



**ORDINANCE REVIEW
STANDING COMMITTEE SPECIAL MEETING
OCTOBER 30, 2012
City Hall
COUNCIL CHAMBER
130 Cremona Drive, Suite B
Goleta, California**

2:30 P.M.

Mayor Easton
Councilmember Bennett
Tim W. Giles, City Attorney
Deborah Constantino, City Clerk

- I. Public Comments
- II. Tree Advisory Board Ordinance (20 minutes)
- III. Recreation Commission Ordinance (20 minutes)
- IV. Nuisance and Noise Ordinance Revision (15 minutes)
- V. Administration Citation Revision (15 minutes)
- VI. Purchasing Ordinance Revision (10 minutes)
- VII. Upcoming Issues

Americans with Disabilities Act: In compliance with the ADA, if special assistance is needed to participate in a City Council meeting (including assisted listening devices), please contact the City Clerk's office at (805) 961-7505. Notification helps to ensure that reasonable arrangements can be made to provide accessibility to the meeting.



MEMORANDUM

DATE: October 30, 2012

TO: Mayor Easton
Councilmember Bennett

FROM: Tim Giles, City Attorney
MaryJo Alonzo, Management Assistant

SUBJECT: Establishment of a Public Tree Advisory Commission

Attached to this memorandum is the draft ordinance and resolution which would establish the Public Tree Advisory Commission. Staff has highlighted the direction given by Council for the Commission below:

Public Tree Advisory Commission

- Appoint five members
- Each councilmember appoint one member with consensus of Council
- Terms coincide with appointment of Councilmember
- Members be residents and have an interest in urban forestry or landscaping
- Meetings occur on an as-needed basis
- Staff support from the Public Works Department
- General consensus of the Duties and Responsibilities

ORDINANCE NO. 12-___

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GOLETA, CALIFORNIA, ADDING CHAPTER 2.11 ENTITLED "PUBLIC TREE ADVISORY COMMISSION" TO TITLE 2 OF THE GOLETA MUNICIPAL CODE RELATING TO THE ESTABLISHMENT OF THE PUBLIC TREE ADVISORY COMMISSION FOR THE CITY OF GOLETA

WHEREAS, the City Council approved the City of Goleta Urban Forestry Management Plan on June 7, 2011; and

WHEREAS, the Plan called for the establishment of a volunteer Commission to advise the Council, City staff and the City Arborist in developing plans and goals for the Goleta Urban Forest, represent the interests of the community, work to resolve conflicts between community members and urban forestry policy, and inform the community of the Urban Forestry program.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GOLETA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Recitals

The following recitals are true and correct.

SECTION 2. Addition of Chapter 2.11 to the Goleta Municipal Code

Chapter 2.11 entitled, "Public Tree Advisory Commission," which is hereby added to Title 2, "Administration and Personnel" of the Goleta Municipal Code to read as follows:

Chapter 2.11
Public Tree Advisory Commission

Sections:

- | | |
|----------|---|
| 2.11.010 | Purpose of Public Tree Advisory Commission. |
| 2.11.020 | Created. |
| 2.11.030 | Members. |
| 2.11.040 | Appointment. |
| 2.11.050 | Qualifications of members. |
| 2.11.060 | Term of office. |
| 2.11.070 | Removal of office. |
| 2.11.080 | Vacancy in office. |
| 2.11.090 | Appeal to Public Tree Advisory Commission. |
| 2.11.110 | Appeal to City Council. |

2.11.010 Purpose of Public Tree Advisory Commission.

The purpose of the Public Tree Advisory Commission shall be to provide advice to staff and the City Council in developing plans and goals for the Goleta Urban Forest, represent the interests of the community and inform the community of the Urban Forestry program as directed by the City Council.

2.11.020 Created.

A Public Tree Advisory Commission for the City is created. The City Council shall provide for the organization and duties of the Commission by resolution.

2.11.30 Members.

The Public Tree Advisory Commission shall be composed of five (5) members.

2.11.040 Appointment.

Following the procedures of California Government Code Section 54970, each councilmember shall have the authority to nominate one member to the Public Tree Advisory Commission. The City Council shall vote on whether to appoint each nominee. Such appointment requires at least three affirmative votes.

2.11.050 Qualifications of members.

(a) Members of the Public Tree Advisory Commission shall be residents of the City.

(b) Members of the Public Tree Advisory Commission should have an interest in and/or experience in urban forestry or landscaping.

(c) No member of the Public Tree Advisory Commission may be an employee or officer of the City.

2.11.060 Term of office.

(a) Each appointment of a Public Tree Advisory Commissioner shall be for a term equal to that of the Councilmember who nominated the Commissioner and shall expire when that council seat is vacated or on the next election day for that nominating Councilmember, whichever event occurs first.

(b) If after any council seat is vacated or a City Council election a new commissioner has not been selected, or a commissioner's term has not been

renewed, that commissioner shall serve until a new appointment or renewal is made.

(c) There is no limit on the number of times that a commissioner may be appointed.

2.11.070 Removal of office.

A member of the Public Tree Advisory Commission is automatically removed from office if the member is absent without excuse from three consecutive regular meetings of the Commission. Excuse shall be determined by the Chair. Excuse for the absence of the Chair shall be determined by the Vice-Chair. A member of the Public Tree Advisory Commission may be removed by a majority vote of all the City Council.

2.11.080 Vacancy in office.

A vacancy on the Public Tree Advisory Commission caused by death, resignation, removal of a commissioner, or any other cause before the expiration of a commissioner's term shall be filled by nomination by the Councilmember responsible for nominating that commission seat and appointment by the Council for the unexpired term.

2.11.090 Appeal to Public Tree Advisory Commission.

A decision made by City staff related to the planting and removal of trees may be appealed to the Public Tree Advisory Commission. However any decision made by City staff for the protection of the public health and safety of the citizens shall not be subject to appeal. A letter stating the reasons for the appeal, along with the appropriate fee, must be filed with the Public Works Department within the ten (10) days following the staff decision. If the tenth day falls on a day that the Public Works Department offices are closed, the appeal period is extended until 5:00 p.m. on the following business day. The Public Works Department will notify the Public Tree Advisory Commission as to the scheduled date of the appeal hearing. The Public Tree Advisory Commission will designate a member to attend an appeal hearing.

2.11.110 Appeal to City Council.

Any persons may appeal a final decision by the Public Tree Advisory Commission to the City Council within ten (10) days of the decision becoming final. If a decision is not appealed to the City Council within that period, the decision cannot be appealed.

SECTION 3. Severability.

If any section, subsection, subdivision, 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. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 4. Certification of City Clerk.

The City Clerk shall certify to the adoption of this ordinance and, within 15 days after its adoption, shall cause it to be published in accord with California Law.

SECTION 5. Effective Date.

This ordinance shall take effect on the 31st day following adoption by the City Council.

RESOLUTION NO. 12-__

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
GOLETA ORGANIZING THE PUBLIC TREE ADVISORY
COMMISSISON**

WHEREAS, the City Council approved the City of Goleta Urban Forestry Management Plan on June 7, 2011; and

WHERAS, the Plan called for the establishment of a volunteer Commission to advise the Council, City staff and the City Arborist in developing plans and goals for the Goleta Urban Forest, represent the interests of the community, work to resolve conflicts between community members and urban forestry policy, and inform the community of the Urban Forestry program; and

WHEREAS, the City Council has established a Public Tree Advisory Commission for the City; and

WHEREAS, it is appropriate to organize and define the duties of the Public Tree Advisory Board.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF
THE CITY OF GOLETA AS FOLLOWS:**

SECTION 1. MEETINGS

The Commission shall hold meetings on an as-needed basis. All meetings of the Commission shall be held in the City of Goleta City Hall.

SECTION 2. ORGANIZATION

Each year, at its first regular meeting of the calendar year, the Commission shall elect from its membership a Chair and Vice-Chair.

The City shall maintain a public record of its resolutions, transactions, findings and determinations.

