

September 18, 2007

City Council Meeting
September 25, 2007

Mayor and Members
of the City Council

ORDINANCE NO. 07-1281 - "AN ORDINANCE OF THE CITY OF HERMOSA BEACH, CALIFORNIA, AMENDING THE GENERAL PROVISIONS AND ENFORCEMENT PROCEDURES OF THE MUNICIPAL CODE."

Submitted for **adoption and waiver of full reading** is Ordinance **No. 07-1281** relating to the above subject.

At the meeting of May 22, 2007, the Ordinance was presented to the City Council for consideration and introduced by the following vote:

AYES: Bobko, Keegan, Reviczky, Tucker, Mayor Edgerton
NOES: None
ABSENT: None
ABSTAIN: None

Subsequent, further review by the staff showed the need for more specificity regarding the applicability of administrative citations for enforcement of different regulations in the Municipal Code, and the ordinance was revised accordingly, making re-introduction necessary.

At the meeting of August 14, 2007, the revised ordinance was presented to the City Council for consideration, and was further amended to delete the paragraph regarding joint authority from Section 1.01.090 – Definitions and Rules of Construction. The revised ordinance was then re-introduced by the following vote:

AYES: Bobko, Edgerton, Reviczky, Tucker, Mayor Keegan
NOES: None
ABSENT: None
ABSTAIN: None

Noted:



Stephen R. Burrell, City Manager



Elaine Doerfling, City Clerk

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ORDINANCE NO. 07-1281

**AN ORDINANCE OF THE CITY OF HERMOSA BEACH, CALIFORNIA,
AMENDING THE GENERAL PROVISIONS AND ENFORCEMENT
PROCEDURES OF THE MUNICIPAL CODE**

**THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH DOES ORDAIN AS
FOLLOWS:**

SECTION 1. An amendment to the Municipal Code has been prepared in response to the need to provide administrative enforcement procedures for violations of the Municipal Code which are deemed minor in nature.

SECTION 2. The code amendment is not subject to environmental review under the California Environmental Quality Act because it is not classified as a project under CEQA Guidelines, Sec. 15378.

SECTION 3. On August 14, 2007, the City Council held a duly-noticed public hearing and considered the proposed code amendment, and the evidence and arguments submitted by the City staff and all interested parties. A notice of time, place and purpose of the public hearing was duly given and testimony was presented to and considered by the City Council at the public hearing.

SECTION 4. The City Council hereby approves the amendment to the Hermosa Beach Municipal Code set out in Exhibits A and B attached hereto and included herein by reference.

SECTION 5. This ordinance shall become effective and be in full force and effect from and after thirty (30) days of its final passage and adoption.

SECTION 6. Pursuant to Government Code § 36933(c)(1), a summary of this ordinance was published in the Easy Reader, a weekly newspaper of general circulation published and circulated, in the City of Hermosa Beach at least five days before adoption. Prior to the expiration of fifteen (15) days after the date of its adoption, the City Clerk shall cause a summary of this ordinance to be published in the Easy Reader, a weekly newspaper of general circulation published and circulated in the City of Hermosa Beach in the manner provided by law.

1 **SECTION 7.** The City Clerk shall certify to the passage and adoption of this ordinance,
2 shall enter the same in the book of original ordinances of the City of Hermosa Beach, and shall
3 make minutes of the passage and adoption thereof in the records of the proceedings of the City
4 Council as which the same is passed and adopted.

5 **PASSED, APPROVED and ADOPTED** this 25th of September 2007 by the following vote:

6 AYES:
7 NOES:
8 ABSENT:
9 ABSTAIN:

10 **PRESIDENT** of the City Council and **MAYOR** of the City of Hermosa Beach, California

11
12 ATTEST:

12 APPROVED AS TO FORM:

13
14
15 _____
16 City Clerk

14 _____
15 City Attorney

EXHIBIT A:
AMENDMENT TO TITLE 1 OF MUNICIPAL CODE

Title 1

General Provisions

Chapters:

- 1.01 CODE ADOPTION AND GENERAL PROVISIONS**
- 1.04 VIOLATIONS AND PENALTIES**
- 1.08 GENERAL CITATIONS**
- 1.10 ADMINISTRATIVE CITATIONS AND PENALTIES**

Chapter 1.01

CODE ADOPTION AND GENERAL PROVISIONS

1.01. 010 Adoption of the Hermosa Beach Municipal Code.

That certain document entitled "Code of the City of Hermosa Beach, California", (hereinafter the "Code" or "Municipal Code"), a copy of which has been filed and is on file in the office of the City Clerk for public inspection, together with the secondary Codes therein adopted by reference, is hereby adopted by this reference as the comprehensive ordinance Code for the City of Hermosa Beach pursuant to the provisions of Article 2 of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code of the State of California, and each and all of the provisions, terms, and penalties of said Code on file in the office of the City Clerk are hereby referred to, adopted, incorporated herein and made a part of this ordinance as if fully set forth herein.

1.01. 020 Short title.

The ordinances embraced in the following chapters and sections shall constitute and be designated the "Hermosa Beach Municipal Code", the "HBMC", or the "Municipal Code", and may be so cited.

1.01. 030 Provisions considered as continuations of existing ordinances.

The provisions appearing in this Code, so far as they are the same as those of ordinances existing at the time of the effective date of this Code, shall be considered as continuations thereof and not as new enactments.

1.01. 040 Repeal of certain ordinances and certain ordinances to remain in effect.

