

ORDINANCE NO. 2013 – 7

**ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF SELMA AMENDING TITLE I OF THE
CITY OF SELMA CITY CODE BY ADDING
CHAPTER 20 TITLED ADMINISTRATIVE CITATIONS**

THE CITY COUNCIL OF THE CITY OF Selma DOES, HEREBY ORDAIN the following:

SECTION 1: Chapter 20 titled "Administrative Citations" is hereby added to Title I of the City Code of the City of Selma as follows:

"1-20-1: TITLE:

This chapter shall be known as the Administrative Citations ordinance of the City of Selma.

1-20-2: PURPOSE:

This Chapter is adopted to protect the health, safety and welfare of the citizens of the City of Selma and to provide a method to penalize responsible parties who fail or refuse to comply with certain provisions of the City of Selma City Code; to minimize the expense and delay of enforcement of the City Code by criminal citation; and to allow the City to recover costs associated with the enforcement process, while continuing to give persons who have been issued citations due process.

1-20-3: AUTHORITY:

Pursuant to Article XI Section 7 of the California Constitution, the City has the authority to "make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." In addition, California Government Code §36901 provides that the City may impose fines, penalties, and forfeitures for violations of ordinances. The City may fix the penalty by fine or imprisonment or both. A fine shall not exceed \$1,000.00. Imprisonment shall not exceed six months. Furthermore, Government Code §53069.4 authorizes the City to enact by ordinance an administrative procedure to govern the imposition, enforcement, collection, and administrative review of administrative fines or penalties issued for violation of a City ordinance.

1-20-4: DEFINITIONS:

For the purposes of this Chapter the following definitions shall apply:

Automatic Violation means a violation defined by any provision in the City Code as an automatic violation.

Citation or Administrative Citation shall mean a Civil Citation issued pursuant to this Chapter stating that there has been a violation of one or more provisions of the City Code and setting the amount of the administrative penalty to be paid by the responsible party.

City shall mean the City of Selma.

City Manager or Manager shall mean the City Manager for the City of Selma or her or his designated representative.

Days shall mean calendar days.

Hearing Officer means any person, persons or entity appointed by the City Council or any City official designated by the City Council, by resolution to preside over the Administrative Hearings provided for by this Chapter.

Official or Enforcement Officer or Public Officer shall mean the City Manager, building official, building director, building inspector, public works director, community development director, police chief, fire chief, health officer, or designees, or any other individual or body appointed or designated by the City Council or the City Manager to enforce violations of the City Code.

Ordinance or City Code shall mean any provision of the Selma City Code.

Person means any natural person, firm, association, business, trust, organization, corporation, partnership, company or any other entity.

Property Owner means the owner of real property.

Responsible Party means any person who is responsible for violating the provisions of the City Code as described in this Chapter.

Year shall mean 365 days.

1-20-5: PROCEDURES - GENERAL:

- A. Any person violating any provision of the City Code may be issued an administrative citation by an Enforcement Officer as provided for by this Chapter.
- B. Each and every day a violation of any provision of the City Code exists will constitute a separate and distinct offense.
- C. Each section of the City Code violated on any day shall constitute a separate and distinct violation.
- D. A fine for violations of the City Code may be assessed by means of an Administrative Citation issued by the Enforcement Officer and shall be payable directly to the City.
- E. The amount of fine for a violation of the City Code shall be determined by resolution of the City Council of the City of Selma and may be amended, from time to time, by resolution of the City Council of the City of Selma.
- F. Administrative fines assessed by means of an Administrative Citation shall be collected by the procedures specified in this Chapter.

1-20-6: PROCEDURES - ISSUANCE OF ADMINISTRATIVE CITATION(S):

- A. Upon discovering or observing any violation of the City Code, the Enforcement Officer shall determine the party responsible for the violation. If a business or other entity the Responsible Party shall be deemed to be the person who is in immediate control of the business or site on that day. The Enforcement Officer may also determine that the owner(s) or officer(s) of the business or property or entity are the responsible party.
- B. Determination of an Automatic Violation:
 - 1. Any violation defined by the City Code or the Schedule of Penalties as an Automatic Violation; or
 - 2. Violations that create an immediate danger to the public health, safety, and welfare, as determined by the Enforcement Officer, and for which immediate correction is required; or
 - 3. Repeat or chronic violations where either formal or informal notice of the violation, and previous reasonable opportunities to correct, have been provided; or

4. Non-continuing violations for which it is not possible or practical to provide prior notice and an opportunity to correct.

