

ORDINANCE NO. 2001-1

AN ORDINANCE OF THE NOVATO FIRE PROTECTION DISTRICT ESTABLISHING A CODE ENFORCEMENT PROGRAM, ADMINISTRATIVE CITATION PROCEDURE, HEARING, AND CIVIL PENALTIES

THE BOARD OF DIRECTORS OF THE NOVATO FIRE PROTECTION DISTRICT DOES HEREBY ORDAIN AS FOLLOWS:

DIVISION I:

Section 1.01.010 Declaration of Purpose

The District finds that enforcement throughout the Novato Fire Protection District of this Code, including such codes as have been adopted by reference, as well as any applicable State codes, is an important public service. Code enforcement is vital to the protection of the public's health, safety, and quality of life. The District recognizes that code enforcement depends upon the codification of precise regulations that can be effectively applied in administrative and judicial proceedings. The District further finds that a comprehensive code enforcement system that uses a combination of judicial and administrative remedies is critical to gain compliance with code regulations.

DIVISION 2:

CODE ENFORCMENT AUTHORITY AND POWERS

Section 1.02.010 Definition Applicable to Ordinance Generally

The following words and phrase whenever used in this Ordinance shall be construed as defined in this section, unless it shall be apparent from their context that a different meaning is

intended or unless a different meaning is specifically defined elsewhere in this Ordinance and specifically stated to apply:

“Abatement” means any action the Novato Fire Protection District may take on public or private property and any adjacent property as may be necessary to remove or alleviate a nuisance, including but not limited to demolition, removal, repair, boarding and securing or replacement of property.

“Administrative Order” means an order issued by an Administrative Hearing Officer after a hearing requiring a Responsible Person to correct code violations, abate a public nuisance, pay administrative civil penalties and administrative costs or take any other action as authorized or required by this Ordinance and applicable to State codes, and authorizing the Novato Fire Protection District to abate the violation or public nuisance if the Responsible Person fails to do so.

“Code” means the provisions of any Ordinance adopted by the NFPD and any provision of Public Resource Code Section 4100 et. seq., or the California Health and Safety Code.

“Code Enforcement Assessment Lien” means a lien to collect outstanding administrative civil penalties and administrative costs imposed as part of an administrative enforcement proceeding with respect to a code violation or public nuisance.

“Code Enforcement Official” means the Novato Fire Protection District, Fire Chief, and any of their designated agents or representatives, including but not limited to the Deputy Chief, Fire Division Chiefs, Deputy Fire Marshal and Fire Loss Management Division Inspectors, and Battalion Chiefs.

“Board” means the Board of Directors of the Novato Fire Protection District.

“County” is the County of Marin.

“District” is the Novato Fire Protection District.

“Administrative Hearing Officer” means any person appointed by the Board to preside over administrative enforcement hearings.

“Financial Institution” means any entity or person that holds a recorded mortgage or deed of trust on real property.

“Imminent Life Safety Hazard” means any condition which creates a present, extreme and immediate danger to life, property, health, or public safety.

“Legal Interest” means any interest in real property that is represented by a document such as, but not limited to, a deed of trust, quitclaim deed, mortgage, judgment lien, tax or assessment lien, mechanic’s lien or other similar instrument which has been recorded with the County Recorder.

“Notice and Order” means a document used in Code violation and other public nuisance proceedings which provides notice of Code violations or existence of public nuisances and which orders a Responsible Person to take certain steps to correct the violations.

“Notice of Code Enforcement Assessment Lien” means a document, approved as to form and content by the Fire Chief, which is recorded concerning an Ordinance Enforcement Assessment Lien.

“Notice of Satisfaction” means a document, approved as to form and content by the Fire Chief, which indicates that all outstanding administrative civil penalties and administrative costs have been paid in full, or that the Novato Fire Protection District has negotiated a lesser but agreed amount of penalties and costs, or that a subsequent administrative or judicial decision has freely resolved the outstanding debt such that payment may not be required to be made.

“Oath” includes affirmations and oaths.

“Owner” applied to a building or land, shall include any person with an ownership interest in the subject real property including, without limitation, part owner, joint owner, tenant in common, joint tenant, of the whole or a part of such building or land.

“Person” means any natural person, firm, joint venture, joint stock company, partnership, association, club, company, corporation, trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them or any other entity which is recognized by law as the subject of rights or duties, not including the Novato Fire Protection District, its officers, employees, and/or agents.