All ordinances of the City in force upon the effective date of the Code are hereby repealed except as follows:

- A. Ordinances codified by the Code; and
- B. Uncodified ordinances comprising or amending the Zoning Map of the City of Hermosa Beach, which are listed in the Uncodified Ordinance List on file in the Office of the City Clerk; and

- C. Uncodified ordinances relating to matters of a special or temporary nature, which ordinances are listed in the Uncodified Ordinance List on file in the Office of the City Clerk; and
- D. Any uncodified ordinance promising or guaranteeing the payment of money or authorizing the issue of bonds, or any evidence of the City's Indebtedness, or any contract or obligation assumed by the City; and
- E. Any ordinance granting any franchise, license or other right conferred by the City on any person or corporation, which franchise, license or other right is in effect as of September 10, 1996; and
- F. Any uncodified administrative ordinance of the City Council not in conflict with the provisions of the Code; and
- G. Any uncodified ordinance relating to the salaries, benefits, and working conditions of City officers and employees; and
- H. Any uncodified ordinance relating to the levy of any tax in effect as of September 10, 1996.

1.01. 050 Effect of repeal of ordinances.

The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect. Also, the repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for any offense committed under the ordinance repealed.

1.01. 060 Superseded ordinances.

All ordinances codified by the Code are superseded to the extent they conflict with the Code.

1.01. 070 Savings provisions.

The repeal herein of any ordinance of the City of Hermosa Beach shall not affect or impair any act done, or right vested or approved, or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done, or right vested or accrued, or proceeding, suit, or prosecution had or commenced shall remain in full force and effect for all intents and purposes as if the applicable provisions of the ordinance, or part thereof, so repealed had remained in force and effect. No offense committed and no liability, penalty, or forfeiture, whether civilly or criminally incurred prior to the time when any such ordinance, or part thereof, shall be repealed or altered by said Code, shall be discharged or affected by such repeal or alteration. Prosecutions and suits for such offenses, liabilities, penalties, or forfeitures shall be instituted and proceeded with in all respects as if such prior ordinance, or part thereof, had not been repealed or altered.

1.01. 080 Severability.

If any section, subsection, sentence, clause, phrase or portion of this Municipal Code 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 Code. The City Council hereby declares that it would have adopted this

Code and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases, or portions be declared invalid or unconstitutional.

1.01. 090 Definitions and rules of construction.

In the construction of this Code and of all ordinances of the City, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the city council or the context clearly requires otherwise:

City. The words "the City" or "this City" shall be construed as if followed by the words "of Hermosa Beach."

Code. The words "the Code" or "this Code" shall mean the code of the City of Hermosa Beach, California.

Computation of Time. The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a holiday and then it is also excluded.

Council. Whenever the word "Council" is used in this Code, it shall be construed to mean the City Council of the city of Hermosa Beach.

County. The words "the County" or "this County" shall mean the County of Los Angeles.

Day. A "day" is the period of time between any midnight and the midnight following.

Daytime, Nighttime. "Daytime" is the period of time between sunrise and sunset. "Nighttime" is the period of time between sunset and sunrise.

Gender. The masculine gender includes the feminine and neuter.

In the City. The words "in the City" shall mean and include all territory over which the City now has, or shall hereafter acquire jurisdiction for the exercise of its police powers or other regulatory powers.

Month. The word "month" shall mean a calendar month.

Number. The singular number includes the plural, and the plural the singular.

Oath. "Oath" includes an affirmation.

Officers, Departments, etc. Officers, departments, boards, commissions and employees referred to in this Code shall mean officers, departments, boards, commissions and employees of the City of Hermosa Beach, unless the context clearly indicates otherwise.

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

Or, And. "Or" may be read "and", and "and" may be read "or" if the sense requires it.

Owner. The word "owner", applied to a building or land, shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole or of a part of such building or land.

Person. "Person" includes any person, firm, association, organization, partnership, business trust, corporation or company.

"Personal property" includes every species of property, except real property, as defined in this section.

Preceding, Following. The words "preceding" and "following" mean next before and next after, respectively.

"Process" includes a writ or summons issued in the course of judicial proceedings of either a civil or criminal nature.

Property. The word "property" shall include real and personal property.

"Real property" shall include lands, tenements and hereditaments.

Shall, May. "Shall" is mandatory and "may" is permissive.

Signature or Subscription by Mark. "Signature" or "subscription" includes a mark when the signer or subscriber cannot write, such signer's or subscriber's name being written near the mark by a witness who writes his own name near the signer's or subscriber's name; but, a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names thereto.

State. The words "the state" or "this state" shall be construed to mean the state of California.

Tenant or Occupant. The words "tenant" or "occupant", applied to a building or land, shall include any person holding a written or an oral lease of, or who occupies the whole or a part of such building or land, either alone or with others.

Tenses. The present tense includes the past and future tenses, and the future includes the present.

Week. A "week" consists of seven consecutive days.

Writing. "Writing" includes any form of recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, statement or record is required or authorized by this Code, it shall be made in writing in the English language, unless it is expressly provided otherwise.

Year. The word "year" shall mean a calendar year, except where otherwise provided.

Chapter 1.04

VIOLATIONS AND PENALTIES

1.04. 010 **Violations of Code.**

No person shall violate any provisions or fail to comply with any of the requirements of this Code. Violations of this Code are punishable as set forth in this chapter.

1.04. 020 **Misdemeanors.**

Any person violating any of the provisions or failing to comply with any of the requirements of this Code shall be guilty of a misdemeanor unless such violation or failure to comply is expressly stated by this Code to be an infraction or is subject to a civil administrative penalty pursuant to chapter 1.10. Any person convicted of a misdemeanor under the provisions of this Code shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Code is committed, continued or permitted by such person and shall be punishable accordingly.