SECTION 3. STAFFING

The Public Tree Advisory Commission shall be supported by the Public Works Department and the City's Arborist or other appropriate staff as designated by the Director of Public Works will attend the meetings to advise the Board.

SECTION 4. DUTIES AND RESPONBILIES

The Commission is authorized to exercise the Duties and Responsibilities attached as "Exhibit A." Additionally, the Commission shall respond to any matter referred to it by the City Council.

SECTION 5. CERTIFICATION

The City Clerk shall certify as to the adoption of this resolution.

PASSED, APPROVED, AND ADOPTED this 20th day of November, 2012.

EDWARD EASTON, MAYOR

ATTEST:

APPROVED AS TO FORM:

DEBORAH CONSTANTINO
CITY CLERK

TIM W. GILES
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA)
CITY OF GOLETA) ss.

I, DEBORAH CONSTANTINO, City Clerk of the City of Goleta, California, DO HEREBY CERTIFY that the foregoing Resolution No. 12-__ was duly adopted by the City Council of the City of Goleta at a regular meeting held on the 20th day of November, 2012, by the following vote of the Council:

AYES:

NOES:

ABSENT:

(SEAL)

DEBORAH CONSTANTINO
CITY CLERK

EXHIBIT "A"

Duties and Responsibilities

1. Identify suggestions for the City Council, City Manager and City staff for the implementation of the Goleta Urban Forestry Management Plan.
2. Review and provide input on the development and review of the Annual Report as defined in the Urban Forestry Management Plan.
3. Consult with staff on updates to the Goleta Urban Forestry Management Plan as needed.
4. Review and provide suggestions to staff on the implementation of public tree planting.
5. Assist staff on the development, review and amendment of the comprehensive street tree inventory and master street tree list.
6. Review and advise staff on the development of a tree protection ordinance and any other ordinances associated with the Goleta Urban Forestry Management Plan; make recommendations on adoption of City ordinances to the City Council.
7. Make recommendations to staff on policies, standards, guidelines and regulations for street trees and other public trees located within City-owned open spaces.
8. Review the City's annual street tree work program.
9. Review and make suggestions to staff on a recommend policy and guidelines for tree removal and replacement, to be reviewed annually, and advise staff on a regular, periodic programmed maintenance schedule.
10. Educate and assist staff in providing public outreach regarding the benefits of the Urban Forestry Program.
11. Consider and decide appeals from residents on city staff decisions regarding public tree removals, plantings, trimming, and pruning.



MEMORANDUM

DATE: October 30, 2012

TO: Mayor Easton
Councilmember Bennett

FROM: Tim Giles, City Attorney
MaryJo Alonzo, Management Assistant

SUBJECT: Establishment of a Parks and Recreation Commission

Attached to this memorandum is a draft ordinance and resolution which would establish the Parks and Recreation Commission. Staff has highlighted the direction given by Council for the Commission below and provided an estimated budget:

Parks and Recreation Commission

- Appoint 7 members, with one being a youth member
- Appoint members to staggered 4 year terms
- Council to make appointments at-large with full Council consensus
- Members must be residents
- Recreation and cultural organizations in Goleta may appoint a non-voting liaison to the Commission
- Staff support by the Neighborhood Services and Public Safety Department
- Council requested minor changes in the purpose and duties and responsibilities section
- Requested the Commission review and develop their purpose statement and duties and responsibilities once the commission meets and return to Council for approval
- Requested meetings be held in the evenings and be televised

Estimated Budget for Parks and Recreation Commission

	Rate	Units	Costs
General Operating			
Stipends	\$ 50.00	42	\$ 2,100.00
Ethics-Training	\$ -	7	\$ -
Staff-Training	\$ 500.00	1	\$ 500.00

Special Department Supplies	\$ 500.00	1	\$ 500.00
Books and Subscriptions	\$ 75.00	2	\$ 150.00
Printing & Copying	\$ 500.00	1	\$ 500.00
Postage & Mailing	\$ 750.00	1	\$ 750.00
Professional Services			
Videotaping Meetings	\$ 91.50	15	\$ 1,372.50
Minutes & Clerking	\$ 37.50	30	\$ 1,125.00
Contract Services	\$ 3,000.00	1	\$ 3,000.00
TOTAL			\$ 9,997.50

ORDINANCE NO. 12-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GOLETA, CALIFORNIA, ADDING CHAPTER 2.12 ENTITLED "PARKS AND RECREATION COMMISSION" TO TITLE 2 OF THE GOLETA MUNICIPAL CODE RELATING TO THE ESTBALISHMENT OF A PARKS AND RECREATION COMMISSION FOR THE CITY OF GOLETA

WHEREAS, in May of 2011, the City Council identified a desire to establish a Parks and Recreation Commission; and

WHEREAS, a Parks and Recreation Commission could provide citizens a platform to discuss the needs, opportunities and current offerings of parks and recreation activities in Goleta; and

WHEREAS, a Parks and Recreation Commission could assist the City Council by reviewing current recreational activities and park opportunities in Goleta and conducting informational studies of parks, open spaces and recreational facilities.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GOLETA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Recitals

The foregoing recitals are true and correct.

SECTION 2. Addition of Chapter 2.12 to the Goleta Municipal Code

Chapter 2.12 entitled, "Parks and Recreation Commission," is hereby added to Title 2, "Administration and Personnel" of the Goleta Municipal Code to read as follows:

Chapter 2.12
Parks and Recreation Commission

Sections:

- 2.11.010 Purpose of Parks and Recreation Commission.
- 2.11.020 Created.
- 2.11.030 Members.
- 2.11.040 Appointment.
- 2.11.050 Qualifications of members.
- 2.11.060 Term of office.
- 2.11.070 Removal of office.
- 2.11.080 Vacancy in office.
- 2.11.090 Compensation.

2.11.010 Purpose of Parks and Recreation Commission.

The purpose of the Parks and Recreation Commission shall be to provide citizens a platform to discuss the needs, opportunities and current offerings of parks and recreation activities in the City. The Commission shall advise the City Council all issues related to parks and recreational opportunities in Goleta.

2.11.020 Created.

A Parks and Recreation Commission for the City is created. The City Council shall provide for the organization and duties of the Commission by resolution.

2.11.30 Members.

The Parks and Recreation Commission shall be composed of seven (7) members. One members shall be a student (15 years or older).

2.11.040 Appointment.

Following the procedures of California Government Code Section 54970, each Parks and Recreation commissioner shall be appointed by the City Council at large. Appointment requires at least three affirmative votes.

2.11.050 Qualifications of members.

(a) Members of the Parks and Recreation Commission shall be residents of the City.

(b) No member of the Parks and Recreation Commission may be an employee or officer of the City.

2.11.060 Term of office.

(a) Members of the Parks and Recreation Commission shall be appointed to a four year term. The student commissioner shall serve a one year term.

(b) Appointments shall be made in such a manner so that no more than four members' terms expire concurrently.

(c) There is no limit on the number of times that commissioners may be appointed.

2.11.070 Removal of office.

A member of the Parks and Recreation Commission is automatically removed from office if the member is absent without excuse from three consecutive regular meetings of the Commission. Excuse shall be determined by the Chair. Excuse for the absence of the Chair shall be determined by the Vice-Chair. A member of the Parks and Recreation Commission may be removed by a majority vote of all the City Council.

2.11.080 Vacancy in office.

A vacancy on the Parks and Recreation Commission caused by death, resignation, removal of a commissioner, or any other cause before the expiration of a commissioner's term shall be filled by an appointment by the Council for the unexpired term.

2.11.090 Compensation.

City Council may establish by Resolution the compensation to be paid to the members of the Commission.

SECTION 3. Severability.

If any section, subsection, subdivision, 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. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 4. Certification of City Clerk.

The City Clerk shall certify to the adoption of this ordinance and, within 15 days after its adoption, shall cause it to be published in accord with California Law.

SECTION 5. Effective Date.

This ordinance shall take effect on the 31st day following adoption by City Council.

