation as referenced in the Citation could result in the recordation of a Declaration of Substandard Property with the Los Angeles County Recorder's Office.
12. Any other information deemed necessary by the City Administrator.

1.13.050 - Service of Administrative Citation and Notices.

A. A Citation may be served either by personal delivery to the Citee or by first class mail through the United States Postal Service.

B. If served by personal delivery, the date of personal delivery of the Citation to the Citee shall constitute its issuance date and the date that service shall

be deemed complete.

C. If served by first class mail, the Citation shall be sealed in an envelope with postage prepaid and addressed to the Citee at his or her last-known business, residence, or mailing address as same appears in public records of the City, the Los Angeles County Tax Assessor's Office, the Los Angeles County Recorder's Office, the California Department of Motor Vehicles, and/or the Secretary of State. In such instances, the date a Citation is deposited with the United States Postal Service shall constitute its issuance date, and the date that service shall be deemed complete.

D. If a Citation is personally sub-served upon an authorized agent, manager or representative of the Citee, a copy thereof shall also be served upon the Citee by first class mail at his or her last-known business, residence, or mailing address as same appears in public records of the City, the Los Angeles County Tax Assessor's Office, the Los Angeles County Recorder's Office, the California Department of Motor Vehicles, and/or the Secretary of State. In such instances, the date a copy of the Citation is deposited with the United States Postal Service shall constitute its issuance date, and the date that service shall be deemed complete

E. If service cannot be accomplished personally or by mail for Citations involving a real property-related violation of the Code, the officer shall post the Citation at a prominent location on the real property where the violation is alleged to have occurred. In such instances, the date of posting shall constitute the issuance date of the Citation, and the date that service shall be deemed complete.

F. Any notice or order given pursuant to any provision of this Chapter shall be served in the manner provided for in this section, unless otherwise stated.

G. Failure of a Citee to receive a Citation or notice given in the manner stated in this Section shall not invalidate any fine, late penalty charge, action or proceeding that is imposed or brought pursuant to this Chapter.

1.13.060 - Imposition of Administrative fines, Late Penalty Charge, Interest Charges, and Re-Inspection Fees

A. **Fine.** The amounts of the fines imposed pursuant to this Chapter shall be established by resolution of the City Council. The City Council may, by resolution, also impose escalating fines in amounts it deems appropriate for repeat offenses of the same ordinance. The amounts of fines may be modified from time to time by a resolution of the City Council.

1. If a violation is otherwise classified as an infraction under the Code, the administrative fine shall not exceed \$100.00 for a first offense, \$200.00 for a second offense of the same ordinance within a twelve month period of time, and \$500.00 for a third or greater offense of the same ordinance within a twelve month period of time, as set forth in subdivision (b) of Section 25132 and

subdivision (b) of Section 36900 of the California Government Code. The amounts of such fines may be modified from time to time by a resolution of the City Council provided they do not exceed the limits allowed by state law.

B. **Re-Inspection Fee.** In addition to any fine imposed pursuant to this Chapter, a re-inspection fee shall be assessed against any Responsible Person in an amount established by resolution of the City Council if the Responsible Person does not timely and completely correct or abate a violation (with all requisite approvals, permits, licenses, and/or inspections) after having received notification from the City to correct or abate same.

C. **Late Penalty Charge.** Failure to pay an administrative fine within the period specified on the citation shall result in an assessment of a late penalty charge in an amount established by resolution of the City Council - not to exceed one hundred percent (100%) of the total fine owed (excluding any re-inspection fee).

D. **Interest.** Failure to pay an administrative fine within sixty (60) calendar days of the issuance of a Citation or, if contested, within sixty (60) calendar days of an order to pay pursuant to a decision by a hearing officer or judicial officer confirming the fine, shall result in the imposition of an interest charge at a rate established by resolution of the City Council. Interest shall not accrue on a late penalty charge or re-inspection fee. The rate of interest may be modified from time to time by resolution of the City Council.

1.13.070 – Satisfaction of Administrative Citation.

