

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA BARBARA AMENDING AND ADOPTING CHAPTER 24A OF THE COUNTY CODE AS THE ADMINISTRATIVE FINE ORDINANCE OF THE COUNTY OF SANTA BARBARA

The Board of Supervisors of the County of Santa Barbara adopts and ordains the following changes to the Code of the County of Santa Barbara under authority of Section 7 of Article XI of the Constitution of the State of California.

The Board of Supervisors of Santa Barbara County amends and adopts Chapter 24A of the County Code of Santa Barbara County and ordains as follows:

SECTION ONE

CHAPTER 24A

ADMINISTRATIVE FINES

Sec. 24A-1. Administrative fines or penalties in addition to other remedies – Authority, definitions.

In addition to any other remedy allowed by this Code or applicable law, any violation of the provisions of Santa Barbara County Code chapters 6 (article III), 7, 9A, 10, 11, 14 (excluding the “potential for significant environmental damage” clause of section 14-8(c)(8)), 14C, 15, 16, 17, 18 (articles I, III, IV and V), 23 (article III), 25, 29 (articles II and IV), 34A, 34B, 35, and 44, shall be subject to an administrative fine or penalty, enforcement and collection proceedings, as set forth in this chapter and authorized by California Government Code Section 53069.4. For purposes of this article, “director” shall include the treasurer-tax collector, the director of animal services, the director of planning and development, the agricultural commissioner, the fire chief, the director of public works, the director of environmental health, the director of housing and

community development, and their designees. Unless otherwise specified, “owner” shall include the owner of property upon which a violation of this article exists, the occupant of that property and any other party responsible for the violation.

Sec. 24A-2. Procedures.

- (a) The treasurer-tax collector or his or her designee shall be responsible for implementing the procedures set forth in this chapter with respect to violations of chapter 6 (article III). The director of animal services or his or her designee shall be responsible for implementing the procedures set forth in this chapter with respect to violations of chapter 7. The director of planning and development or his or her designee shall be responsible for implementing the procedures, set forth in this chapter with respect to violations of chapters 9A, 10, 11, 14 (excluding the “potential for significant environmental damage” clause of section 14-8(c)(8)), 14C, 25, and 35 of the Santa Barbara County Code. The agricultural commissioner or designee shall be responsible for implementing the procedures set forth in this chapter with respect to violations involving native oak tree removal under chapter 14 of the Santa Barbara County Code.

The fire chief or his or her designee shall be responsible for implementing the procedures set forth in this chapter with respect to violations of chapters 15 and 18 (articles III, IV and V). The director of environmental health or his or her designee shall be responsible for implementing the procedures set forth in this chapter with respect to violations of chapters 16, 18 (article I), 29 (articles II and IV), 34A and 34B of the Santa Barbara County Code. The director of public works or his or her designee shall be responsible for implementing the procedures set forth in this chapter with respect to violations of chapters 17, 23 (article III) and 29 (article IV) of the Santa Barbara County Code.

The director of housing and community development or his or her designee shall be responsible for implementing the procedures set forth in this chapter with respect to violations of chapter 44.

- (b) Upon determining that a violation of any provision of chapters 6 (article III), 9A, 10, 11, 14 (excluding the “potential for significant environmental damage” clause of section 14-8(c)(8)), 14C, 15, 16, 17, 18 (articles I, III, IV and V), 23 (article III), 25, 29 (article II and IV), 34A, 34B, 35, or 44 of this Code exists with respect to any property, the director shall

transmit a notice of violation to the owner by certified mail or by personal service by a public officer, or other service methods in accordance with California Code of Civil Procedure Section 415.20, as amended. The notice of violation shall specify:

- (1) The conditions constituting violations;
 - (2) A specified time period not less than thirty days from receipt of the notice of violation within which the violation must be abated;
 - (3) That, the conduct, activity or circumstances constituting the violation must be stopped immediately or immediate steps must be taken to make the correction;
 - (4) That, in the event the violation is not corrected by the expiration of the specified time period (“effective date of the notice of violation”), the owner shall be subject to an administrative fine under this chapter; and
 - (5) That the owner may submit in writing, to the director, any information relating to a determination of the existence of a violation or the amount of the fine to be imposed. If the director determines that an effort is being made to correct the violation, he or she may grant an additional period of time for correction of the violation.
- (c) Notwithstanding subsection (b) of this section, the director may require immediate correction of a violation if the violation creates an immediate danger to the health and safety of persons or property.
- (d) The director may condition any building permit, grading permit, or land use permit issued to remediate a violation to require that the work or project described in the permit be completed by a certain date or in a certain period of time. Failure to complete the work or project by the date or within the time stated in a permit condition shall be good cause in the discretion of the director to:
- (1) Issue a stop work order; and/or
 - (2) Suspend or revoke the permit; and/or
 - (3) Impose administrative fines for the permit violation.