RESOLUTION NO. 12-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GOLETA, CALIFORNIA ORGANIZING THE PARKS AND RECREATION COMMISSION

WHEREAS, the City Council has established a Parks and Recreation Commission to advise staff and City Council on parks and recreational activities; and

WHEREAS, the focus of the Commission will be to advance the interests of the community by serving in an advisory capacity to the City Council pertaining to the acquisition, development, maintenance, and improvement of the City's public parks, recreational services, and open spaces; and

WHEREAS, it is appropriate to organize and define the duties of the Parks and Recreation Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLETA AS FOLLOWS:

SECTION 1. MEETINGS

Every year the Commission shall establish dates for six regular meetings and may hold such additional meetings as deemed necessary or expedient. The City Clerk shall publicly notice the dates and times of the regularly scheduled meetings. The date, time and location along with the meeting agenda shall be noticed in accordance with Government Code Sections 54970-54975.

SECTION 2. ORGANIZATION

Each year, at its first regular meeting of the calendar year, the Commission shall elect from its membership a Chair and Vice-Chair.

The City shall maintain a public record of its resolutions, transactions, findings and determinations.

SECTION 3. STAFFING

The Parks and Recreation Commission shall be supported by the Neighborhood Services and Public Safety Department.

SECTION 4. PUBLIC OUTREACH

The Parks and Recreation Commission shall encourage organizations which have an interest and purpose in providing parks and recreational activities within the City of Goleta to participate in the meetings of the Parks and Recreation Commission.

SECTION 5. DUTIES AND RESPONSIBILITIES

The commission is authorized to exercise the Duties and Responsibilities attached as "Exhibit A." Additionally, the commission shall respond to any matter referred to it by the City Council.

SECTION 6. COMPENSATION

The Parks and Recreation Commission members shall be compensated at the rate of \$25.00 a month. No additional compensation shall be provided to the commissioners.

SECTION 7. CERTIFICATION

The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED by the City Council of Goleta, California, this 20th day of November, 2012.

EDWARD EASTON, MAYOR

ATTEST:

APPROVED AS TO FORM:

DEBORAH CONSTANTINO
CITY CLERK

TIM W. GILES
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA)
CITY OF GOLETA) ss.

I, DEBORAH CONSTANTINO, City Clerk of the City of Goleta, California, DO HEREBY CERTIFY that the foregoing Resolution No. 12-__ was duly adopted by the City Council of the City of Goleta at a regular meeting held on the 20th day of November, 2012, by the following vote of the Council:

AYES:

NOES:

ABSENT:

(SEAL)

DEBORAH CONSTANTINO
CITY CLERK

EXHIBIT "A"

Duties and Responsibilities

1. The Parks and Recreation Commission shall have the power, and it shall be the duty of the Commission, to make recommendations to the City Council and to advise the Council and City Manager on matters pertaining to the creation, development, operation, maintenance, use, management and control of community recreational programs and activities, parks, beaches, open spaces and other indoor and outdoor recreational facilities and areas;
2. Advise City Council on matters pertaining to recreation programs and facilities including youth, teen, adult, and senior activities, arts and cultural programs, beaches and pools, and other community facilities;
3. Charged with implementing the Public Parks, Open Space & Recreational Facilities element of the City's General Plan;
4. Consider the annual budget for parks, open spaces, and recreation purposes during the process of its preparation and make recommendations with respect thereto to the City Council and the City Manager. Advise the City Council on long-range recreational capital improvement program plans;
5. Promote and stimulate public interest therein, and solicit to the fullest extent possible, the cooperation of school authorities and other public, private and volunteer agencies interested therein;
6. Advise and make recommendations to the Council on all matters pertaining to the location, acquisition, development, maintenance and/or modification of public parks and recreational facilities.
7. Recommend to the City Council, after public input, the adoption, amendment or repeal of ordinances, resolutions, or requirements pertaining to the preservation, enhancement and advancement of the viability and attractiveness of the parks and recreation programs and facilities;
8. Review periodic surveys or inventories of parks and recreation services that exist or may be needed and ascertain the needs of the public for such services;
9. Disseminate to the public, information concerning the policies and functions of the City's Parks and Recreation Commission.
10. Review the acceptance of money, personal property or real estate donated to the city for park or recreational purposes, subject to the approval of the City Council.



MEMORANDUM

DATE: October 30, 2012

TO: Standing Ordinance Committee

FROM: Reed Gallogly, Deputy City Attorney

SUBJECT: **Nuisance and Noise Ordinance Revisions**

During discussion of recent code compliance investigations into public nuisances, it has become apparent that the Goleta Municipal Code has some limitations. After analysis, the City Attorney's Office is recommending modifying the definition of Responsible Person in three places in the code. This will provide a better tool to assure compliance with Ordinances adopted by the City Council.

Additionally, the City Attorney's Office is recommending modifying the noise restrictions in the municipal code to provide a more effective tool in addressing and preventing disturbances within a neighborhood. The current noise restrictions are very limited both in terms of time and the source of the noise and therefore limited in effectively addressing disturbances.

The attached revised language would accomplish the requested changes and is submitted for the Committee's review and consultation.

1.01.060 General Purpose.

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1.01.160 Definitions.

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As used in this Code, unless a different meaning is apparent from the context or is specified elsewhere in the Code:

“Calendar year” shall mean from January 1st through December 31st of any given year.

“City” shall mean the City of Goleta.

“City Manager” shall mean the appointed official of the City who occupies the position of chief administrative officer of the City.

“Council” shall mean the City Council of the City of Goleta.

“Councilmember” shall mean a person duly elected to the Council.

“County” shall mean the County of Santa Barbara.

“Day” shall mean that period between midnight and the following midnight, and shall refer to a calendar day unless otherwise indicated.

“Fiscal year” shall mean from July 1st of any given year through June 30th of the following year.

Gender. The masculine gender shall include the feminine and neuter genders.

“Goods” shall mean and include wares and merchandise.

“May” means permissive.

“Month” shall mean a calendar month, unless otherwise specially expressed.

Number. The singular number shall include the plural, and the plural number shall include the singular, unless the context clearly indicates otherwise.

“Oath” shall include affirmation.

Official Time Standard. Wherever certain hours are named in this Code, they shall mean Standard Time or Daylight Saving Time as may be in current use in the City.

“Operate” shall mean and include carrying on, keeping, conducting, or maintaining.

“Owner” applied to a building or land, shall include any part owner, joint owner, tenant, tenant in common, or joint tenant of the whole or a part of such building or land.

“Person” shall include any person, firm, company, corporation, partnership, association, public corporation, city (except the City of Goleta), the County of Santa Barbara, any district in the County of Santa Barbara, the State of California, or the United States of America, or any department, agency, or political subdivision of the above, unless this Code expressly provides otherwise.

“Personal property” shall include money, goods, chattels, things in action, and evidences of debts.

“Police” shall mean the agency which performs the appropriate law enforcement function for the City. “Police Chief,” “Chief of Police,” or “Chief of Police Services,” shall mean the head of the agency or division which at the time involved has responsibility for performing the police function for, or within, the City.

“Property” shall include real and personal property.

“Quarterly” where used to designate a period of time, shall mean the first three calendar months of any given year or succeeding period of three calendar months.

“Real property” shall include land, tenements, and hereditaments.

“Responsible person” means any of the following:

1. An individual who causes a Code violation to occur.
2. An individual who maintains or allows a Code violation to continue, by his or her action or failure to act in a lawful manner.
3. An individual whose agent, employee, or independent contractor causes a Code violation by its action or failure to act in a lawful manner.
4. An individual who is an owner of real property where a property related Code violation occurs.
5. An individual who is an owner of a business or who is the on-site manager of a business and who normally works at the site when the business is open and is responsible for the activities at such premises.

For purposes of this subsection "responsible person" includes a natural person or a legal entity including but not limited to, the owners, majority stockholders, corporate officers, trustees, and general partners of a legal entity. There shall be a legally rebuttable presumption that the record owner of a parcel as listed on the County's latest equalized property tax assessment rolls is the person responsible for a Code violation on such parcel. In addition, where applicable, a commercial lessee, sub-lessee, or operator of a business on a parcel shall be presumed responsible for Code violations relating to the operation of the business (for example, sign ordinance violations) on that parcel.