1.04. 030 **Infractions.**

A. **Penalties.** Any person violating any provision or failing to comply with any mandatory requirement of this Code expressly stated by this Code to be an infraction shall be guilty of an infraction. Except as otherwise provided in this Code, any person convicted of an infraction shall be punishable by:

1. A fine not exceeding one hundred dollars (\$100.00) for a first violation;
2. A fine not exceeding two hundred dollars (\$200.00) for a second violation of the same provision of the Code within one year;
3. A fine not exceeding five hundred dollars (\$500.00) for each additional violation of the same provision of the Code within one year.

B. **No counsel for infractions at public expense.** An infraction is not punishable by imprisonment. A person charged with an infraction shall not be entitled to have the public defender or other counsel appointed at public expense to represent him or her unless he or she is arrested and not released on his or her written promise to appear, on his or her own recognizance, or on a deposit of bail.

1.04. 040 **Reclassification of misdemeanors as infractions.**

A violation of any provision of this Code section which is classified as a misdemeanor may be charged as an infraction when:

1. The prosecutor files a complaint charging the offense as an infraction, unless the defendant, at the time he or she is arraigned, after being informed of his or her rights, elects to have the case proceed as a misdemeanor; or

2. The court, with the consent of the defendant, determines that the offense is an infraction. In that event, the case shall proceed as if the defendant had been arraigned on an infraction complaint.

1.04. 050 **Additional Provisions.**

- A. **Each day a separate offense.** Unless otherwise specified, each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Code is committed, continued or permitted by such person and shall be punishable accordingly.
- B. **Included offenses.** Whenever in the Code any act or omission is made unlawful, it shall include causing, permitting, aiding, abetting, suffering, or concealing the fact or such act of omission.
- C. **Violations deemed to be a public nuisance.** In addition to the penalties hereinabove provided, any condition caused or permitted to exist in violation of any of the provisions of the Code shall be deemed a public nuisance and may be summarily abated as such by the City, and every day such condition continues shall be regarded as a new and separate offense.

Chapter 1.08

GENERAL CITATIONS

1.08. 010 **General Citation.**

If any person is arrested for the violation of any provision of this Code and such person is not taken immediately before a magistrate, the arresting officer shall prepare in duplicate a written notice to appear in court. Such notice may be referred to as a "general citation," and shall contain the name and address of such person, the offense charged, and the time when and place where such person shall appear in court.

1.08. 020 **Notices to appear--Time.**

The time specified in the notice to appear shall be at least ten days after such arrest.

1.08. 030 **Notices to appear--Place.**

The place specified in the general citation shall be:

1. The court of the magistrate before whom the person would be taken if the requirement of arresting and taking the person before a magistrate were complied with; or
2. Before an officer authorized by such court to receive deposit or bail.

1.08. 040 **Notices to appear--Promise and release.**

The arresting officer shall deliver one copy of the general citation to the arrested person. The arrested person, in order to secure release, shall give his written promise to appear in court by signing a duplicate notice which shall be retained by the officer. Thereupon, the arresting officer shall forthwith release from custody the person arrested.

1.08. 050 **Warrants for arrest.**

When a person signs a written promise to appear at the time and place specified in the written promise to appear and does not appear or has not posted bail as provided in Section 853.6 of the Penal Code of the State of California, the magistrate shall issue and have delivered for execution a warrant for such person's arrest within twenty (20) days after his failure to appear as promised, or if such person promises to appear before an officer authorized to accept bail, other than a magistrate, and fails to do so on or before the date which such person promised to appear, within twenty (20) days after the delivery of such written promise to appear by the officer to a magistrate having jurisdiction over the offense.

1.08. 060 **Violations of promises to appear.**

Any person willfully violating his written promise to appear in court shall be guilty of a misdemeanor regardless of the disposition of the charge upon which he was originally arrested.

1.08.070 **Arresting officer defined.**

For the purpose of this chapter, the term "arresting officer" means any police officer of the City and any other employee of the City whose duty it is to enforce the provisions of this Code who is authorized by the City Manager to use the general citation procedure established by said sections in the performance of his enforcement duties.

Chapter 1.10

ADMINISTRATIVE CITATIONS AND PENALTIES

1.10. 010 Administrative citations.

Certain provisions of this Code, specifically designated in this chapter, may be enforced through the use of administrative citations and penalties as provided for in this chapter. Use of the provisions of this chapter shall not prevent the use of other methods of enforcement or abatement as provided by this Code, including but not limited to criminal and civil actions.

1.10 .020 Definitions.

For the purposes of this chapter, the following definitions shall apply:

A. *Responsible person*: A responsible person is any of the following:

1. A person who causes a Code violation to occur.
2. A person who maintains or allows a Code violation to continue, by his or her action or failure to act.
3. A person whose agent, employee, or independent contractor causes a Code violation by its action or failure to act.
4. A person who is the owner of, and/or a person who is a lessee or sub lessee with the current right of possession of, real property where a property-related Code violation occurs.
5. A person who is the on-site manager of a business who normally works daily at the site when the business is open and is responsible for the activities on such premises.

For the purposes of this definition, "person" includes a natural person or legal entity and the owners, majority stockholders, corporate officers, trustees, and general partners of a legal entity.

B. *Legal Interest*: 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.

C. *Enforcement officer*: Any police officer or City employee or agent of the City designated by the director of any City department who has the authority and responsibility to enforce the provisions of this Code as provided for herein.

1.10. 030 Administrative citations not a waiver of other remedies.

The procedures established in this chapter may be in addition to any criminal, civil or other legal remedy established by law which may be pursued to address violations of the Municipal Code. Issuance of an administrative citation shall not be deemed a waiver of any other enforcement remedies found within this Code.

1.10. 040 Code violations subject to administrative penalty procedures.