“Public Nuisance” means any condition caused, maintained, or permitted to exist, which violates any provision of this Ordinance or applicable state codes, or which constitutes a threat to the public’s health, safety and welfare, or which significantly obstructs, injures or interferes with the reasonable or free use of property in a neighborhood, community or to any significant number of persons, or which constitutes any of the acts affecting the public as provided in Civil Code Sections 3479 and 3480, or which constitutes an unlawful obstruction or encroachment on over, or under any public property, including but not limited to any public street, highway, right-of-way, open space area, park or building, or which consists of any of the following:

1. Land, the topography, geology or configuration of which, whether in natural state or as a result of grading operations, excavation or fill, causes erosion, subsidence, or surface water drainage problems of such magnitude as to be injurious or potentially injurious to public health, safety and welfare, to public property or facilities, or to a considerable number of adjacent private properties in sufficient numbers to constitute a public menace California Code Section 3480.
2. Buildings which are abandoned, partially destroyed, or permitted to remain for an unreasonable period of time in a state of partial construction, whether or not any building permit has expired.
3. The failure to close by such means as shall be acceptable to the Novato Fire Protection District all doorways, windows, and other openings in vacant structures.
4. Broken windows constituting hazardous conditions or inviting trespassers and malicious mischief.
5. Overgrown, dead, decayed, diseased or hazardous trees, bushes, weeds or vegetation which are likely to harbor rats, vermin, or other pests, or the condition of which impair traffic safety, or otherwise cause a threat to public safety.
6. Broken or discarded furniture, household equipment or other machinery or equipment located on property, visible from public streets, or open and accessible from public streets and likely to be attractive and dangerous to children.

7. Abandoned or disabled vehicles located on property visible from public streets, or open and accessible from public streets and likely to be attractive and dangerous to children.
8. Pools, ponds, water containers, or excavations that are open and accessible from public streets and likely to be attractive and dangerous to children.

“Responsible Person” means a person who a Code Enforcement Official determines is responsible for causing or maintaining a public nuisance or a violation of the Code or applicable State Codes. The term “Responsible Person” includes but is not limited to a property owner, tenant, person with a Legal Interest in real property or person in possession of real property.

“State” is the Sate of California.

“Street” includes all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs, access roads, streets and turnarounds intended to be used for Fire District emergency vehicles, or other public ways in this District which have been or may hereafter be dedicated and open to the pubic use, or such other public property so designated in any of the laws of this state.

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

“Written” includes printed, typewritten, mimeographed, multigraphed, printout by computer, facsimile and those items listed in California Evidence Code Section 250.

Section 1.02.020 General Code Enforcement Authority

The District Fire Chief, his/her designee, including other Code Enforcement Officials as previously defined shall have the authority and powers necessary to gain compliance with the provisions of this Code and applicable State codes. These powers include but are not limited to the power to enter and inspect public and private property, and use whatever judicial and administrative remedies are available under this Code and applicable State codes, and in the case of Code Enforcement Officials other than peace officers (whose powers are otherwise specified in the Penal Code), the power to arrest and issue criminal citations as provided under the Penal Code Section 836.5 with respect to provisions of this

Code and applicable State codes it is their discretionary duty to enforce.

Section 1.02.030 Authority to Enter and Inspect Property

A Code Enforcement Official is authorized to enter upon any property or premises, and into any buildings or structures located thereon, to ascertain whether the provisions of this Code or applicable State codes are being complied with, and to make any examinations and surveys as may be necessary in the performance of their enforcement duties. These may include the taking of photographs, samples, or other physical evidence. All inspections, entries, examinations and surveys shall be performed in a reasonable manner. If an owner, occupant or agent refuses permission to enter or inspect, the Code Enforcement Official may seek an administrative inspection warrant pursuant to the procedures provided in State law, including California Civil Procedure Section 1822.50 et seq., as it may be amended from time to time.

Section 1.02.040 Procedure in Cases Involving Misdemeanors

In any case in which an arrest is made pursuant to this authority for a misdemeanor offense, the Code Enforcement Official shall, instead of taking the person arrested before a magistrate, follow the procedure prescribed by Chapter 5C (commencing with Section 853.6) of Title 3 of Part 2 of the California Penal Code, unless the arrested person demands to be taken before a magistrate: provided, that nothing herein shall prevent a peace officer from exercising his or her authority not to release an arrested person pursuant to the provisions of Penal Code Section 853.6(c) or any other provisions of law. The provisions of such Chapter 5C shall thereafter apply with reference to any proceeding based upon the issuance of a citation pursuant to this authority.