Upon receipt of an administrative citation, the responsible person shall do the following:

A. Correct the violation by the correction date on the administrative citations; and

B. Pay the specified fine to the City within twenty-one (21) calendar days from the date the administrative citation is served. All fines assessed shall be payable to the City of Commerce. Payment of fine shall not excuse or discharge the failure to the correct the violation(s) not shall it bar further enforcement action by the City; or

C. Contest the administrative citation by requesting as administrative hearing within twenty-one (21) calendar days from the date the administrative citation is served.

1.13.080 - Payment and Collection of Fines, Fees and Other Charges.

A. **Payment.** All administrative fines and re-inspection fees imposed by means of a Citation shall be due from the Citee and shall be received by the City (or agent thereof) within twenty-one (21) calendar days from the date the Citation was served. Thereafter, a late penalty charge shall be due and owing, as well as

interest, as imposed by this Chapter.

1. Administrative fines, re-inspection fees, late penalty charges, and any interest due shall be paid to the City at such location or address as stated in the citation, or as may otherwise be designated by the City Administrator.

2. Payment of an administrative fine shall not excuse or discharge a Citee from the duty to immediately abate a violation of the Code, nor from any other responsibility or legal consequences for a continuation or repeated occurrence(s) of a violation of the Code.

3. Abatement of a violation shall not excuse the obligation of a Citee to pay an administrative fine or any other charges, fees, or costs imposed as a result of the issuance of a Citation.

B. **Collection.** Unpaid administrative fines and other charges, fees, or costs imposed in accordance with this Chapter shall constitute a debt that may be collected in any manner allowed by law, including, but not limited to: (i) the filing of a small claims or civil action in the Los Angeles Superior Court; and/or, (ii) by means of collecting the debt using the California Franchise Tax Board "Inter-Agency Offset Program" (pursuant to Section 12419.10 of the California Government Code); and/or, (iii) by denying the issuance or renewal of any City approval, license, permit, or other entitlement to any Citee who has failed to tender all unpaid administrative fines, late penalty charges, interest charges, or re-inspection fees; and/or, (iv) by pursuing any and all legal and equitable remedies for the collection of unpaid fines, fees, interest and penalties. The use of one recovery method does not preclude the use of any other recovery method. The City Administrator, or a designee thereof, may promulgate policies and procedures for the City's election to use one or more of the foregoing collection remedies.

1.13.090 - Right to an Administrative Hearing; Waiver of Advance Deposit of Fine

A. **Appeal.** Any Citee may contest the violation(s), or that he or she is a Responsible Person, by filing a request for an administrative hearing in the manner set forth on the Citation within twenty-one (21) calendar days from the date of service of the Citation. If the request for a hearing is not timely received in the manner set forth on the Citation, the Citee shall have waived the right to a hearing and the citation shall be deemed final.

1. A request for a hearing shall contain the following:
 - a. The citation number.
 - b. The name, address, telephone and any facsimile electronic mail address, of each person contesting the numbers or citation.

- c. A statement of the reason(s) why a citation is being contested.
 - d. The date and signature of the Citee(s).
- 2. No filing fee shall be charged for the filing of a request for an administrative hearing.
- 3. A timely request for a hearing shall not excuse a Citee from the duty to immediately abate a violation of the Code, nor from any other responsibility or legal consequences for a continuation or repeated occurrence(s) of a violation of the Code.

B. Advanced Deposit of Fine. Requests for a hearing shall be accompanied by an advance deposit of the entire amount of the fine (and any accompanying re-inspection fee) stated in the Citation. Failure to deposit a fine (and accompanying re-inspection fee) within the required period, or the tender of a non-negotiable check, shall render a request for an administrative hearing incomplete and untimely, in which case the Citee shall have waived the right to a hearing and the Citation shall be deemed final. Fines that are deposited with the City shall not accrue interest. Fines deposited shall be returned to the person tendering the fines in the event a Citation is overturned.