C. Issuance of Notice to Correct:

1. Except as provided in subsection (B) of this section, the Enforcement Officer may issue a written notice to the Responsible Party of the violation. Said notice need not be in any particular form, but shall include:
 - a. the date of the violation;
 - b. the address or a description of the location where the violation occurred;
 - c. a description of the nature of the City Code violation, including identifying the City Code section(s) violated;
 - d. identify what action is necessary to correct the violation;
 - e. provide the responsible party with not less than ten (10) days to correct the violation, unless (i) a lesser time is specified elsewhere in the City Code for correcting the violation(s); or (ii) the enforcement officer determines that a lesser time is necessary to protect the public health, safety, or welfare of the citizens of the City; and
 - f. an explanation of the consequences of a failure to correct the violation.

D. Notice:

1. The Enforcement Officer may attempt to locate the Responsible Party at the location of the violation during regular business hours if a business, or at any reasonable time if not a business. If the Enforcement Officer is able to locate the Responsible Party, the Enforcement Officer shall attempt to obtain the signature of that person on the Administrative Citation. If that person refuses to or does not sign the Administrative Citation, the lack of signature shall in no way affect the validity of the Citation and subsequent proceedings. If the Responsible Party refuses to sign the Citation, the Enforcement Officer may either leave the Citation with the responsible party or mail the citation in accordance with this subsection.
2. For property related violations, the Enforcement Officer may securely post the Citation in a conspicuous place on the property and mail a copy of the Citation to the Responsible Party by first-class mail within five days of posting to the Responsible Party's business address,

principal place of business address, residence address, or other address known to the Enforcement Officer by reliable information.

3. In lieu of personally serving the Responsible Party, if the violation is at a business, the Enforcement Officer may leave a copy of the Citation with a person who is apparently in charge at the person's place of business and thereafter mailing, by first-class postage, a copy of the citation to the recipient at the address where the copy was left, or by leaving a copy at the recipient's dwelling or usual place of abode, in the presence of a competent member of the household over the age of eighteen (18), and thereafter mailing, by first-class mail, to the address where the copy was left.
- E. If after the expiration of the time period provided to the Responsible Party to correct the violation, the Responsible Party has not corrected the violation, the Enforcement Officer may issue an Administrative Citation to the Responsible Party by any method defined in this section.
- F. The notice provided pursuant to subsection (C) of this section shall be sufficient notice for subsequent violations of the same City Code occurring within one year of the notice even if the violation occurs at a different location, and the Enforcement Officer may proceed directly to issuing an Administrative Citation for future violations of the same City Code section occurring within one year of the notice even if the violation occurs at a different location.

1-20-7: PROCEDURE - CONTENTS OF CITATION:

The Administrative Citation shall be on a form approved by the City Manager and should include, where applicable, the following:

- A. The name and address of the Responsible Party;
- B. Date and location of the violation(s) and the approximate time the violation(s) were observed and/or discovered;
- C. Section or sections of the City Code violated and a description of how the section(s) are violated;
- D. A description of the action required to correct the violation(s), if applicable;
- E. A Statement requiring the Responsible Party to immediately correct the violation(s) and explaining the consequences of a failure to correct the violation(s);
- F. Amount of fine imposed for the violation(s);

- G. An Explanation of how the fine shall be paid and the time period by which it shall be paid, and the consequences of failure to pay the fine;
- H. The Responsible Party's Right to an appeal;
- I. Signature of the Enforcement Officer; and signature of the Responsible Party and/or the address where the citation is served, posted, or mailed.