Section 1.02.050 Provisions of Law Relating to Infractions

Except as otherwise provided by law, all provisions of law relating to misdemeanors shall apply to infractions, except the right to trial by jury, including but not limited to powers of peace officers, jurisdiction of courts, periods for commencing action and for bringing a case to trial and burden of proof.

Section 1.02.060 **False Arrest or Imprisonment – Use of Reasonable Force**

There shall be no civil liability on the part of and no cause of action shall arise against any person acting pursuant to Section 1.02.020 and within the scope of his/her authority for false arrest or false imprisonment arising out of any arrest which is lawful or which the arresting officer at the time of such arrest had reasonable cause to believe was lawful. No such officer shall be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect an arrest hereunder or to prevent escape or to overcome resistance.

DIVISION 3:

JUDICIAL REMEDIES

Section 1.03.010 **Criminal Violations – Misdemeanors and Infractions**

It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this Code. A violation of any of the provisions or failing to comply with any of the requirements of this Code, may be charged and prosecuted as either an infraction or misdemeanor at the discretion of the District, except where otherwise specifically provided.

Except as otherwise specifically provided herein or by statute, any person convicted of an infraction is punishable by a maximum fine not exceeding five hundred dollars (\$500.00), for each violation within the same year, and any person convicted of a misdemeanor is punishable by a fine not exceeding five hundred dollars (\$500.00), or imprisonment in the Marin County Jail for a period of not more than six (6) months, or by both such fine and imprisonment.

Each separate day or any portion thereof on which a violation occurs, or is committed, continued, or permitted, shall be deemed to constitute a separate offense punishable as herein provided.

Section 1.03.020 **Civil Actions – Injunction, civil penalties and administrative costs**

In addition to all other remedies, the District may bring a civil action to enforce the provisions of this code in which a court shall be entitled to impose the following relief and remedies:

- A. An injunction;
- B. Civil penalties in an amount not to exceed five hundred dollars (\$500.00) per violation for each day, payable to the District, against any person who commits, continues, operates, allows or maintains any violation of any provision of this code;
- C. Reimbursement of District administrative and abatement costs, including but not limited to investigative costs incurred in the enforcement of the provisions of this code; and
- D. Award of attorneys’ fees, where the District has elected at the initiation of the action to seek the recovery of such fees, in which case the prevailing party in such action shall be entitled to an award of attorneys’ fees in an amount which shall not exceed the reasonable attorneys’ fees incurred by the District.

Section 1.03.030 **Judicial Abatement**

Pursuant to California Government Code Section 38773, the District has authority to judicially abate public nuisances by filing criminal or civil actions. The District also has the authority under state law to make the expense of abatement of the nuisance a special assessment, or a lien against the property on which it is maintained and a personal obligation against the property owner, in accordance with California Government Code Section 38773.1 or 38773.5.

Section 1.03.040 **Treble damages for subsequent abatement judgments**

Pursuant to California Government Code Section 38773.7, upon the entry of a second or subsequent civil or criminal judgment within a two-year period that finds an owner of property responsible for a condition that may be abated in accordance with

California Government Code Section 38773.5, a court may order the owner to pay treble the costs of abatement. These costs shall not be imposed in connection with conditions abated pursuant to California Health and Safety Code Section 17980.

DIVISION 4:

ADMINISTRATIVE CITATIONS

Section 1.04.010 Applicability

This Section provides for administrative citations which are in addition to all other legal remedies, criminal or civil, which may be pursued by the District to address any violation of this Code or other public nuisances.

Section 1.04.020 Administrative Citation and Pre-Citation Notice

A. Whenever a Code Enforcement Official charged with the enforcement of any provision of this Code determines that a violation of that provision has occurred, the Code Enforcement Official shall have the authority to issue an administrative citation to any person responsible for the violation, subject to the limitations contained in Subsection C hereafter.

B. Each administrative citation shall contain the following information:

1. The date of the violation;
2. The address or a definite description of the location where the violation occurred;
3. The section of this Code violated and a brief description of the violation;
4. The amount of the fine for the code violation;
5. A description of the fine payment process, including a description of the time within which and the place where the fine shall be paid;

6. An order prohibiting the continuation or repeated occurrence of the code violation described in the administrative citation;
7. A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place at which a request for hearing form to contest the administrative citation may be obtained; and
8. The name, signature, and department of the citing Code Enforcement Official.