1. **Hardship Waiver of Advance Deposit of Fine.** A Citee who is financially unable to deposit the administrative fine with his or her request for a hearing may complete a City approved application form for an advance deposit hardship waiver (hereinafter, "Hardship Waiver"). This form and all required accompanying records Commerce shall be tendered, along with a request for a hearing, to the Office of the City Clerk - Commerce City Hall, 2535 Commerce Way, Commerce, California 90040, or as otherwise set forth on the Citation - within ten (10) calendar days from the issuance date of the Citation.

a. To be considered for a Hardship Waiver, the application form must be complete, signed, and must be accompanied by documents that enable the City to reasonably determine the Citee's present inability to deposit the fine. Documents suitable for consideration, may include, without limitation, accurate, complete and legible copies of state and federal income tax returns and all schedules for the preceding tax year; financial statements, loan applications, bank account records, income and expense records for twelve (12) months preceding submittal of the waiver form, as well as other documentation demonstrating the Citee's financial hardship. The City may, at its sole discretion, request additional documents in order to determine a Citee's financial ability to tender an advance deposit of the fine. Failure to submit sufficient evidence of a Citee's financial inability to tender an advance deposit of the fine shall result in a denial of the Hardship Waiver.

b. Failure to submit a completed, signed Hardship Waiver

form, along with sufficient records that support a claim of financial hardship, shall render any request for an administrative hearing incomplete and untimely. In this event, the Citee shall have waived the right to a hearing and the Citation shall be deemed final.

c. The City shall issue a written decision regarding the application for a Hardship Waiver. If the Hardship Waiver is denied, the written decision shall specify the reasons for not issuing the Hardship Waiver. All decisions for Hardship Waivers shall inform the Citee of the manner and time in which to retrieve the documents submitted by the Citee to the City in support of the Hardship Waiver application. This decision is final and non-appealable. The decision shall be served upon the person requesting the Hardship Waiver by first class mail to the address listed on the Hardship Waiver application.

(1) The City shall retain all documents submitted by a Citee to support an application for a Hardship Waiver for ten (10) calendar days after the date of the written decision on the application, and if the documents are not recovered by the Citee within said time, the City may, at any time thereafter, in its sole discretion and after a Citation is final or confirmed, destroy or discard the supporting documents without any further notice to the Citee.

(2) Approval of a Hardship Waiver shall result in the City setting a hearing pursuant to Section 1.13.090 of this Chapter.

(3) If the City determines that the Citee is not entitled to a Hardship Waiver, he or she shall tender the full amount of the administrative fine as set forth in the written decision on the Hardship Waiver within ten (10) calendar days of the date the decision is deposited with the U.S. Postal Service. In the event the City Clerk does not receive the full amount of the fine in the required period (i) the request for a hearing is rendered incomplete and untimely, (ii) the Citee shall have waived the right to a hearing and the Citation shall be deemed final, and (iii) a late penalty charge shall be imposed upon the administrative fine.

1.13.100 - Administrative Hearing – Procedures.

A. An administrative appeal hearing shall be scheduled and conducted within sixty (60) calendar days of the date a timely and complete request is received by the City. A Citee who files a request for an administrative hearing to contest a citation (hereinafter, "appellant") shall be notified in writing by first class mail of the date, time, and location of the hearing at least ten (10) calendar days prior to the date of the hearing. The failure of an appellant to receive a properly addressed notice shall not invalidate the Citation or any hearing or City action or proceeding conducted pursuant to this Chapter.

B. At the place and time set forth in the written notice of administrative hearing, the Hearing Officer shall hear and consider the testimony of the issuing officer, the appellant(s), and/or their witnesses, as well as any documentary evidence presented by these persons concerning the violation(s) alleged in the Citation.

C. The Hearing Officer may consolidate multiple administrative citations issued to the same responsible party.

D. Administrative hearings are informal, and formal rules of evidence and discovery do not apply. The City bears the burden of proof to establish a violation and responsibility therefore by a preponderance of evidence. The issuance of an administrative citation shall constitute prima-facie evidence of the violation and the Enforcement Officer who issued the Citation is not required to attend or participate at the hearing. The appellant(s), and Officer, if present, shall have an opportunity to present evidence and witnesses and to cross-examine witnesses. An appellant may bring an interpreter to the hearing at the appellant's sole expense. The hearing officer may question any person who presents evidence or who testifies at any hearing.

E. An appellant shall appear at the hearing in person. If the appellant fails to attend the scheduled hearing, the hearing officer shall cancel the hearing and send a notice thereof to the appellant(s) by first class mail to the address(es) stated on the appeal form. A cancellation of a hearing due to non-appearance of the appellant shall constitute the appellant's waiver of the right to appeal. In such instances, the Citation (and corresponding fine and other applicable fees) shall be deemed final.