1-20-8: PROCEDURE - APPEAL OF ADMINISTRATIVE CITATION:

- A. Any person receiving an administrative citation which carries a monetary penalty shall within thirty (30) calendar days from the date of issuance of the citation either pay the fine or file an appeal with the City Manager. Fines may be paid at City Hall. Warning citations may not be appealed.
- B. A Notice of Appeal shall be in writing and shall identify the citation being appealed, specify the basis for the appeal in sufficient detail so that a hearing officer can understand the grounds for the appeal, an address where further notices may be delivered to the Responsible Party by first-class mail and shall be accompanied by an advance deposit of the total penalty amount or a hardship waiver application form as described in Section 1-20-8H. The Notice of Appeal must be received by the City Manager at City Hall prior to the expiration of thirty (30) calendar days from the date of the issuance of the Citation.
- C. If the deadline to file an appeal or pay a fine falls on a Saturday, Sunday, or City Holiday, the deadline for filing an appeal or paying a fine shall be extended until the next regular business day.
- D. If a Hearing Officer has not been previously appointed by resolution of the City Council as soon as practicable after receiving a written notice of appeal, the City Clerk shall place on the agenda of the City Council the appointment of a Hearing Officer. The appointed Hearing Officer shall forthwith fix a date, time, and place for the hearing. Written notice of the time and place for the hearing shall be served at least ten (10) calendar days prior to the date of the hearing to the party appealing the Citation by any one or more of the following means:
 - 1. Personal service; or
 - 2. First-class mail at the address specified in the Notice of Appeal, or if no address is specified, at such other address known to the City Manager by reliable information; or

3. If a property-related violation, by posting the Notice of Hearing conspicuously on or in front of the property on which the violation is located.
- E. The failure of any person to receive such notice shall not affect the validity of any proceedings taken under this Chapter. Service by normal first-class delivery mail in the manner described above in subsection (C) shall be effective on the date of mailing.
 - F. Failure of any person to file an appeal in accordance with the provisions of this section shall constitute a waiver of that person's rights to an administrative hearing and determination on the merits of the Citation and the amount of the fine.
 - G. Failure by the Responsible Party to attend the Administrative Hearing shall constitute a waiver of his or her rights to an Administrative Hearing.
 - H. Any person who intends to appeal an Administrative Citation and is financially unable to make the advance deposit of the penalty as required in section 1-20-8B may request an advance deposit hardship waiver by doing the following:
 1. Completing an advance deposit hardship waiver application form available from the City Clerk's office which shall be signed by the applicant under penalty of perjury;
 2. The request shall be filed, along with the notice of appeal, with the City Clerk within thirty (30) days of the date of the Administrative Citation;
 3. The City Manager may waive all or part of the requirements of an advance deposit and issue the advance deposit hardship waiver only if the sworn application together with any supporting documents or materials, demonstrate to the satisfaction of the City Manager the person's actual financial inability to deposit with the City the full amount of the penalty in advance of the hearing. The City Manager, in determining the responsible party's financial ability or inability to deposit the full amount of the penalty in advance, may consider the amount of the penalty imposed, the income of the applicant, the expenses of the applicant and any other factors that are reasonably related to the applicant's ability to deposit the full amount of the penalty;
 4. If the City Manager makes a determination to deny all or part of the advance deposit hardship waiver, then a written determination listing

the reasons for the denial shall be served by first-class mail to the address on the application. The written determination of the City Manager shall be final.

5. If all or part of the advance deposit hardship waiver is denied by the City Manager, the applicant shall have ten (10) days from the date the written determination is mailed to make the advance deposit to the City Clerk. Failure to make the advance deposit in the amount determined by the City Manager within ten (10) days from the date the City Manager's written determination was mailed will result in the notice of appeal being considered untimely filed. If the deadline to make the advance deposit falls on a Saturday, Sunday, or City Holiday, the deadline for making the advance deposit shall be extended until the next regular business day.

1-20-9: PROCEDURE - APPEAL HEARING:

- A. The Hearing Officer shall conduct an informal and orderly proceeding. The technical rules of evidence shall not apply, except that irrelevant and unduly repetitious evidence shall be excluded. Evidence on which persons commonly would rely on in the conduct of their business affairs shall be accepted. All evidence shall be received only on oath or affirmation.
- B. During the Hearing, the City Manager or designee, and/or Enforcement Officer shall present information or testimony relating to the violation and the appropriate means of correcting the violation. The responsible party(ies), owner(s), or any other interested person(s) may present testimony or other evidence concerning the violation and the means and time frame necessary for correction.
- C. Each party shall have the right to:
 1. Call and examine witnesses on any matter relevant to the issues of the Hearing;
 2. Introduce documentary and physical evidence relevant to the issues of the Hearing;
 3. Cross-examine opposing witnesses on any matter relevant to the issues of the Hearing;
 4. Impeach any witness regardless of which party first called the witness to testify;
 5. Rebut the evidence;