C. Prior to issuing an administrative citation for a continuing violation of this Code pertaining to building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to health or safety, the Code Enforcement Official shall serve a Pre-Citation Notice on the person responsible for the violation containing the following information:

1. The date the violation was observed;
2. The address or definite description of the location where the violation was observed;
3. The section of this Code violated and a description of the violation;
4. The compliance date by which the violation must be corrected or otherwise remedied, which shall be no less than fifteen (15) days and no more than sixty (60) days from the date the Pre-Citation Notice is given, as determined to be reasonable by the Code Enforcement Official;
5. A statement that if the violation is not corrected by the specified compliance date, that an administrative citation will be issued which imposes a fine, for the amount of which will be specified; and
6. The name, signature, and department of the Code Enforcement Official issuing the Pre-Citation Notice.

Section 1.04.030 Amount of Fines

A. The amounts of the fines for code violations imposed pursuant to this Section shall be set forth in a schedule of fines established by resolution of the District, from time to time.

B. The schedule of fines shall specify any increased fines for repeat violations of the same code provision by the same person within thirty-six (36) months following the date of an administrative citation.

C. The schedule of fines shall specify the amount of any late payment charges imposed for the payment of a fine after its due date.

Section 1.04.040 Payment of the Fine

A. Any fines imposed hereunder shall be paid in full to the District within thirty (30) days from the date of the administrative citation.

B. Any administrative citation fine paid pursuant to subsection A shall be refunded in accordance with Section 1.04.080E. if it is determined, after a hearing, that the person charged in the administrative citation was not responsible for the violation or that there was no violation as charged in the administrative citation.

C. Payment of a fine under this Chapter shall not excuse or discharge any continuation or repeated occurrence of the code violation that is the subject of the administrative citation.

Section 1.04.050 Hearing Request

A. Any recipient of an administrative citation may contest that there was a violation of this Code, or that he or she is the responsible party, by completing a request for hearing form and returning it to the Director of Administrative Services within thirty (30) days from the date on the administrative citation, together with an advance deposit in the amount of the total of the fine, except where an advance deposit hardship waiver has been obtained in accordance with the procedures adopted by the Director of Administrative Services.

B. A request for hearing form may be obtained from the department specified on the administrative citation.

C. The person requesting the hearing shall be notified of the time and place set for the hearing at least ten (10) days prior to the date of the hearing.

Section 1.04.060 Administrative Hearing Officer

The Fire Chief shall designate Administrative Hearing Officers who shall conduct any hearings on contests to administrative citations. The qualifications for the Administrative Hearing Officer shall be designated in the Procedures Manual.

Section 1.04.070 Hearing Procedure

A. No hearing to contest an administrative citation before an Administrative Hearing Officer shall be held unless the total amount of the fine has been deposited in advance in accordance with Section 1.04.050 or an advance deposit hardship waiver has been obtained in accordance with procedures adopted by the Director of Administrative Services.

B. A hearing before the Administrative Hearing Officer shall be set for a date that is not less than fifteen (15) days nor more than sixty (60) days from the date that the request for hearing is filed in accordance with the provisions of this Chapter.

C. At the hearing, the party contesting the administrative citation, and the Code Enforcement Official, shall be given the opportunity to testify and to present evidence concerning the administrative citation.

D. The failure of any recipient of an administrative citation to appear at the administrative citation hearing shall result in a forfeiture of the fine and shall constitute a failure to exhaust administrative remedies.

E. The administrative citation and any report submitted by the Code Enforcement Official to the Administrative Hearing Officer shall constitute prima facie evidence of the respective facts contained in those documents.

F. The Administrative Hearing Officer may continue the date set for hearing or the hearing for good cause, and may request additional information from the Code Enforcement Official or the recipient of the administrative citation prior to issuing a written decision, provided that the hearing shall not be continued for more than fifteen (15) days.

Section 1.04.080 Administrative Hearing Officer's Decision

A. After considering all of the testimony and evidence submitted at the hearing, and within fifteen (15) days following the conclusion of the hearing, the Administrative Hearing Officer shall issue a written decision to uphold or cancel the administrative citation and recite in the decision the reasons therefore. The decision of the Administrative Hearing Officer shall be final. The Administrative Hearing Officer's decision shall include a statement that the recipient of the administrative citation has appeal rights.