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“Sale” shall include any sale, exchange, barter, or offer for sale.

“Shall” means mandatory.

“State” shall mean the State of California.

“Street” shall include all streets, highways, avenues, boulevards, alleys, courts, places, squares, or other public ways in the City which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any State law.

“Tenant or occupant” applied to a building or land, shall include any person who occupies the whole or a part of such building or land, whether alone or with others.

Tense. The present tense shall include the past and future tense, and the future tense shall include the present tense.

“Year” shall mean calendar year unless otherwise indicated.

Words and phrases not defined in this Code shall be construed according to the normal approved usage of the language, or, when appropriate, by reference to definitions contained in state or federal law.

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12.13.020 Definitions.

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The following words and phrases, when used in the context of this chapter, shall have the following meanings:

“Abandoned” means not legally occupied or in use for any legally permitted purpose.

“Enforcement officer” means any person authorized to enforce provisions of this Code.

“Hearing Officer” is the City Manager or the Manager’s designee.

“Legal interest” means any interest that is represented by a deed of trust, quitclaim deed, mortgage, judgment lien, tax or assessment lien, mechanic’s lien or other similar instrument, which is recorded with the county recorder.

“Parking” means the parking of a vehicle on private property for less than 48 hours.

“Responsible person” means any of the following:

1. An individual who causes a Code violation to occur.
2. An individual who maintains or allows a Code violation to continue, by his or her action or failure to act in a lawful manner.
3. An individual whose agent, employee, or independent contractor causes a Code violation by its action or failure to act in a lawful manner.
4. An individual who is an owner of real property where a property related Code violation occurs.
5. An individual who is an owner of a business or who is the on-site manager of a business and who normally works at the site when the business is open and is responsible for the activities at such premises.

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For purposes of this subsection "responsible person" includes a natural person or a legal entity including but not limited to, the owners, majority stockholders, corporate officers, trustees, and general partners of a legal entity. There shall be a legally rebuttable presumption that the record owner of a parcel as listed on the County's latest equalized property tax assessment rolls is the person responsible for a Code violation on such parcel. In addition, where applicable, a commercial lessee, sub-lessee, or operator of a business on a parcel shall be presumed responsible for Code violations relating to the operation of the business (for example, sign ordinance violations) on that parcel.

Responsible person” means any person whom an enforcement officer determines is responsible for causing or maintaining a violation of this Code. The term “responsible person” includes, but is not limited to, a property owner, tenant, a person with a legal interest in any real or personal property, or a person in possession or control of any real or personal property.

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“Storage” means the storage of a vehicle or equipment for more than 48 hours. (Ord. 04-05 § 2)

12.13.030 Public Nuisances Designated.

It is unlawful and hereby declared to be a public nuisance, for any responsible person to maintain, cause, permit, or allow to exist upon his or her property or premises owned, occupied, or controlled by him or her within the City any violation of any provision of this Code, including, but not limited to, in a manner in which any of the following conditions are found to exist:

A. Land, the topography or configuration of which, in any man-made state, whether as a result of grading operations, excavations, fill, or other alteration, interferes with the established drainage pattern over the property or from adjoining or other properties that may or does result in erosion, subsidence, or surface water drainage problems of such magnitude as to be injurious to public health, safety, and welfare or to neighboring properties;

B. Buildings or structures partially destroyed, uninhabitable or permitted to remain in a state of partial construction for which no building permit is active;

C. Buildings or structures that have broken windows or an unkempt appearance, that are dilapidated, uninhabited or unsecured for more than six months;

D. The failure to secure and continue to secure from public access all doorways, windows and other openings into vacant or abandoned buildings or structures;

E. Overgrown, dead, decayed or hazardous vegetation that:

1. Is maintained so as to cause an obstruction to the vision of motorists or a hazardous condition to pedestrians or vehicle traffic, or

2. Constitutes a fire hazard;

F. Building exteriors that are maintained in such condition as to become structurally unsound or subject to intrusion by the elements;

G. The accumulation of junk, trash, garbage, salvage materials, rubbish, hazardous waste, refuse, rubble, broken asphalt or concrete, containers, broken or neglected machinery or the presence of the following: appliances, sinks, fixtures or equipment, scrap metals, machinery parts, inoperative or dismantled automobiles, abandoned or neglected pools, ponds, excavations and wells, or other such material or conditions present on property that are visible from a public street, alley, or neighboring property;

H. Except where construction is occurring under a valid City permit, the storing of any construction equipment, buses, tow trucks, dump trucks, flatbed trucks, grading equipment, tractors, storage containers, roll off bins, cargo containers, tractor trailers, any other commercial vehicle over 22 feet long, materials, or machinery of any type or description, upon any property within a residential zone. Any two axle commercial vehicle, when used as the primary source of personal transportation by the person owning, leasing, occupying or having charge of any such vehicle, shall be excluded from the provisions of this section;

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I. Construction debris storage bins stored on a public street or in any front or side yard setback area without the expressed approval of the City through a building or encroachment permit;

J. Unscreened storage of refuse or trash containers in front yard setbacks beyond 48 hours of being serviced;

K. Accumulations of grease, oil or other hazardous material on paved or unpaved surfaces and from which any such material is likely to or actually flows or seeps onto any public street or other adjacent public or private property;

L. Any open yard area which lacks turf, bark, planted groundcover, or other planted material, or decorative rock, or other hardscape or landscape treatment so as to cause excessive dust or allow soil erosion;

M. The existence of any unlawful encroachment including signs, play equipment, vehicle, trash or vegetation, which obstructs or interferes with the free passage or use by the public, of any public sidewalk, street, alley, or other public right-of-way, or which may impede emergency access or may otherwise constitute a hazard to public safety or property;

N. Use of a recreational vehicle for living space on private, residentially zoned property, for a period exceeding 14 days in a six-month period;

O. Trailers, campers, boats or motor vehicles parked or stored on vacant property, or in front yards of developed lots unless on paved surfaces. Nothing in this section shall be construed to permit any activity that is otherwise prohibited by this Code; and

P. Any condition caused or permitted to exist in violation of Chapter 13.04, including releases of pollutants or illegal discharges into the storm drain system and/or waters of the State. (Ord. 12-02 § 20; Ord. 10-02 § 3; Ord. 04-05 § 2)

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Chapter 9.09 ~~NIGHTTIME~~ NOISE RESTRICTIONS

9.09.010 Purpose.

The purpose of this chapter is to preserve the public peace and comfort of citizens of Goleta from the unwarranted noise and disturbances, ~~of including that of~~ amplified music played in or out of doors after 10:00 p.m. on weekdays and after midnight on weekends and to eliminate confrontations and breaches of the peace created by such activity. (Ord. 02-01 § 1)

9.09.020 Certain Noises Prohibited.

A. It shall be unlawful to make, assist in making, permit, continue, create, or cause to be made, any loud and unreasonable noise, music, percussion or other sound which is broadcast outside of any residence or building by means of any amplified musical instrument, drum, or similar device, or by means of any radio, loudspeaker, sound amplifier or phonograph, or by means of or employing any similar device which amplifies and produces, reproduces or broadcasts sound, during any of the following periods of time:

1. The night and following morning of any Sunday, Monday, Tuesday, Wednesday, or Thursday between the hours of 10:00 p.m. of such day and 7:00 a.m. the following morning; or,

2. The morning hours after midnight of any Friday or Saturday, between 12:00 midnight, following such day, and 7:00 a.m. the following morning.

B. Within such time periods, and for the purposes of this chapter, a loud and unreasonable sound shall include any sound created by means prohibited above which is clearly discernable at a distance of 100 feet from the property line of the property upon which it is broadcast or which is at any level of sound in excess of 60 decibels at the edge of the property line of the property upon which the sound is broadcast, as such sound would be measured on a sound measuring instrument meeting American National Standard Institute's Standard SI.4-1971 (or more recent revision thereof) for Type 1 or Type 2 sound level meters or an instrument and the associated recording and analyzing equipment which provide equivalent data, or inside of a neighboring residence.