F. Hearings may be continued at the request of an appellant or the Officer who issued the citation. Any request by an appellant to continue a hearing must be submitted to the City Clerk in writing no later than two (2) business days before the date scheduled for the hearing. The hearing officer may continue a hearing for good cause, or on his/her own motion, including to request additional information from the Enforcement Office or the appellant prior to issuing a written decision.

1.13.110- Hearing Officer Decision; Right of Appeal Therefrom.

A. After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision to uphold or overturn the Citation based upon whether there was a preponderance of evidence that the violation(s) listed in the Citation existed or occurred and shall state the reasons therefore.

1. If the Citation is upheld and the violation has not been fully corrected as of the date of the hearing, the hearing officer shall order correction thereof in the decision and provide a deadline to complete said action(s) - which shall in no event be greater than thirty (30) calendar days from the date of the decision. The decision of the hearing officer shall be a final administrative decision.

2. If the Citation is upheld and the appellant did not deposit the fine at the time the appellant requested an administrative appeal hearing, the hearing officer shall also order the payment of the fine (and other applicable fees and costs)

as set by Council resolution within twenty (20) calendar days of the decision.

3. If the Citation is overturned in whole or in part, the City shall refund the fine deposit corresponding to portion of the Citation that was overturned. Any such fine shall be mailed to the Responsible Person within forty-five (45) calendar days of the City's receipt of the Hearing Officer's decision and order.

B. The appellant(s) shall be served by first class mail with a copy of the hearing officer's written decision. The date the decision is deposited with the U.S. Postal Service shall constitute the date of its service. The failure of an appellant to receive a properly addressed decision shall not invalidate or any hearing, City action or proceeding conducted pursuant to this Chapter.

C. Decisions of the hearing officer are, in accordance with Government Code Section 53069.4(b), appealable to the superior court within twenty (20) days after the date of their service. Each decision shall contain a statement advising the appellant(s) of this appeal right and the procedures and court-filing fee for its exercise. An appellant shall serve a copy of the court-filed Notice of Appeal on the Office of the City Clerk - Commerce City Hall, 2535 Commerce Way, Commerce, California 90040 - by personal service or first-class mail within five (5) calendar days of filing the original thereof.

D. If a hearing officer's decision is not appealed in a timely manner, the decision shall be deemed confirmed, final, and binding.

E. An appeal from a hearing officer's decision is not appealable to the City Council and the Los Angeles County Superior Court is the sole reviewing authority. The appeal hearing before the Los Angeles County Superior Court shall be heard de novo, except that the contents of the City's file in the case (including the Citation) shall be received in evidence and shall constitute prima facie evidence of the facts stated therein.

1. If a Responsible Person prevails on appeal, the City shall reimburse his or her filing fee, as well as the fine deposit in accordance with the court judgment. These monies shall be mailed to the Responsible Person within forty-five (45) calendar days of the City's receipt of a notice of judgment or ruling from the superior court clerk, or unless ordered otherwise by a judicial officer, or representative thereof, of the Los Angeles County Superior Court.

1.13.120 – Penalties.

Failure of a Citee to comply with a corrective action stated in any uncontested citation, or with regard to a correction order in any Hearing Officer decision that is deemed confirmed and not appealed to the Los Angeles County Superior Court, shall constitute a misdemeanor.

SECTION 5: If any section, subsection, paragraph, sentence, clause or phrase of this Chapter is declared by a court of competent jurisdiction to be

unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council declares that it would have adopted this Chapter, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases, or portions be declared invalid or unconstitutional.

SECTION 6. This Ordinance shall take effect thirty (30) days after its adoption. The City Clerk, or her duly appointed deputy, shall attest to the adoption of this Ordinance and shall cause this Ordinance to be posted as required by law.

Introduced and read at a regular meeting of the City Council of the City of Commerce the 3rd day of April, 2018, and adopted at a regular meeting thereof held on the _____ day of _____, 2018.

AYES:

NOES:

ABSENT:

ABSTAIN:

Oralia Rebollo
Mayor

APPROVED AS TO FORM:

ATTEST:

Noel Tapia
City Attorney

Lena Shumway
City Clerk