B. The Administrative Hearing Officer's decision shall include a statement that the person who received the administrative citation may contest the decision by filing a Notice of Appeal in accordance with the timeliness of the procedures specified in Government Code Section 53069.4.

C. If the Administrative Hearing Officer determines that the administrative citation should be upheld, then the total fine amount on deposit with the District shall be retained by the District.

D. If the Administrative Hearing Officer determines that the administrative citation should be upheld and the fine has not been deposited pursuant to an advance deposit hardship waiver, the Administrative Hearing Officer shall set forth in the decision a schedule for payment of the fine, which shall not extend more than one hundred and eighty (180) days from the date of the decision.

E. If the Administrative Hearing Officer determines that the administrative citation should be dismissed and the fine was deposited with the District, then the District shall promptly refund the amount of the deposited fine, together with interest at the average rate earned on the District's investment portfolio for the period of time that the fine amount was held by the District.

F. The recipient of the administrative citation shall be served with a copy of the Administrative Hearing Officer's written decision.

Section 1.04.090 Late Payment Charges

Any person who fails to pay to the District any fine imposed pursuant to the provisions of this Chapter on or before the date that fine is due also shall be liable for the payment of any applicable late payment charges set forth in the schedule of fines.

Section 1.04.100 Recovery of Administrative Citation Fines and Costs

The District may collect any past due administrative citation fine or late payment charge by use of all available legal means. The District also may recover its collection costs, and reasonable attorneys' fees, in any civil action brought to collect administrative citation fines and late payment charges.

Section 1.04.110 Right to Judicial Review

Any person aggrieved by the decision of an Administrative Hearing Officer, on an administrative citation, may obtain review of the decision by filing a Notice of Appeal with the Marin County Courts in accordance with the timeliness and provisions set forth in California Government Code Section 53069.4.

Section 1.04.120 Notices

A. The Administrative Citation, Pre-Citation Notice, Administrative Hearing Officer Decision, and all notices required to be given by this Chapter shall be served on the responsible party in accordance with the provisions of Section 1.05.041 of this Code.

B. Failure to receive any notice specified in this Chapter shall not affect the validity of proceedings conducted hereunder.

Division 5:

ADMINISTRATIVE ORDERS

Section 1.05.010 Applicability

This Chapter provides for administrative remedies, which are in addition to all other legal remedies, criminal or civil, which may be pursued by the District to address any violation of this Code, including any codes adopted by reference, or other public nuisance.

Section 1.05.030 Notice and Order

A. Whenever a Code Enforcement Official determines that a violation of this Code, including any codes adopted by reference, or any other public nuisance, is occurring or exists, the Official may issue a written Notice and Order to the person or persons responsible for the code violation or other public nuisance.

B. A Notice and Order issued pursuant to this Section shall contain the following information:

1. The date and location of the code violation or public nuisance.
2. A description of the violation or public nuisance, with reference to the applicable sections of this Code, and the sections of any code adopted by reference.
3. The actions required to correct the violation or abate the public nuisance, and the date by which compliance must be achieved.
4. A statement that if compliance is not achieved by the compliance date, that administrative civil penalties and administrative costs, as well as the costs of actual abatement by the District, may be imposed on the Responsible Person, and collected judicially, or by special assessment or tax collection, as provided in this Ordinance.
5. Either a copy of this Ordinance, or an explanation of the consequences of

noncompliance with this Ordinance and a description of the hearing procedure and appeal process.

6. Such other information as may be required by any code adopted by reference, where applicable.

Section 1.05.040 Method of Service

A. The Notice and Order and any other notices required by this Ordinance shall be served as provided in Section 1.05.041 and Section 1.05.042, and the requirements of any codes adopted by reference, where applicable.

B. Where real property is involved, the Notice and Order and all other notices required by this Code shall be mailed to the record owner of the property at the address as shown on the last equalized County assessment roll, and also shall be conspicuously posted at the property which is the subject of the Notice and Order.

C. The failure of any person to receive any notice required under this Ordinance shall not affect the validity of any proceedings taken under this Ordinance.