C. Enforcement of a violation under this chapter shall not require the use of a sound level meter. (Ord. 02-01 § 1)

9.09.030 Special Provisions—Exemptions.

The provisions of this chapter are not intended to affect and shall not apply to:

A. Bells, chimes, carillons and similar devices while being used for religious purposes, or in conjunction with religious services, or for celebrations of public holidays; or

B. Outdoor gatherings, public dances, shows and sporting and entertaining events, provided such gathering, dance or event is conducted on commercial or institutional premises, pursuant to applicable rules, regulations and zoning restrictions, and in compliance with all permits or licenses issued by the City relative to the staging of the gathering, dance or event.
(Ord. 02-01 § 1)

9.09.040 Disturbing the Peace.

A. Disturbing the Peace - Excessive or Unreasonable Noise. It is unlawful for any person to make, cause or suffer or permit to be made or caused, upon any premises owned, occupied or controlled by him/her in the City, any unnecessary noises or sounds which are physically annoying to persons of ordinary sensitiveness or which are so harsh or so prolonged or unnatural or unusual in their use, time or place as to occasion physical discomfort to the inhabitants of the City, or any number thereof.

B. Factors Used in Determining Whether a Violation Has Occurred. The factors which shall be considered by the City in determining whether to issue a citation for a violation and whether a violation of this Section has occurred shall include, but not be limited to, the following:

1. The volume of the noise, music, or related sound;
2. The intensity of the noise, music, or related sound;
3. The continuousness or repetitive nature of the noise, music, or related sound;
4. Whether the nature of the noise, music, or related sound is unusual for the area in which it occurs;
5. Whether the origin of the noise, music, or related sound is natural or unnatural to the area in which it occurs;
6. The volume and intensity of the background noise or sound, if any;
7. The proximity of the noise, music, or related sound to residential sleeping facilities or to overnight accommodations, such as hotels and motels;
8. The proximity to offices, places of business or other areas where work is known to be carried on, of the noise, music, or related sound;
9. The nature and zoning of the area within which the noise, music, or related sound emanates;
10. The time of day or night the noise, music, or related sound occurs and the relationship of this time to the normal activities of the area in which it occurs and in relation to the other factors listed in this subsection;
11. The duration of the noise, music, or related sound;
12. Whether the noise, music, or related sound is recurrent, intermittent, or constant;
13. Whether the noise, music, or related sound is produced by a commercial or a noncommercial activity;

14. Whether the person or business responsible for the noise, music, or related sound has been previously recently warned that complaints have been received about the noise, music, or related sound and such person or business has failed to reduce it to an appropriate level.



MEMORANDUM

DATE: October 30, 2012
TO: Standing Ordinance Committee
FROM: Reed Gallogly, Deputy City Attorney
SUBJECT: **Administrative Citation Ordinance Revisions**

The City has adopted an Administrative Citation Program as an alternative to criminal charges for securing compliance with the municipal code.

As we contemplate the number and variety of potential citations that may be issued under the program, we have conducted a comprehensive review of the program and suggest a number of procedural clean up items to make the program as successful as possible.

The attached language would accomplish the requested changes and is submitted for the Committee's review and consultation.

Chapter 1.02. ADMINISTRATIVE CITATIONS

1.02.010 General Purpose.

(a) The City Council finds that there is a need for an alternative method of enforcing minor violations of this Code. The City Council further finds that an appropriate and alternative method of enforcement for minor violations is an Administrative Citation Program as authorized by Government Code section 53069.4.

(b) The purpose of issuing civil citations pursuant to this Chapter is to encourage voluntary and complete compliance with the provisions of this Code in order to protect the public health, safety, and welfare of the citizens of Goleta; to provide a method of holding parties responsible when they fail or refuse to comply with the provisions of this Code, and to minimize the expense and delay where the otherwise sole remedy is to pursue responsible parties in the civil or criminal justice system.

1.02.020 Applicability.

(a) **ENFORCEMENT OF THE MUNICIPAL CODE.** This Chapter makes any violation of the provisions of the Goleta Municipal Code, including but not limited to all codes adopted by reference and as amended pursuant to Title 15 of the Goleta Municipal Code, subject to administrative fines.

(b) **ADMINISTRATIVE AUTHORITY.** This Chapter establishes the procedures for the imposition, enforcement, collection, and review of civil administrative fines pursuant to California Government Code section 53069.4 and pursuant to the City's police powers as granted under California Constitution Article XI section 7.

(c) **REMEDIES NOT EXCLUSIVE.** The use of the administrative enforcement remedies provided by this Chapter is solely at the City's discretion. By adopting this Chapter, the City does not intend to limit its discretion to exercise any other remedy, civil or criminal, or other administrative procedures, for the abatement of such violations that the City may select in a particular case, including procedures for the imposition of civil or criminal penalties.

(d) **STRICT LIABILITY OF THE OWNER.** Because serious Code violations may impact public health, welfare, safety, and the adequacy and safety of housing, this Chapter is intended to impose strict civil liability upon the owners of real property and the owners of a business (where the violation is caused by or relates to the operation of a business) for all violations of the Goleta Municipal Code which may occur in the City of Goleta regardless of the existence of

specific or general intent or prior knowledge of such violations and, further, regardless of any intent (or lack thereof) to violate the Code.

1.02.030 Definitions. The following definitions shall apply to the use of these terms, words, and phrases for the purposes of this Chapter. The singular shall also imply the plural:

(a) "Notice of Administration Citation," "Administrative citation," or "citation" means an official written notice issued to a responsible person notifying them that they are responsible for one or more violations of the Goleta Municipal Code, that abatement of the violation was not completed by the specified deadline, setting a new deadline for abatement, and assessing a civil fine or penalty.

(b) "Code Enforcement Officer," "Enforcement officer", or "officer" means any person authorized to enforce certain provisions of this Code.

(c) "Code violation" means any violation of the Goleta Municipal Code or its adopted, supplemental codes.

(d) "Continuing violation" means either (1) a particular violation of the Code continuing for more than twenty-four (24) hours without correction or abatement, or (2) a repeated, consecutive violation of the same or similar offense without intervening days.

(e) "Fine" means any monetary penalty imposed to punish a violation of this Code. A fine may include the costs the City incurs while identifying the violation and issuing a notice of violation or administrative citation in addition to the monetary penalties set forth under section 1.02.080.

(f) "Issued" means giving, mailing, or posting a Notice of Administrative Citation or a Notice of Violation as set forth under 1.02.060. "Issuance" is deemed to have occurred on the earlier of the date when a Notice is personally served on a person, the date it is mailed to a person by posting in the regular United States mail, or the date it is physically posted on real property.

(g) "Legal interest" means any interest that is represented by a deed of trust, quitclaim deed, mortgage, judgment lien, tax or assessment lien, mechanic's lien or other similar instrument, which is recorded with the County Recorder.

(h) "Notice of Violation" means an official written notice issued to a responsible person notifying them that they are responsible for a violation of the Goleta Municipal Code and warning them that an administrative citation assessing fines will be issued unless the violation is ceased and abated by a specified deadline.

- (i) "Responsible person" means any of the following:
1. An individual who causes a Code violation to occur.
 2. An individual who maintains or allows a Code violation to continue, by his or her action or failure to act in a lawful manner.
 3. An individual whose agent, employee, or independent contractor causes a Code violation by its action or failure to act in a lawful manner.
 4. An individual who is an owner of real property where a property related Code violation occurs.
 5. An individual who is an owner of a business or who is the on-site manager of a business and who normally works at the site when the business is open and is responsible for the activities at such premises.