6. Be represented by anyone who is lawfully permitted to do so; and
 7. Provide an interpreter, at his or her own expense, to translate the proceeding, if the party is not proficient in the English language.
- D. The Hearing Officer shall direct the order of the proceedings. The hearing shall be electronically recorded. The parties, at their sole expense, may have the Hearing recorded by a certified shorthand reporter.
 - E. The Hearing Officer shall have the authority to grant continuances, from time to time, for good cause shown, upon request of the City, Responsible Party, or the Hearing Officer's own motion.
 - F. If the violation is related to real property in the City, the Hearing Officer may, upon reasonable notice and consent, inspect the property prior to, during, or after the Administrative Hearing. The Responsible Party shall have the right to be present at the inspection.
 - G. The Hearing Officer may take official notice, either during the hearing, or after submission of the matter for decision, of any fact which may be judicially noticed by the courts of this state or of official records, regulations, rules, and decisions of state and local agencies, boards and departments and of City and County ordinances. In addition, the Hearing Officer may take official notice of matters in City files and of prior proceedings under this Chapter involving the same issues. If applicable, the Hearing Officer may also take official notice of any generally accepted technical or scientific matter within the Hearing Officer's expertise. The Hearing Officer shall inform the parties at the hearing on the record, referred to therein, or appended thereto all matters to be noticed. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority.
 - H. At the conclusion of the Hearing, the Hearing Officer may sustain the citation, not sustain the citation, may reduce, waive, or conditionally reduce the fine stated in the citation. The Hearing Officer may also impose conditions and deadlines by which to correct the violation or pay any outstanding fine, or continue the Hearing, as necessary.
 - I. The decision of the Hearing Officer shall be in writing and issued within thirty (30) days of the conclusion of the Hearing. The decision shall be served upon the Responsible Party in the manner as the notice of hearing was served on the Responsible Party and is effective upon the date of service. The decision of the hearing officer regarding any appeal is the FINAL ADMINISTRATIVE ORDER AND DECISION. There are NO APPEALS TO THE CITY COUNCIL. Judicial review may be had only in accordance

with the provisions of California Government Code §53069.4. The decision shall contain a statement advising of the right to judicial review, and shall be substantially in the following form:

'The decision of the Hearing Officer is the final decision of the City. You have the right to seek judicial review of the decision pursuant to and in accordance with Government Code §53069.4 by filing an appeal with the Superior Court, County of Fresno. The time to file an appeal is within twenty (20) days after service of this final administrative decision. These are your only rights to judicial review. If you fail to file an appeal within the prescribed time, you may be barred from seeking judicial review.'

- J. The time to pay a fine following the Hearing Officer's final Administrative Decision is twenty (20) calendar days after service of the decision unless the Hearing Officer provides for a longer time.

1-20-10: FINES ASSESSED:

- A. The amounts of the fines to be assessed for City Code violations pursuant to this Chapter shall be set forth in a Schedule of Penalties established and revised from time to time by resolution of the City Council. The Schedule of Penalties shall be maintained and made available to the public by the City Clerk.
- B. The Schedule of Penalties established by resolution shall specify whether a violation is an Automatic Violation.
- C. The Schedule of Penalties established by resolution shall specify any increased penalties for repeat violations of the same City Code provision.
- D. The payment of a fine or fines shall not excuse the failure to correct the violation nor shall it bar any further enforcement action by the City.

1-20-11: COLLECTION OF FINES:

- A. All fines assessed shall be payable to the City of Selma.
- B. The failure of any person to timely pay a fine assessed by Administrative Citation or final administrative decision shall result in an assessment of an additional late fee to be charged. The amount of a late fee shall be ten percent (10%) of the total amount of the administrative fine owed.
- C. The failure of any person to timely pay a fine assessed by Administrative Citation or final administrative decision constitutes a debt owed to the City.

To enforce that debt, the City Manager may cause to be filed a claim with the Small Claims or other appropriate court.