Section 1.05.041 Notice, how given

Whenever a notice is required to be given under this code, unless different provisions herein are specifically made, such notice may be given either by personal delivery thereof to the person to be notified or by deposit in the United States mail, in a sealed envelope, postage prepaid, addressed to such person to be notified, at his last known business or residence address as the same appears in the public records of the District or other records pertaining to the matter to which such notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in the United States mail.

Section 1.05.042 Proof of notice

Proof of giving any notice may be made by the certificate of any officer or employee of the District, or by affidavit of any person over the age of eighteen (18) years, which shows service in conformity with this code, or other provisions of law applicable to the subject matter concerned.

Section 1.05.050 Compliance with Notice and Order

If the Code Enforcement Official determines that all violations have been corrected or the public nuisance eliminated within the time specified in the Notice and Order, no further action shall be taken.

Section 1.05.060 Non-Compliance with Notice and Order: Hearing

A. If the Code Enforcement Official determines that full compliance has not been achieved by the compliance date specified in the Notice and Order, the Official may schedule a hearing before an Administrative Hearing Officer.

B. A written Notice of Hearing shall be served on the Responsible Person and, where real property is involved, on the record property owner, as provided in Section 1.05.040.

Section 1.05.070 Notice of Hearing

A. Every Notice of Hearing on a Notice and Order shall contain the date, time, and place at which the hearing shall be conducted by the Administrative Hearing Officer. The Notice of Hearing shall state that the purpose of the hearing will be determination regarding the existence of the code violations or other public nuisance described in the Notice and Order, on the compliance with the Notice and Order, and on the adoption of an Administrative Order, including imposition of civil penalties and administrative costs pursuant to this Ordinance. The Notice and Order shall be attached to the Notice of Hearing.

B. The hearing shall be set for a date not less than fifteen (15) days nor more than sixty (60) days from the date of service of the Notice of Hearing unless the Code Enforcement Official determines that the matter is urgent or alternatively that good cause exists for an extension of time.

C. This hearing procedure serves to provide full opportunity for a person subject to a Notice and Order to object to the determination that a code violation has occurred and/or that the violation has continued to exist or that a public nuisance exists. If any person subject to a Notice and Order, pursuant to this Ordinance, fails to appear at this hearing, such non-appearance shall not affect the right of the District to go forward

with the hearing and shall constitute a failure to exhaust administrative remedies.

Section 1.05.080 Hearing – Findings, Decision, and Administrative Order

A. At the place and time set forth in the Notice of Hearing, the Administrative Hearing Officer shall conduct a hearing concerning the code violation(s), and/or other public nuisance(s) described in the Notice and Order issued pursuant to Section 1.05.030.

B. The Administrative Hearing Officer shall consider any written or oral evidence, consistent with any rules and procedures adopted by the Fire Chief, regarding the violation and/or public nuisance described in the Notice and Order, and compliance therewith, by the Responsible Person and/or by the record property owner.

C. Within a reasonable time, but not more than thirty (30) days following the conclusion of the hearing, the Administrative Hearing Officer shall issue a written Decision containing factual findings and determinations, referenced to supporting evidence, regarding:

1. The existence of each code violation and/or public nuisance described in the Notice and Order.
2. The failure of the Responsible Person and/or record property owner to take corrective action within the time period required in the Notice and Order.

D. If the Administrative Hearing Officer finds by a preponderance of the evidence that a code violation and/or a public nuisance has occurred, and that the code violation and/or other public nuisance was not corrected within the time period specified in the Notice and Order, the Administrative Hearing Officer's Decision shall include an administrative order as specified in Section 1.05.090.

E. The Administrative Hearing Officer shall submit the Decision to the District Clerk for filing, and serve a copy on the record property owner or other Responsible Party as provided in Code of Civil Procedure Section 1094.6(b).

F. The Administrative Hearing Officer's Decision shall include a notice to the record property owner or other Responsible Party that the Decision (and Administrative Order if applicable) is subject to judicial review according to the provisions and time limits set forth in Code of Civil Procedure Section 1094.6.

Section 1.05.090 Administrative Order

If the Administrative Hearing Officer determines that a code violation and/or other public nuisance occurred which was not corrected within the time period specified in the Notice and Order, the Administrative Hearing Officer's Decision shall include an Administrative Order which shall contain any or all of the following:

A. An order for the record property owner or other Responsible Person to correct or to abate the code violation and/or other public nuisance, including a compliance date for completion of same, if compliance has not been achieved by the date of the hearing.