A. The violations described in the Municipal Code titles, chapters and sections listed hereinbelow are subject to the administrative penalty procedures and other provisions of this chapter 1.10:

1. Chapter 5.04: Business Licenses Generally
2. Chapter 6.04: Animals Generally
3. Chapter 8.04: Health Code Adopted
4. Chapter 8.08: Alarm Systems
5. Chapter 8.12: Garbage Collection and Disposal
6. Chapter 8.24: Noise Control
7. Chapter 8.28: Nuisances
8. Chapter 8.32: Rodent Control
9. Chapter 8.40: Smoking
10. Chapter 8.44: Stormwater And Urban Runoff Pollution Control Regulations
11. Chapter 12.16: Encroachments (streets and sidewalks)
12. Chapter 12.32: Newsracks
13. Section 15.04.140: Pedestrian Protection at Building and Demolition Sites
14. Sections 15.16.070 and 16.16.080: Grease Recovery Systems
15. Title 17: Zoning

B. Any person who violates the same provision, or fails to comply with the same requirement, of the sections of this Code set forth in paragraph A of this section more than three times within a twelve-month period shall be guilty of a misdemeanor for each violation committed thereafter within that same twelve-month period. Any person who violates or fails to comply with the sections of this Code set forth in paragraph A of this section and who possesses no photo identification or refuses to identify himself/herself to an enforcement officer, making it impossible to issue an administrative citation, shall be guilty of a misdemeanor.

1.10. 050 Fines.

A. Any responsible person who receives an Administrative Citation shall be subject to the payment of fines as set out in the penalty schedule for administrative fines as adopted by resolution of the City Council. An administrative penalty shall be assessed by means of an administrative citation issued by an enforcement officer, and shall be payable directly to the City Treasurer. A portion of each penalty shall constitute reimbursement for the City's administrative expenses in issuing and processing the citation. Penalties shall be collected in accordance with the procedures specified in this chapter. Payment of a penalty shall not excuse the failure to correct the violation nor shall it bar further enforcement action by the City. In the case of violations of the building, plumbing or electrical codes, an administrative citation shall not be issued until after the responsible party has been provided notice and a reasonable opportunity to correct the violation, and has failed to do so.

B. Failure of any person to pay the fines assessed by an administrative citation may result in the matter being referred for collection which includes but is not limited to the filing of a small claims court action.

1.10. 060 Contents of citation.

Each administrative citation shall contain the following information:

1. Date, approximate time, and address or definite description of the location where the violation(s) was observed;
2. The Code sections or conditions violated and a description of the violation(s);
3. The amount of the fine for the violation(s);
4. An explanation of how the fine shall be paid and the time period by which it shall be paid;
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 and signature of the enforcement officer issuing the citation;
7. If the violation is one which is continuing, an order to correct the violation, the actions needed to correct the violation, and an explanation of the consequences for failing to correct the violation; and
8. The name and address of the responsible person, and a signature line so that the responsible person may acknowledge receipt of the citation.

1.10.070 **Service of citation.**

The following procedures shall be used in serving administrative citations:

1. *Personal service.* The enforcement officer shall attempt to locate and personally serve the responsible person and obtain the signature of the responsible person on the administrative citation. If the responsible person served refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity of the administrative citation or of subsequent proceedings.
2. *Service of citation by mail.* If the enforcement officer is unable to locate the responsible person, the administrative citation shall be mailed to the responsible person by certified mail, postage prepaid with a requested return receipt. Simultaneously, the citation may be sent by first class mail. If the citation is sent by certified mail and returned unsigned, then service shall be deemed effective pursuant to first class mail, provided the citation sent by first class mail is not returned.
3. *By Posting on Property.* If the enforcement officer is unable to serve the citation under subsections 1 or 2 preceding, a copy of the citation may be posted on any real property within the City in which the City has knowledge that the responsible party has a legal interest. Service under this subsection shall be deemed effective on the date when the notice is posted; or
4. *By Publication.* If the enforcement officer cannot post the citation by any of the preceding methods, the citation may be published in a newspaper likely to give actual notice to the party subject to the citation. The publication shall be once a week for four successive weeks in a newspaper published at least once a week

1.10.080 **Satisfaction of administrative citation.**

Upon receipt of a citation, the responsible person must do one of the following:

- 1) *Pay the fine.* Pay the fine to the City within 30 days from the date of the citation. All fines assessed shall be payable to the Hermosa Beach Finance Department. Payment of a

fine shall not excuse or discharge a failure to correct continuing violations nor shall it bar further enforcement action by the City. Payment of the fine, in the absence of a timely request for a hearing pursuant to Section 1.10.090, waives the responsible party's right to the administrative hearing and appeal process;

- 2) *Remedy the Violation.* If the violation is of a nature that it can be remedied and is deemed by the enforcement officer to not create an immediate danger to health and safety and was corrected within the time given, no fine shall be imposed; or
- 3) *File an appeal.* Appeals shall be filed in accordance with the time limits and other provisions of Section 1.10.090.

In the event the responsible party fails or refuses to select and satisfy any of the alternatives set forth above, then the penalty shall be immediately due and owing to the City and may be collected in any manner allowed by law for collection of a debt. Commencement of an action to collect the delinquent penalty shall not preclude issuance of additional citations to the responsible party should the violations persist.