For purposes of this subsection "responsible person" includes a natural person or a legal entity including but not limited to, the owners, majority stockholders, corporate officers, trustees, and general partners of a legal entity. There shall be a legally rebuttable presumption that the record owner of a parcel as listed on the County's latest equalized property tax assessment rolls is the person responsible for a Code violation on such parcel. In addition, where applicable, a commercial lessee, sub-lessee, or operator of a business on a parcel shall be presumed responsible for Code violations relating to the operation of the business (for example, sign ordinance violations) on that parcel.

1.02.040 Administrative Citation Authority.

(a) Any City Department Director, or their designee, acting as a Code Enforcement Officer, upon determining that a provision of this Code which such officer is charged to enforce has been violated, has the authority to issue an administrative citation to any responsible person. Pursuant to this authority, the enforcement officer shall determine the appropriate responsible person(s) for each violation.

(b) Any responsible person may be issued an administrative citation by a code enforcement officer. A responsible person to whom a citation is issued shall be liable for and shall pay to the City the fine or fines described in the citation when due. If a code Enforcement Officer determines that the same or a similar type of violation occurs within any twelve month period following an initial citation, it may be cause for issuing additional administrative citations to a responsible person without warning. Each and every day a violation of the Goleta Municipal Code exists constitutes a separate and distinct offense and will be subject to a separate fine. A single citation may charge a violation for one or more days on which a violation exists, and for violation of one or more Code

sections. Continuing violations shall automatically accrue fines beginning on the date the citation is issued until the abatement of the offense is properly verified in accordance with Section 1.02.090.

(c) The owner of any property, building or structure within the City has the responsibility for keeping such property, building, or structure free of violations related to its use or condition. The owner of such property, building or structure is also a responsible person where the violation is caused by or relates to the operation of a business or the action of tenants and shall be separately liable for violations committed by tenants or occupants relative to the use or condition of the property.

(d) **DEVELOPMENT REVIEW CONDITIONS.** Every person who applies for and receives a permit, license, or any type of land use approval (such as, but not limited to, a development review approval, a coastal development permit, a subdivision map approval, a conditional or special use permit, a zoning requirement modification, a variance, or other discretionary approval) shall comply with all mandatory approval conditions imposed upon the issuance of the permit, license, or other such approval. If a person violates any condition of such permit, license, or similar land use approval, that person may be issued a Notice of Administrative Citation and may be held responsible for administrative fines under the provisions of this Chapter.

1.02.041 Continuing Code Violations Constitute a Public Nuisance

(a) Pursuant to the authority of California Government Code section 38771, any continuing violation of the Goleta Municipal Code constitutes a public nuisance. Therefore, any responsible person who is in violation of any provision of the Goleta Municipal Code may be determined to be maintaining a public nuisance provided, however, that it shall not be the intent of the City that this Chapter preempt any private nuisance right of action or any and all other legal remedies available to private parties to abate such nuisances.

1.02.050 Notice of Violation.

(a) An enforcement officer may, in the officer's discretion, issue a "Notice of Violation" to a responsible person prior to issuing an Administrative Citation. Such Notice of Violation shall serve as a written warning and notification of responsibility and require action by the responsible person to cease and abate the violation. The Notice of Violation shall include the information set forth in Section 1.02.070(b). If the violation is not ceased or abated by the end of the correction period stated in the Notice of Violation, the enforcement officer may issue an Administrative Citation assessing fines in accordance with this Chapter.

(b) In accordance with Government Code section 53069.4, no responsible person shall be assessed a civil fine under this Chapter for a continuing violation pertaining to building, plumbing, electrical, zoning, or other structural, design or land use regulation without first receiving a warning and reasonable opportunity to correct or otherwise remedy the violation.

(1) In such circumstance, the enforcement officer shall issue a Notice of Violation requiring cessation or abatement of the violation within a stated period of time prior to the assessment of civil fines. The stated period available to correct the violation prior to assessment of fines shall be appropriate to the violation as determined by the enforcement officer, but in no event less than seven (7) days.

(2) If, after the correction period stated in the Notice of Violation, the violation is not ceased or abated, the enforcement officer may issue an administrative citation assessing fines accruing on each day the violation exists beyond the stated period to correct the violation without abatement in accordance with Section 1.02.080.

(c) A Notice of Violation shall be sent by regular first class mail and shall be deemed delivered and issued on the date of mailing.

(d) Any responsible person cited for a continuing violation may petition the City Manager for an extension of time to correct the violation so long as the petition is received before the end of the correction period. The City Manager may grant an extension of time to correct the violation if the responsible person has supplied sufficient evidence showing that the correction cannot reasonably be made within the stated period.

(e) The procedures of this Section shall not apply in instances where in the discretion of the City Manager, a violation poses an immediate danger to public health or safety.

1.02.060 Service Procedures. Unless another method of notice is specifically provided, notice pursuant to this Chapter shall be served either by personal delivery, mail, or by posting notice.

(a) **Personal service.** The enforcement officer may attempt to locate and personally serve the responsible person.

(b) **Service by mail.** If the enforcement officer is unable to locate the responsible person, the administrative citation may be mailed to the responsible person by first class mail. Service shall be deemed effective pursuant to first class mail, provided the citation sent by first class mail is not returned as undeliverable.

(c) **Service by posting notice.** If the enforcement officer does not succeed in personally serving the responsible person, or by sending the citation by regular first class mail, the enforcement officer shall post the administrative citation on the affected property or any other real property within the City in which the City has knowledge that the responsible person has a legal interest, and such posting shall be deemed effective service.

(d) Where service of any notice under this chapter is affected in compliance with the requirements of this section, the asserted failure of any person to receive the notice shall not affect the validity of any proceedings taken under this chapter.

1.02.070 Information Required for Notices of Violation and Administrative Citations.

(a) The following guidelines concern the issuance and contents of Notices of Violation and Administrative Citations.

(b) Each Notice of Violation shall contain the following information:

(1) Name of the person who is charged as a responsible person for the violation;

(2) The date of violation;

(3) The date of issuance of the Notice of Violation;

(4) Address or definite description of the location where the violation was observed;

(5) The Code sections or conditions violated and a plain, non-technical description of the violation;

(6) A description of the actions necessary to correct and abate the violation and a date by which such abatement must be completed;

(7) An order to the responsible person to correct the violation and an explanation of the consequences of failure to correct the violation;

(c) Each Administrative Citation shall contain the following information:

(1) Whether the offense is a continuing violation which shall accrue fines until properly ceased and abated;

(2) The amount of the fine for the violation, including the amount due for the initial violation and any prospective daily fine for failure to abate the violation (if applicable to a continuing violation);

(3) An explanation of how the fine shall be paid and the time period by which it shall be paid;

(4) An explanation of how the abatement of the violation can be properly verified (if applicable);

(5) Identification of rights of appeal, including the time within which the citation may be contested and the place to obtain a request for hearing form to contest the administrative citation;

(6) The name, identification number, and signature of the enforcement officer;

(7) Notice that the violation is a nuisance and that collection of unpaid fines and/or nuisance abatement costs can be enforced as an assessment or lien against the property where the violation occur; and

(8) A sequential citation number, identifying the order in which the citation was issued.

(9) A copy of the Notice of Violation pertaining to the violation for which the Administrative Citation is being issued. If no Notice of Violation was issued prior to the issuance of the Administrative Citation, that citation shall also contain all the information set forth under section 1.02.070(b).

1.02.080 Amount of Administrative Fines.

(a) The amount of the fines for Code violations shall be set forth in the Administrative Penalty Schedule established by resolution of the City Council. The schedule may include escalating fine amounts for repeat Code violations occurring within specified periods of time.

(b) Where no amount is specified by resolution of the City Council, the following fines shall apply:

(1) **Standard Penalty.** A fine not exceeding one hundred dollars (\$100.00) per occurrence for a first violation;

(2) **Second Violation.** A fine not exceeding two hundred dollars (\$200.00) per occurrence for a second violation of the same or similar ordinance or permit within one year from the date of the first violation;

(3) **Third Violation.** A fine not exceeding five hundred dollars (\$500.00) per occurrence for each additional violation of the same or similar ordinance or permit within one year from the date of the first violation.