B. An order authorizing the Code Enforcement Official to correct or to abate the code violation or other public nuisance by use of District employees or a District contractor, and to enter upon the private property where such violation or other public nuisance exists, for purposes of correcting and abating same, if the record property owner or other Responsible Person fails to do so by the compliance date.

C. Administrative civil penalties as provided in Section 1.05.100.

D. Administrative costs as provided in Section 1.05.110.

Section 1.05.100 Administrative Civil Penalties

A. The Administrative Hearing Officer may impose administrative civil penalties for the violation of any provision of this Code, or the existence of a public nuisance, in an amount not to exceed a maximum of Five Hundred Dollars (\$500.00) per day for each ongoing code violation, or other public nuisance, except that the total administrative penalty shall not exceed One Hundred Thousand Dollars (\$100,000.00), exclusive of administrative costs, interest and restitution for compliance re-inspections, for any

related series of violations or conditions constituting a public nuisance.

B. In determining the amount of the administrative penalty, the Administrative Hearing Officer may take any or all of the following factors into consideration:

1. The duration of the code violation and/or the public nuisance;
2. The frequency, recurrence, and number of code violations, and/or public nuisance conditions related or unrelated, by the same record property owner or other Responsible Person;
3. The seriousness of the violation;
4. The good faith efforts of the record property owner or other Responsible Person to come into compliance;
5. The economic impact of the penalty on the record property owner or other Responsible Person;
6. The impact of the code violation on the community and/or general public;

C. Administrative civil penalties imposed by the Administrative Hearing Officer shall accrue from the date specified in the Notice and Order and shall cease to accrue on the date the violation and/or other public nuisance is corrected as determined by the Code Enforcement Official or the Administrative Hearing Officer.

D. The Administrative Hearing Officer may suspend the imposition of applicable administrative civil penalties for any period of time during which:

1. The record property owner or other Responsible Person has filed for any necessary permit(s).
2. Such permit applications are actively pending before the District, State, or other appropriate governmental agency.

E. Administrative civil penalties assessed by the Administrative Hearing Officer shall be due and payable in full by the date specified in the Administrative Order, which shall be no later than ninety (90) days from the date of such Administrative Order.

F. Administrative civil penalties assessed by the Administrative Hearing Officer are a debt owed to the District and, in addition to all other means of enforcement, if the code violation and/or other public nuisance is located on real property, may be enforced by means of a lien against the real property on which the violation occurred.

G. If the code violation or other public nuisance is not corrected as specified in the Administrative Hearing Officer's Administrative Order, administrative penalties shall continue to accrue on a daily basis until the violation and/or other public nuisance is corrected, subject to the maximum amount set forth in Section 1.05.100 A., above.

Section 1.05.110 Administrative Costs

A. The Administrative Hearing Officer shall assess administrative costs against the record property owner or other Responsible Person when such Officer finds that a violation and/or public nuisance has occurred and that compliance has not been achieved by the compliance date specified in the Notice and Order.

B. The administrative costs may include any and all costs incurred by the District in connection with the matter before the Administrative Hearing Officer including, but not limited to, the costs for the Administrative Hearing Officer's services, costs of investigation, staffing costs including attorney fees incurred by the District incurred in preparation for the hearing and for the hearing itself, costs for all re-inspections necessary to enforce the Notice and Order, and the costs of actual abatement if undertaken by the District.

C. Administrative costs assessed by the Administrative Hearing Officer shall be due and payable in full by the date specified in the Administrative Order, which shall be no later than ninety (90) days from the date of such Administrative Order.

Section 1.05.120 **Supplemental Hearing, Decision, and Administrative Order**

Following issuance of an Administrative Hearing Officer's Decision and Administrative Order, the Code Enforcement Official may schedule a supplemental hearing before the same or another Administrative Hearing Officer for the purpose of obtaining a Supplemental Decision and Administrative Order, which may include the confirmation or imposition of administrative civil penalties or administrative costs applicable to continuation of the code violation or public nuisance following the date of the original hearing with respect to a Notice and Order. The supplemental hearing date, Notice of Supplemental Hearing, supplemental hearing procedures, and the contents, submission, and service of the Supplemental Decision and Administrative Order shall be consistent with the provisions of Sections 1.05.040, 1.05.060, 1.05.070, 1.05.080, 1.05.090, 1.05.100, and 1.05.110.