1.10.090 Appeal of administrative citation.

- A. *Time to file an appeal.* Any responsible person to whom an administrative citation is issued may choose to contest the citation by requesting an administrative hearing within thirty (30) days of service of the citation. In order to request a hearing, the responsible person shall submit in the manner directed on the citation a fully completed request for administrative hearing form along with either a deposit of the full amount of the administrative fine (in cash or by way of a negotiable check) or a notice that an advance deposit hardship waiver request has been filed pursuant to paragraph B of this section 1.10.090. The request for hearing shall be incomplete if it does not include the deposit in the full amount of the fine or the request for a hardship waiver. The deposit will be retained in a non-interest bearing account until the matter is resolved. If a timely and complete request for hearing is not submitted, the citation shall be deemed final, and the fine shall be immediately due and owing to the City and may be collected in any manner allowed by law for collection of a debt. Commencement of an action to collect the delinquent fine shall not preclude issuance of additional citations to the responsible party should the violation persist.
- B. *Hardship Waiver.* Any responsible person who requests a hearing to contest an administrative citation and who is financially unable to deposit the administrative fine as required in paragraph A of this section may file a request for an advance deposit hardship waiver. The request shall be filed with the planning department on an advance deposit hardship waiver application form, available from the department, no later than ten days after service of the administrative citation. The City Manager or his/her designee may issue an advance deposit hardship waiver only if the person requesting the waiver submits to the City Manager or his/her designee a sworn affidavit, together with any supporting documents, demonstrating to the satisfaction of the City Manager or his/her designee the person's financial inability to deposit with the City the full amount of the fine in advance of the hearing. Written proof of financial hardship, at a minimum must include tax returns, financial statements, bank account records, salary records or similar documentation demonstrating that the responsible person is unable to deposit the penalty. The City Manager or his/her designee shall issue a written decision specifying the reasons for issuing or not issuing the waiver. The decision shall be final, and shall be served upon the person requesting the waiver by certified mail postage pre-paid return receipt requested and first class mail. If the

City Manager or his/her designee determines that the waiver is not warranted, the person shall remit the full amount of the fine as a deposit within ten days of mailing of the decision. If the full amount of the fine is not deposited within the ten-day period, the request for hearing shall be deemed incomplete and waived, and the citation shall be deemed final. The fine shall be immediately due and owing to the City and may be collected in any manner allowed by law for collection of a debt.

- C. *Dismissal of citation.* The City Manager may dismiss an administrative citation at any time if it is determined to have been issued in error, in which event any deposit made shall be refunded.
- D. *Hearing procedure.*
1. The Hermosa Beach City Manager shall designate the hearing officer for the administrative citation hearing.
 2. After receipt of the "request for hearing" and fine deposit (or, if applicable, approval of a hardship waiver) a hearing before the hearing officer shall be set for a date that is not less than 15 and not more than 60 days from the date that the "request for hearing" is filed in accordance with the provisions of this section. The person requesting the hearing shall be notified of the time and place set for the hearing by first class mail at least ten days prior to the date of the hearing. The responsible person may request one continuance of the hearing, but in no event may the hearing begin later than 90 days after receipt of the request for hearing from the responsible person. The responsible person may attend the hearing in person or in lieu of attending may submit written argument and documentation under penalty of perjury prior to the time scheduled for the hearing.
 3. Any documentation other than the administrative citation, which the enforcement official has submitted or will submit to the hearing officer, shall be sent to the person requesting the hearing by regular first class mail at least five days before the date on which the hearing is scheduled. The documentation shall also be made available upon request at the time of the hearing
 4. If the responsible person fails to attend the hearing or fails to submit arguments in writing, the administrative hearing officer will render a decision based on the documents that have been received and the responsible person will be deemed to have waived his/her right to an administrative hearing. Under those circumstances, the administrative hearing officer may request additional information from either the responsible person or the enforcement official as may be necessary to render a decision. If service of the administrative hearing is made by posting the citation on real property within the City in which the responsible person has a legal interest, and the responsible person provides verifiable and substantial evidence that removal of the administrative citation from the property by a third party caused the responsible person's failure to attend the scheduled hearing, the responsible person shall be entitled to an administrative hearing.
 5. 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 the Municipal Code on the date(s) specified in the administrative citation.

6. Administrative hearings are informal, and formal rules of evidence and discovery do not apply. Each party shall have the opportunity to present evidence in support of his or her case and to cross-examine witnesses. The City bears the burden of proof at an administrative hearing to establish a violation of the Code. The administrative citation and any additional reports submitted by the enforcement official shall constitute prima facie evidence of the facts contained in those documents. The administrative hearing officer must use a preponderance of evidence as the standard of evidence in deciding the issues.
 7. The hearing officer may continue the hearing and request additional information from the issuing officer/employee or the recipient of the administrative citation prior to issuing a written decision.
- E. *Hearing officer's decision.* At the conclusion of the hearing or within fifteen (15) days thereafter, the administrative hearing officer shall render a decision as follows:
1. Determine that the violation for which the citation was issued occurred, and impose a fine in the amount set forth in the fine and penalty schedule, and if the violation has not been corrected as of the date of the hearing, order correction or abatement of the violation. In this event, the City shall retain the fine deposited by the responsible person.
 2. Determine that the violation for which the citation was issued occurred, but that the responsible party has introduced credible evidence of mitigating circumstances warranting imposition of a lesser fine than that prescribed in the fine and penalty schedule, or no fine at all, and impose such lesser fine, if any; and if the violation has not been corrected as of the date of the hearing, order correction or abatement of the violation. In this event, the City shall retain all or a portion of the fine deposited by the responsible person as applicable.
 3. Determine that the violation for which the citation was issued did not occur or that the condition did not constitute a violation of the Municipal Code, or that the person cited was not the responsible party. In this event, the City shall refund the deposit, if any, within fifteen (15) days of the decision.

The administrative hearing officer's decision shall be in writing, shall explain the basis for the decision, and shall be served upon the responsible party by first class mail, to the address stated on the request for hearing form. If applicable, the order shall set forth the date by which compliance shall be achieved and the imposed fine paid to the City. The order shall be final on the date of mailing, which shall be deemed the "date of service," and shall notify the responsible person of the right to appeal to the Superior Court, as further described in Section 1.10.100.