- D. The City Manager may also pursue any other legal remedy to collect such money owed, including but not limited to, contracting for collection, or the imposition of an assessment lien as set forth below:
1. The City Manager may impose a special assessment against the property that is the subject of an Administrative Citation, if the Administrative Citation has been issued to a property owner for the amount of the fine, plus late fees, plus an administrative charge established by resolution of the City Council to reimburse the City for costs of imposing the assessment, the assessment shall be imposed by the following procedures:
 - a. The City Council shall confirm the amount to the assessment at a regularly scheduled meeting or at a special meeting.
 - b. The property owner and any holder of the mortgage or deed of trust of record shall be notified of the meeting to confirm the assessment in accordance with the notice requirement of this Chapter.
 - c. After conformation by the City Council, the City Manager or designee shall record a Notice of Lien in the office of the County Recorder. When so made, confirmed, and recorded, the confirmed amount shall constitute a lien on that property for the amount of the assessment.
 - d. After conformation and recordation, a copy may be filed with the tax collector for the City of Selma. The tax collector shall add the amount(s) of the respective assessment(s) to the next regular tax bill or bills levied against the property subject to the lien. Those amounts shall be collected at the same time and in the same manner as ordinary City taxes are collected, and shall be subject to the same penalties and procedures under foreclosure and sale in the cases of a delinquency as provided for with ordinary City taxes. Or, after recording, the lien may be foreclosed by judicial or other sale in the matter and means provided by law. The notice of lien for recordation shall be in the form substantially as follows:

NOTICE OF LIEN

Pursuant to Title 1 Chapter 20 of the Selma City Code, the City Manager of the City of Selma did on or about the ____ day of _____, 20____, assess the cost of administrative fines and penalties on the real property hereinafter described; and the same has not been paid nor any part thereof and the City of Selma does hereby claim a lien for such fines and penalties, in the amount of \$_____. Said amount shall be a lien upon the real property until it has been paid in full and discharged of record.

The real property, upon which a lien is claimed, is that certain parcel of land in the City of Selma, County of Fresno, State of California, more particularly described as follows:

Dated this ____ day of _____, 20____

City of Selma

By:_____

[Print Name and Title]

- E. If the failure by any person to pay a fine assessed by Administrative Citation results in the filing of an action in any court of proper jurisdiction, to collect the fine, the City of Selma shall be entitled to collect all costs, including reasonable attorney's fees, associated with the filing of such actions.
- F. The payment of a fine or fines shall not excuse the failure to correct the violation nor shall it bar further enforcement action by the City.

1-20-12: OTHER REMEDIES:

- A. Nothing in this Chapter precludes the City of Selma from using any other available method to enforce the provisions of the City Code.

1-20-13: ADMINISTRATION:

- A. The City Manager may adopt any necessary guidelines, policies, or procedures to aid in the interpretation and enforcement of this Chapter.

1-20-14: SEVERABILITY:

If any section, subsection, sentence, clause, phrase or portion of this Chapter or any part of the City Code adopted herein by reference is for any reason to be held invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof."

SECTION 2: California Environmental Quality Act: The City Council having considered the Staff Report and all public comments, has determined that the amendment is not a project under the California Environmental Quality Act because the amendment has no potential for resulting in a physical change in the environment. Since the amendment is not a project, no environmental documentation is required.

SECTION 3: Severability: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, the decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases have been declared invalid or unconstitutional.

SECTION 4: Effective Date and Posting of Ordinance: This Ordinance shall take effect and be in force thirty (30) days from and after the date of final passage. The city Clerk of the City of Selma shall cause this Ordinance to be published at least once within fifteen (15) days after its passage in The Selma News with the names of those City Council Members voting for or against the Ordinance.

I, REYNA RIVERA, City Clerk of the City of Selma, do hereby certify that the foregoing Ordinance was introduced at a regular meeting on October 7, 2013, and duly adopted on November 4, 2013 by the following vote, to wit:

AYES: 5 COUNCIL MEMBERS: Avalos, Robertson, Derr, Rodriguez, Grey

NOES: 0 COUNCIL MEMBERS: None

ABSENT: 0 COUNCIL MEMBERS: None

ABSTAIN: 0 COUNCIL MEMBERS: None

/s/ Kenneth Grey

Kenneth Grey
Mayor of the City of Selma

ATTEST:

/s/ Reyna Rivera

Reyna Rivera
City Clerk

APPROVED AS TO FORM:

/s/ Neal E. Costanzo

Neal E. Costanzo
City Attorney