Section 1.05.130 **Failure to Comply With Administrative Order**

Failure to pay the assessed administrative civil penalties and/or administrative costs specified in the administrative order of the Hearing Officer may be enforced as:

1. A personal obligation of the violator; and/or
2. If the violation is in connection with real property, a Code Enforcement Assessment Lien upon the real property. The Code Enforcement Assessment Lien shall remain in effect until all of the administrative civil penalties, and administrative costs are paid in full.

Section 1.05.140 **Right of Judicial Review**

Any decision, Administrative Order, or Supplemental Decision and Administrative Order of an Administrative Hearing Officer shall be subject to judicial review in the Marin County Courts by filing with the court a petition for writ of mandate pursuant to the provisions and time limits set in Section 1094.6 of the Code of Civil Procedure.

Section 1.05.150 Recovery of Administrative Civil Penalties and Administrative Costs

The District may collect the assessed administrative civil penalties and administrative costs by use of all available means, including by civil action in which the District may recover its reasonable attorneys' fees as provided in Section 1.03.020(D), and by recordation of a Code Enforcement Assessment Lien and tax collection pursuant to Section 1.05.160.

Section 1.05.160 Code Enforcement Assessment Lien: Tax Collection

A. Whenever any administrative civil penalties and/or administrative costs imposed in an Administrative Hearing Officer's Decision and Administrative Order or Supplemental Decision and Administrative Order have not been paid in full when due, and a timely writ of mandate has not been filed or has been filed but not been successful, the amounts owing shall constitute a Code Enforcement Assessment Lien and special assessment against the real property on which the code violation or other public nuisance occurred.

B. The District Clerk may cause to be recorded in the County Recorder's Office a Notice of Code Enforcement Assessment Lien against the subject real property. Such Notice of Code Enforcement Assessment Lien shall specify the amount of the lien, the name of the Novato Fire Protection District, on whose behalf the lien is imposed, the street address, legal description and assessor's parcel number of the property on which the lien is imposed, the name and address of the record property owner, and the date of the Administrative Hearing Officer's Decision and Administrative Order to which the lien relates. Upon recordation of such Code Enforcement Assessment Lien, it shall attach as a lien against such real property, and shall have the same effect and priority as recordation of an abstract of judgment.

C. In addition to the foregoing, the District Clerk may file a certified copy of the Notice of Code Enforcement Assessment Lien in the Office of the County Treasurer-Tax Collector, whereupon it shall be the duty of the County Treasurer-Tax Collector to add the unpaid amount as a special assessment to the next regular tax bills levied against the property for municipal purposes. Thereafter the amounts shall be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be

subject to the same penalties and the same procedure under foreclosure and sale in case of delinquency as provided for ordinary municipal taxes.

D. Upon receiving a report from the Director of Administrative Services that payment in full has been received by the District of the amount specified in the Notice of Code Enforcement Assessment Lien, the District Clerk shall either record a Notice of Satisfaction of the Code Enforcement Assessment Lien with the County Recorder, and file a certified copy of same with the County Treasurer-Tax Collector, or provide the property owner or financial institution with a Notice of Satisfaction so that they may record it with the Office of County Recorder and file it with the County Treasurer-Tax Collector. Recordation of such Notice of Satisfaction shall cancel the District's Code Enforcement Lien and assessment against the property.

DIVISION 6:

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such determination shall not affect the validity of the remaining portions of this Ordinance. The Board hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause, or phrase be declared invalid.

DIVISION 7:

A summary of this Ordinance shall be posted in the office of the District Clerk at least five (5) days prior to the Board meeting at which it is adopted. This Ordinance shall be in full force and effect thirty (30) days after its passage, and the summary of this Ordinance shall be published within fifteen (15) days after the adoption, together with the names of the Board members voting for or against the same, in a newspaper of general circulation published and circulated in the City of Novato, County of Marin, State of California. Within fifteen (15) days after adoption, the District Clerk shall also post in the office of the District Clerk, a certified copy of the full text of this Ordinance along with the names of those Board members voting for against this Ordinance.

ATTEST:

The foregoing Ordinance No. 2001-1 was read and introduced at a Regular Meeting of the Board of Directors of the Novato Fire Protection District, held on the 3rd day of October, 2001, and ordered passed to print by the following vote to wit:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

And will come up for adoption as an Ordinance of the Novato Fire Protection District at a Regular Meeting of the Board to be held on the 17th day of October 2001.