- F. *Collection of unpaid fines.* Failure to pay the assessed administrative fine within 15 days or such other time limit set forth in the administrative citation, and/or if the decision of the hearing officer has not been successfully challenged by a timely appeal as provided in section 1.10.100, this obligation shall constitute a special assessment and/or lien against the real property on which the violation occurred. The special assessment and/or lien shall be imposed pursuant to the procedure set forth in Section 8.28.080 of this Code. Alternatively, the matter may be referred for collection, which includes but is not limited to the filing of a small claims court action.

1.10. 100 Right to judicial review.

Within 20 days after service of the decision of the administrative hearing officer upon the responsible person, he/she may seek review of the decision by filing a notice of appeal with the Superior Court. The responsible person shall serve upon the City Clerk either in person or by first class mail a copy of the notice of appeal. If the responsible person fails to timely file a notice of appeal, the administrative hearing officer's decision shall be deemed final.

1.10. 110 Failure to comply with administrative order.

In the absence of a timely appeal to the Superior Court, failure to comply with a final administrative order directing the abatement of a continuing violation by the date specified in the order is a misdemeanor offense for each day thereafter, or any portion thereof, that the violation is maintained or permitted. In the event of a timely appeal to the Superior Court pursuant to section 1.10.100, and provided the City prevails thereon, the responsible person shall be guilty of a misdemeanor offense for each day, or any portion thereof, that a continuing violation is maintained or permitted after a court ordered abatement date. Filing a misdemeanor action does not preclude the City from pursuing any other remedies to gain compliance provided in this Code or under state law. For purposes of this chapter, a "continuing violation" shall mean a single, ongoing condition or activity in violation of the Municipal Code.

**EXHIBIT B:
AMENDMENTS TO SELECTED SECTIONS OF THE
MUNICIPAL CODE**

The following Sections of the Hermosa Beach Municipal Code are amended to read as follows:

5.04. 290 Enforcement of chapter. [Business Licenses]

It shall be the duty of the license collector to enforce each and all of the provisions of this title, and the chief of police shall render such assistance in the enforcement hereof as may from time to time be required by the license collector and the city manager. The license collector in the exercise of the duties imposed upon him hereunder, and acting through his deputies or duly authorized assistants, shall examine all places of business in the city to ascertain whether or not the provisions of this title have been complied with.

The license collector, his deputies, all police officers, and inspectors of the fire and building departments are hereby appointed as business license inspectors in addition to their other duties, and shall have and exercise the power to enter any place of business for which license is required by this title and to demand the exhibition of the license for the current year by any person engaged or employed in the transaction of the business and if such person shall then and there fail to exhibit the license, the licensee shall be liable to the penalty provided in this title for a violation of this title. It is made the duty of such officers and inspectors to notify the license collector, in writing, of any person violating any of the provisions of this title. The license collector may, with the prior consent of the city council, deputize a qualified accountant to examine the necessary books and records of any person doing business in the city.

5.04. 340 Violations of business license regulations.

It is a violation of this chapter to knowingly make a false statement in any application for a license or permit or in any report required under this chapter. A violation of this chapter is subject to the administrative penalty provisions of chapter 1.10. Where the violation is of a continuing nature, each day or portion thereof wherein the violation continues constitutes a separate and distinct violation.

6.04. 110 Violations of animal regulations.

Violations of this chapter are subject to the administrative penalty provisions of chapter 1.10.

8.04. 060 Violations of health and safety regulations.

- A. It shall be unlawful for any person, firm, partnership or corporation to violate any provision or to fail to comply with any of the requirements of the Chapter, Codes, or Regulations hereby adopted. Any person, firm, partnership or corporation violating any provision of the Chapter, Codes or Regulations hereby adopted, or failing to comply with any of their requirements shall be deemed guilty of a misdemeanor unless the violation is classified as an infraction in accordance with the provisions of chapter 1.04. Violations of the provisions of this chapter, whether deemed misdemeanors or infractions, shall be punishable in accordance with the procedures of chapter 1.10. Each and every person, firm, partnership, or corporation shall be deemed guilty of a separate offense for each and every day or any portion thereof during which any violation of any of the provisions of the Chapter, Codes or Regulations hereby adopted is committed, continued or permitted by such person, firm, partnership or corporation, and shall be deemed punishable therefore as provided herein.

B. Any person, firm, corporation or association violating any of the provisions of Los Angeles County Code, Title 11, Health and Safety, Division 1, Health Code, and Division 2, General Hazards, as amended and in effect on September 10, 1996, adopted by reference herein or violating any provision of any permit, license or exception granted thereunder or failing to comply with any of the requirements thereof shall be shall be punishable as a misdemeanor or infraction as provided in chapter 1.04. Each violation is a separate offense for each and every day during any portion of which such violation is committed, continued, or permitted by such person.

8.08. 190 Violations of alarm system regulations.

Violations of the provisions of this chapter are subject to the administrative penalty provisions of chapter 1.10.

8.12. 350 Violations of garbage collection and disposal regulations.

Violations of the provisions of this chapter are subject to the administrative penalty provisions of chapter 1.10.

8.24. 100 Violations of noise regulations.

Violations of the provisions of this chapter are subject to the administrative penalty provisions of chapter 1.10.

8.28. 110 Other remedies. [Nuisances]

Nothing in this chapter shall be deemed to prevent the city council from ordering the city attorney to commence a civil action to abate a nuisance as an alternative to or in conjunction with the proceedings herein set forth or to initiate a criminal action against the responsible party for the maintenance of a nuisance. Further, nothing in this chapter shall be deemed to prevent the imposition of the administrative penalty provisions of chapter 1.10 as an option to redress violations of the provisions herein.