(c) **Delinquency Penalty.** The schedule of fines shall specify the amount of late payment penalty owed for any fine not paid when due.

(d) **Cost Recovery.** The City may, in addition to the fines set forth above, include in an administrative fine the costs incurred by the City in identifying the violation and issuing a Notice of Violation or Administrative Citation.

1.02.090 Satisfaction of Administrative Citation.

(a) Upon receipt of a citation, the responsible person can rectify a violation of the Code and satisfy the requirements of an Administrative Citation by taking the following actions:

(1) Paying the fine to the City by check or money order within 30 days from the issuance date of the administrative citation. All fines assessed shall be payable to the City of Goleta. Payment of a fine shall not excuse or discharge the failure to correct the violation nor shall it bar further enforcement action by the City.

(2) Ceasing and abating the violation and obtaining an inspection by City staff to verify abatement of the violation. If the offense is a continuing violation and the responsible person fails to properly cease and abate such violation, fines shall accrue for each day until the abatement is properly verified. Subsequent administrative citations may be issued for the same violation. The amount of the fine for failure to correct the violation shall increase at a rate specified in this Chapter or by resolution.

(3) Having the citation dismissed by review of the City designated Hearing Officer.

1.02.091 Payment of Fines

(a) The fine shall be remitted to the City through its Finance Department within thirty (30) days from the date the Administrative Citation is issued.

(b) Any Administrative Citation fine paid pursuant to subsection (a) shall be refunded in whole or in part as appropriate if it is determined, after a hearing, that the person charged in the

Administrative Citation was not responsible for the violation, that there was no violation as charged in the Administrative Citation, or if the Administrative Hearing Officer orders the fine reduced or dismissed.

- (c) Payment of a fine shall not bar additional enforcement proceedings for repeated occurrences of a Code violation that is the subject of Administrative Citation.
- (d) Payment shall be made by check or money order.

1.02.092 Failure to Pay Fines

(a) Following 30 days after the issuance of the citation, the City shall send a collection bill to the responsible person requiring payment for all outstanding amounts owed for the delinquent administrative citation. This bill shall include the amount due for the initial violation, any accrual of daily fines from the date the citation was issued to the date the abatement of the offense is properly verified (if applicable), any costs incurred by the City, and any appropriate late payment charge, less any amount remitted pursuant to Section 1.02.091.

(b) The abatement of a continuing violation must be verified by an enforcement officer of the City. The responsible person shall contact the Code Enforcement Officer via the phone number designated on the Notice of Violation and Administrative Citation and schedule an inspection by a Code Enforcement Officer. Fines shall accrue until the abatement is verified, less any days delayed by action of the City in scheduling such inspection.

1.02.100 Request for Administrative Hearing – Appeal of Administrative Citation.

(a) Any recipient an administrative citation may contest the citation by completing a request for administrative hearing form and filing it with the City's Legal Office Assistant within fifteen (15) days after the issuance date of the administration citation.

(b) A request for hearing must be accompanied by an advance deposit of the fine assessed by the citation for the initial violation, unless a request of hardship has been approved by the City Manager or their designee.

(c) A request for hearing shall not postpone or avoid the requirement of a responsible person to abate a violation nor toll the daily fines accruing for a continuing violation until the abatement of the offense is properly verified. In the event the hearing officer upholds the citation, the responsible person shall be

liable for the total fines accrued from the issuance of the citation to the date the abatement is properly verified unless reduced by the hearing officer. Any administrative citation fine which has been deposited shall be refunded if it is determined, after a hearing, that there was no violation(s) as charged in the administrative citation.

(d) A person seeking an administrative hearing can request a hardship waiver, if they are unable to post the advance deposit. The request for hardship must be properly completed and filed with the City's Legal Office Assistant. The form must be signed by the party to be charged under penalty of perjury. The person requesting the waiver bears the burden of proving that such person does not have the financial ability to make the deposit.

(e) The request for a hardship waiver will be decided by the City Manager or their designee within ten (10) business days from date the request is received, and that decision is final. The applicant shall be notified by telephone, facsimile, or via mail of the decision on the request. The filing of a request for hardship waiver does not extend the time to file for an administrative hearing or pay the civil fine when due. If the request for hardship waiver is denied, an administrative hearing shall not be scheduled unless the fine deposit is paid within five (5) business days following the City Manager's determination on the request for hardship waiver.

(f) Failure to submit a timely and complete request for hearing shall terminate a person's right to contest the citation and result in a failure to exhaust administrative remedies, and the order of the citation shall serve as a final determination and conclusive evidence of the named responsible person's liability for the citation. Where the administrative hearing form is mailed by the appellant, the request shall be deemed filed on the date it is received by the City.

(g) The City's Legal Office Assistant shall set a hearing before a City hearing officer on a date that is not less than fifteen (15) and not more than sixty (60) days from the date that the request for hearing is properly filed in accordance with the provisions of this Section. The person requesting the hearing shall be notified by first class mail of the date, time and place set for the hearing at least ten (10) days prior to the date of the hearing and be given any additional written reports filed concerning the violation that are provided to the hearing officer.

1.02.110 Hearing Procedure.

(a) The City Manager will designate the City Administrative Hearing Officer(s) to conduct the administrative citation hearing at City Hall.

(b) An Administrative Hearing shall not be held until a request for hearing form has been completed, timely submitted, and the fine has been deposited in advance, unless waived in accordance with Section 1.02.100(d).

(c) The hearing officer shall only consider evidence that is relevant to whether the violation occurred and whether the responsible person has caused or maintained the violation of this Code on the date specified in the administrative citation.

(d) The person contesting the administrative citation and the City shall be given the opportunity to testify and present witnesses and evidence concerning the administrative citation. The appeal hearing shall be conducted informally and the legal or formal rules of evidence need not be followed. The Hearing Administrator does not have the authority to issue a subpoena.

(e) Unless requested in advance by the person contesting the administrative citation, neither the enforcement officer nor any other representative of the City shall be required to attend hearing, provided that any such appearance may be made at the discretion of the enforcement officer or City Manager.

(f) The failure of any recipient of an administrative citation to appear at the administrative citation hearing shall constitute a forfeiture of the fine and a failure to exhaust the administrative remedies, and the order of the citation shall be a final determination.

(g) The administrative citation and any additional documents or reports concerning a code violation that are submitted by the enforcement officer to the hearing officer shall constitute prima facie evidence of the violation and the respective facts contained in those documents and shall be accepted by the hearing officer as such.

(h) At least ten (10) days prior to the hearing, the recipient of an administrative citation shall be provided with copies of the citations, reports and other documents submitted or relied upon by the enforcement officer. No other discovery is permitted. Formal rules of evidence shall not apply. If the enforcement officer submits an additional written report concerning the administrative citation to the hearing officer for consideration at the hearing, and such report was not initially provided to the appellant, then a copy of this report also shall be sent by first class mail to the person requesting the hearing at least five (5) days prior to the date of the hearing. If such report cannot be provided to the appellant within five (5) days of the date of the hearing, the hearing shall be rescheduled accordingly.

(i) The Hearing Administrator may continue an appeal hearing if a request is made showing good cause by the appellant or the City. All

continuance requests shall either: (1) be made in person at the hearing by the appellant or his or her representative if the appellant is physically unable to attend, or (2) be made by a written request by the City or the appellant. If the continuance is granted, a new hearing date shall be set within thirty (30) days. If the continuance is denied, the hearing shall proceed as originally scheduled, and, if the appellant is not present at the hearing, the request(s) shall be deemed abandoned.

1.02.120 Administrative Hearing Decision.

(a) After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision within fifteen (15) days after the hearing to uphold or revoke the administrative citation based upon the Hearing Administrator's conclusion of whether a violation occurred. The hearing officer shall use preponderance of evidence as the standard of evidence in deciding issues. The decision of the hearing officer shall be final.

(b) If the hearing officer determines that the administrative citation should be upheld, then any applicable fine amount on deposit with the City shall be retained by the City. The hearing officer may also impose conditions and deadlines to correct the violations or require payments of any outstanding penalties.