8.32. 060 Violations of rodent control regulations.

Violations of the provisions of this chapter are subject to the administrative penalty provisions of chapter 1.10.

8.40. 050 Violations of smoking regulations.

Violations of the provisions of this chapter are subject to the administrative penalty provisions of chapter 1.10.

8.44. 110 Violations of stormwater and urban runoff pollution control regulations.

A. Enforcement Procedure.

1. Any condition caused or permitted to exist in violation of:
 - a. Any of the provisions of this Chapter; or

- b. Any failure to comply with any applicable requirement of either the SUSMP or an approved Storm Water Mitigation Plan with respect to a property; or
- c. Any false certification or verification, or any failure to comply with a certification or verification provided by a project applicant or the applicant's successor in interest; or
- d. Any failure to properly operate and maintain any Structural or Treatment Control BMP on a property in accordance with an approved Storm Water Mitigation Plan or the SUSMP,

is hereby determined to be a threat to the public health, safety and welfare, is declared and deemed a public nuisance, and may be abated or restored by any Authorized Enforcement Officer, and a civil or criminal action to abate, enjoin or otherwise compel the cessation of such nuisance may be brought by the City Attorney."

- 2. For the first failure to comply with any provision contained in this Chapter, the Director of Public Works shall issue to the violator a written notice which includes the following information: (i) a description of the violation being committed; (ii) a specified time within which the violation must be corrected or within which the violator may file a written response to the Director disputing the existence of a violation; and (iii) a description of the penalties which may be imposed for continued noncompliance.
- 3. If the violator demonstrates that the violation does not exist, or has been corrected, no further action need be taken. If, however, the violation exists and is not corrected within the prescribed time, the Director of Public Works may thereafter pursue any of the enforcement remedies described below in this Section.

B. Violation an Infraction.

Violations of the provisions of this chapter shall constitute an infraction. Each day that a violation continues shall constitute a separate offense.

C. Violations Deemed a Public Nuisance.

- 1. Any condition caused or permitted to exist in violation of any of the provisions of this Chapter is hereby determined to be a threat to the public health, safety and welfare, is declared and deemed a public nuisance and may be abated or restored by any authorized enforcement officer, and a civil or criminal action to abate, enjoin or otherwise compel the cessation of such nuisance may be brought by the City Attorney.
- 2. The cost of such abatement and restoration shall be borne by the owner of the property and the cost thereof shall be invoiced to the owner of the property, as provided by law or ordinance for the recovery of nuisance abatement costs.
- 3. If any violation of this Chapter constitutes a seasonal and recurrent nuisance, the City Manager shall so declare. The failure of any person to take appropriate annual precautions to prevent storm water pollution after written notice of a determination under this paragraph shall constitute a public nuisance and a violation of this Chapter.

D. Concealment.

Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall constitute a violation of such provision.

E. Civil Actions.

In addition to any other remedies provided in this section, any violation of this Chapter may be enforced by civil action brought by the City. In any such action, the City may seek, as appropriate, any or all of the following remedies:

1. A temporary and/or permanent injunction.
2. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection.
3. Costs incurred in removing, correcting, or terminating the adverse effects resulting from violation.
4. Compensatory damages for loss or destruction to water quality, wildlife, fish and aquatic life.

In addition to the preceding measures, violations of the provisions of this chapter are subject to the administrative penalty provisions of chapter 1.10.

F. Administrative Enforcement Powers.

In addition to the other enforcement powers and remedies established by this Chapter, the authorized enforcement officer has the authority to utilize the following administrative remedies:

1. Cease and Desist Orders. When an authorized enforcement officer finds that a discharge has taken place or is likely to take place in violation of this Chapter, the officer may issue an order to cease and desist such discharge, or practice, or operation likely to cause such discharge and direct that those persons not complying shall: (i) comply with the requirement, (ii) comply with a time schedule for compliance, and (iii) take appropriate remedial or preventive action to prevent the violation from recurring.
2. Notice to Clean. Whenever an authorized enforcement officer finds any oil, earth, debris, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel of land, or upon any parcel of land or grounds, which may result in pollutants entering the MS4 or a non-storm water discharge to the MS4, he or she may give notice to the owner or occupant of the adjacent property to remove such oil, earth, debris, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or other material, in any manner that he or she may reasonably provide. The recipient of such notice shall undertake the activities as described in the notice.

G. Permit Revocation.

To the extent the City makes a provision of this Chapter or any identified BMP a condition of approval to the issuance of a permit or license, any person in violation of such condition is subject to the permit revocation procedures set forth in this Code.

H. Remedies.

Remedies specified in this Chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal, including remedies under the Federal Clean Water Act and/or

Porter-Cologne Act. The remedies provided for in this Section shall be cumulative and not exclusive.

I. Citizen Reporting.

Members of the public are encouraged to report possible violations of this Chapter to the City's Public Works Department.

12.16. 180 Violations of encroachment regulations--additional remedies.

As an additional remedy, the construction or maintenance of any encroachment in violation of any provision of this chapter shall be deemed, and is declared to be, a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction. In addition, violations of the provisions of this chapter are subject to the administrative penalty provisions of chapter 1.10.

12.32.020 Permit required for newsracks--application--condition—term--violation.

A. No person may install, use or maintain a newsrack upon a public sidewalk without a written permit. One permit may include any number of newsracks owned or leased by the permittee.

B. Application for a permit for a newsrack must be made to the director of public works, under the procedure stated below.

C. A permit may be issued for a newsrack without prior inspection of the location, but the use of the newsrack is conditioned upon observance of the requirements of this code.

D. A permit is valid for one year and may be renewed under the procedure for original applications.

E. Violations of the provisions of this chapter are subject to the administrative penalty provisions of chapter 1.10

15.04. 030 Violations .

Section 103 of said building code is hereby amended to read as follows:

SECTION 103.

103.1 It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or cause or permit the same to be done in violation of this Code.

103.2 Any person violating any of the provisions of this chapter or said building code shall be deemed guilty of a misdemeanor and shall be punishable as set forth in Section 1.04.020 of this Code.

15.04. 140 Pedestrian protection at building and demolition sites

Notwithstanding the provisions of Section 15.04.010, Chapter 3303 of the Building Code is amended by adding thereto a new Section 3303.7.5 to read as follows:

SECTION 3303.7.5

3303.7.5 Fencing and pedestrian protection shall be required at all building and demolition sites as follows:

1. Prior to issuance of a demolition or building permit, a pre-demolition site inspection shall be performed verifying sewer cap and temporary toilet location, and the capping of electrical, water and gas service to the property.
2. Prior to commencement of work, all new construction or demolition sites shall install minimum 6 foot high protective chain link fencing or wood fencing consistent with Section 3303 of the California Building Code, and Table 33-A regardless of distance to the property line. Protective wood canopies shall be installed prior to commencement of work pursuant to the requirements of Section 3303 and Table 33A of the CBC.
3. A Pedestrian Protection Plan shall be approved identifying all areas of required pedestrian protection for the property, prior to the issuance of demolition or building permits. The plan shall indicate all areas of pedestrian protection or indicate why such protection is not required (i.e. exempt due to distance of construction to property line). The Pedestrian Protection Plan, shall be prepared by a licensed contractor, engineer or owner-builder and indicate the proposed protection system to be installed and the method of installation. When conditions make installation of a pedestrian canopy impractical (i.e. a narrow street or alley) an alternative method may be shown on the plan such as pedestrian diversion through use of flag persons and barriers.
4. Any work encroaching into the public right of way or involving pedestrian diversion shall require Public Works Department approval of permits and pedestrian protection.
5. In addition to the remedies provided in the Building Code, violations of this section shall result in revocation or suspension of a building permit pursuant to the procedures set forth in the Code.
6. Violations of the provisions of this section are subject to the administrative penalty provisions of chapter 1.10.

15.08.030 **Violations.**

Section 204 of said housing code is hereby amended to read as follows:

SECTION 204.

Any person violating any of the provisions of this chapter or said housing code shall be deemed guilty of a misdemeanor and shall be punishable as set forth in Section 1.04.020 of this Code.

15.12.040 **Violations.**

Any person violating any of the provisions of this chapter or the current adopted mechanical code shall be deemed guilty of a misdemeanor and shall be punishable as set forth in Section 1.04.020 of this Code.

15.16.080 **Maintenance and Annual Inspection of Grease Recovery Systems in Commercial Kitchens--Violations.**

Notwithstanding the provisions of Section 15.16.010, the Plumbing Code is amended as follows:

Section 1014.6.1 is hereby added to Chapter 10 of the Plumbing Code to read as follows :

1014.6.1

1. *Maintenance/Monitoring.* It is the responsibility of the owner or operator of every establishment required to have a grease removal system to maintain the system in a sanitary, safe, and efficient operating condition so as to prevent grease from flowing into the sewer system. A grease removal system shall not be considered properly maintained if for any reason it is not in good working condition or if sediment and/or grease accumulations total more than 25 percent of the operative fluid capacity. It is the owner or operator's responsibility to provide for removal of the accumulated grease and other waste contained in the system. Grease removed from such a system shall not be disposed of in the sanitary or the storm sewer.

Inspection. All owners/operators of establishments with grease recovery systems shall keep maintenance records and haulers manifests and shall allow City inspection of grease removal systems a minimum of once per calendar year. All applicable records shall be available to the Director or his representative upon requests. An annual inspection fee in an amount set forth in the City's Master Schedule of Service Charges and Fees shall be paid by the owner/operator at the time of business license renewal.

Violation. Violations of the provisions of sections 15.16.070 and 15.16.080 are subject to the administrative penalty provisions of chapter 1.10.

15.16.090 Violations.

Any person violating any of the provisions of this chapter or the current adopted plumbing code shall be deemed guilty of a misdemeanor and shall be punishable as set forth in Section 1.04.020 of this Code.

15.20.130 Penalties. [Fire Code]

Any person violating any of the provisions of this chapter or the current adopted fire prevention code shall be deemed guilty of a misdemeanor, punishable as set forth in Section 1.04.020 of this Code. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each ten (10) days that prohibited conditions are maintained shall constitute a separate offense.

The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions

15.32.140 Violations.

Any person violating any of the provisions of this chapter or the current adopted electrical code shall be deemed guilty of a misdemeanor and shall be punishable as set forth in Section 1.04.020 of this Code.

17.74.010 Violations of zoning regulations.

Violations of the provisions of this title shall be subject to the administrative penalty provisions of chapter 1.10.

17.74. 020 Each day a separate offense.

Each person, firm or corporation found guilty of a violation shall be deemed guilty of a separate offense for every day during any portion of which any violation of any provision of this title is committed, continued or permitted by such person, firm or corporation, and any use, occupation or building or structure maintained contrary to the provisions hereof shall constitute a public nuisance.

17.74. 030 Violations of conditional use permits and precise development plans.

No person shall violate any conditions of a conditional use permit or precise development plan. Such violations shall be subject to the administrative penalty provisions of chapter 1.10 in addition to the measures set out in chapter 17.70 regarding revocation of the permit.