(c) The hearing officer may reduce, waive or conditionally reduce the fines assessed by the citation. In making such determination, the hearing officer shall take into account the facts and circumstances of the violation, including without limitation:

- (1) The length of time of the violation;
- (2) The willfulness of the violation;
- (3) The number of previous violations of the same or related type;
- (4) The extent of the violation and the effect of the violation on neighboring properties;
- (5) Attempts, if any, to comply with the applicable Code provisions, or notice of violation;
- (6) The time necessary to abate the violation; and
- (7) Any other information relevant to a determination of the fine.

(d) If the hearing officer determines that the administrative citation should be canceled or reduced, the City shall promptly refund the applicable amount of the deposited fine.

(e) The Hearing Officer may assess administrative costs against the violator when the Hearing Officer determines that a violation has occurred and that compliance was not achieved.

(f) Administrative costs may include any and all costs incurred by the City (both direct and indirect costs) in investigating and commencing administrative proceedings for the violation as well as any and all costs incurred by the City in connection with the hearing officer incurred in preparation for the hearing and for participating in the hearing itself and costs of the City to conduct the hearing. Failure to pay administrative costs in the amount specified in the administrative Hearing Officer decision on or before the date specified in that decision shall constitute a violation of this code punishable as a misdemeanor and shall further be subject to collection and late charges as otherwise provided for administrative penalties herein

(g) A copy of the decision shall be mailed to the appellant by first class mail within five (5) businesses day subsequent to the Hearing Administrator's issuance of the Notice of Decision.

1.02.130 Right to Judicial Review.

(a) Any person aggrieved by an administrative decision of a hearing officer on an administrative citation may seek judicial review of the administrative decision by filing a further appeal with Santa Barbara Superior Court within twenty (20) calendar days after the appellant receives a copy of the Notice of Decision, in accordance with the provisions of California Government Code section 53069.4. The appeal filed with the Court must also contain a proof of service showing a copy of the appeal was served upon the City of Goleta City Attorney. The appellant must pay to the Superior Court the appropriate court filing fee when the appeal is filed.

(b) No appeal is permitted from a decision where the appellant is deemed to have abandoned the contest of the Notice of Administrative Citation by an unexcused failure to appear at the appeal hearing or by the failure to request an administrative appeal hearing before the Hearing Administrator.

(c) The City Attorney or the City Attorney's designee shall forward to the Superior Court within fifteen (15) days of the Court's request, the pertinent Notice of Administrative Citation documents for any case appealed to that Court. If the Superior Court revokes any Notice of Administrative Citation, the City will refund to the appellant the Superior Court filing fee paid by the appellant.

1.02.140 Collection of Unpaid Fines.

(a) **CITY REMEDIES.** The City, at its discretion, may pursue any and all legal, equitable, and administrative remedies for the collection of unpaid civil administrative fines.

(1) **Remedies Cumulative.** Pursuit of one remedy does not preclude the pursuit of any other remedies until the total fines owed by a person under this Chapter have been collected.

(2) **Refusal to Issue Permits.** A City department may refuse to accept an application for a City permit or license or to refuse to issue, extend, or renew to any person, who has unpaid delinquent fines, liens, or assessments, any city permit, license, or other City approval pertaining to the property that is the subject of a Notice of Administrative Citation and an unpaid administrative fine.

(3) **Suspension of Issued Permits.** Notwithstanding any other provision of the Code, any permit, license, or any type of land use approval issued by the City to a person who has unpaid administrative fines totaling \$500.00 or more which remain delinquent for thirty (30) days or longer may be suspended by the department which issued the permit or other entitlement. The suspension becomes effective ten (10) days after the date the notice of the suspension is placed by the issuing department in the United States mail, postage prepaid, addressed to the person, and continues until the administrative delinquency is paid in full. The person may request an appeal or review hearing pursuant to the specific permit, license, or other City approval procedures or ordinance if such a request is filed before the ten (10) day period ends. Continuing to operate under a suspended permit, license, or approval shall also be grounds for the Planning Commission to revoke the permit, license, or approval.

(4) **Criminal Remedies.** The City Attorney, at his or her discretion, may also issue a criminal citation or complaint (infraction or misdemeanor) to any person for a Code violation when the applicable fine has not been paid.

(b) **VIOLATIONS CONSTITUTE A PUBLIC NUISANCE.** The City may pursue the remedies described in this Section whether or not the City is pursuing any other action to terminate an ongoing Code violation that was the basis for an administrative fine or to otherwise abate the violation or sanction the property

owner. To compel Code compliance, the City may also seek to collect assessed fines by means of a nuisance abatement lien or special assessment against the property where a property related violation occurred in accordance with the procedures in Government Code Sections 38773.1 and 38773.5.

(c) **LIEN CONDITIONS.** To recover any delinquent administrative fines as a lien or special assessment on real property, the following conditions must be met:

- (1) City Staff must submit to and receive approval from the City Council for a resolution certifying the amounts of the liens and special assessments sought to be collected from each property owner; and
- (2) The total amount of the delinquent fine against the property owner must be delinquent for 60 days or more.

(d) **LIEN COLLECTIONS.** City staff is authorized to take any steps necessary to enforce collection of the lien or special assessment, including but not limited to the following:

- (1) Request the County Recorder to record a notice of any lien or special assessment certified by resolution of the City Council.
- (2) Request the County Tax Collector on behalf of the City to collect any special assessments certified by resolution of the City Council.

(e) **NOTICE OF LIEN COLLECTION PROCEDURES.** All Notices of Administrative Citation shall contain a notice that unpaid fines are subject to the assessment and lien collection procedures of this Chapter. This notice shall satisfy the notice requirements of Government Code Sections 38773.1 and 38773.5 when a Notice of Administrative Citation is served on the person. In addition, the City shall by first class mail send notice to each property owner at least ten (10) days before the City Council considers the resolution to certify the amounts of the liens and special assessments stating the date, time, and location of the meeting. The lien or special assessment shall be imposed on the date the Notice of Administrative Citation for the Code violation is issued to the responsible person and shall become effective upon the recording of a Notice of Lien or Special Assessment by the County Recorder.

(f) **CONTESTING CERTIFICATION OF A LIEN.** A person may contest the amount or the validity of any lien or special assessment for a civil fine at the public hearing when the City Council considers the resolution to certify the liens or assessments. Such contests shall be limited to the issue of the amount or validity of the lien or assessment and may not consider whether the underlying

Code violation occurred. Pursuit of such a contest by a person is necessary to exhaust the administrative remedies concerning a legal challenge to the validity of any such lien or special assessment.



DATE: October 30, 2012
TO: Standing Ordinance Committee
FROM: Tim W. Giles, City Attorney *[Signature]*
SUBJECT: **Purchasing Ordinance Revision**

The City Manager has requested further revisions to the City Purchasing Ordinance.

The City Manager has the authority to award certain professional services contracts regardless of the contract value in certain circumstances. Specifically, certain assignments that are paid for by a project applicant are subject to the ordinance, when the applicant deposits the funds with the City in advance of the award.

The requested change is to add contracts to provide monitoring of compliance with environmental impact mitigation measures and monitoring of compliance with conditions of approval. The attached revised language would accomplish the requested changes and is submitted for the Committee's review and consultation.

6. Award. Except in the following circumstances, professional services contracts \$30,000.00 and over may only be awarded by the City Council.

a. The City Manager may award professional services contracts without regard to the contract value if:

i. The services have been requested by a project applicant;

ii. The project applicant has deposited cash with the City in the maximum value of the contract; and

iii. The services are for:

(a) _____ the preparation of California Environmental Quality Act (CEQA) studies or reports;

(b) _____ economic analysis of a project;

(c) _____ peer review of a project economic analysis (pro forma); or

(d) _____ peer review of an environmental study or report, or

(e) _____ monitoring of compliance with environmental impact mitigation measures, or

(~~g~~)(f) _____ monitoring of compliance with conditions of approval.