Sec. 24A-3. Amount of fine – General.

Any person who violates any provision of chapters 6 (article III), 7, 9A, 10, 11, 14 (excluding the “potential for significant environmental damage” clause of section 14-8(c)(8)), 14C, 15, 16, 17,

18 (articles I, III, IV and V), 23 (article III), 25, 29 (article II and IV), 34A, 34B, 35, or 44 of this Code, or any person who owns property upon which a violation exists, irrespective of whether that person caused the violation, shall be subject to an administrative fine up to the maximum amounts as set forth below.

Sec.24A-4. Amount of fine – Infraction.

If this code designates the violation as an infraction, the director shall impose as the administrative fine up to the maximum fine or penalty amounts for infractions set forth in subdivision (b) of California Government Code section 25132; the director shall impose the fine if the violation is not abated by the effective date of the notice of violation.

Sec.24A-5. Amount of fine – Other.

If this code does not designate the violation as an infraction, or deems as a separate and distinct violation each and every day during which a violation continues to exist or, if it provides in the alternative for civil remedies and penalties in amounts greater than set forth in subdivision (b) of California Government Code section 25132, the director shall impose an administrative fine within the amounts set forth below:

- (a) If the violation arises from an unlawful commercial, industrial, rental (residential or nonresidential), owner-occupied residential or similar use or structure on the property, the director, in his or her discretion, shall impose a fine in one of the following sums:
 - (1) One hundred dollars for the date of transmittal of the notice of violation, and up to one hundred dollars for each calendar day thereafter that the violation exists on the property through the effective date of the notice of violation for initial notice of violation, two hundred dollars per day for second notice of violation and five hundred dollars per day for any third or subsequent notice of violation for the same violation.
 - (2) In addition to the fines described in (a)(1), in the event that the use of a structure in violation may be permitted with an appropriate permit, up to a maximum of five times the amount of the standard fee for such permit.
- (b) In the event that an action results in a “one-time” violation which cannot be corrected/cured (e.g., violation of permit conditions, use violations, etc.) the director may impose fines

under an immediate Notice of Determination of Fines up to one thousand dollars per each one-time action.

- (c) If a violation is corrected pursuant to a notice of violation and the same conduct is committed within forty-five days of the correction, the violation will be deemed a continuing violation and immediate fines will be incurred dating back to the date of the original notice of violation.

Sec. 24A-6. Determination of fine – Notice of determination of fine – Recordation of notice.

- (a) In making a fine determination, the director shall take into account the facts and circumstances of the violation, including without limitation:
 - (1) The length of time the violation existed;
 - (2) The culpability of the owner and the willfulness of the violation;
 - (3) The number of previous violations of the same or related type committed by the owner within the preceding thirty-six months;
 - (4) The extent of the violation and the effect of the violation on neighboring properties;
 - (5) Attempts, if any, to comply with the applicable ordinances;
 - (6) The time necessary to abate the violation;
 - (7) Any other information relevant to a determination of the fine. In making a determination of the fine, the director shall consider any information submitted by the owner. In the event that the director determines that the violation was not caused by, or with the knowledge of, the current owner, the director may reduce or eliminate the fine. In the event the director determines that the correction of the violation is not feasible, and the violation does not present a threat to public health or safety, the director may reduce or eliminate the fine.
- (b) After making a determination of the fine, the director shall transmit a notice of determination of fine by certified mail or personal service by a public officer, or other service methods in accordance with California Code of Civil Procedures Section 415.20, as amended, to the person upon whom the fine has been imposed. The notice of determination of fine shall contain a statement that if the owner fails to request an appeal of the administrative fine, the notice of determination of fine shall be final and that any

responsible party upon whom an administrative fine has been imposed may seek judicial review of the order imposing the penalty pursuant to Government Code § 53069.4

- (c) The director may, in his discretion, record a copy of the notice of determination of fine with the Santa Barbara County Recorder. In the event of such recordation, and in the event that the violation is subsequently corrected, the director shall record a notice of correction. Correction of the violation shall not excuse the owner's liability for costs incurred during the administrative abatement process or for payment of all fines accrued prior to correction.

Sec. 24A-7. Appeals.

- (a) Any person upon whom an administrative fine is imposed by the director may appeal such fine pursuant to the procedures set forth in this section. The appellant must file a written appeal with the director within ten working days of personal service or the date of mailing of the notice of determination of fine. The written appeal shall contain:
 - (1) A brief statement setting forth the interest the appealing party has in the matter relating to the imposition of the penalty;
 - (2) A brief statement of the material facts which the appellant claims supports his or her contention that no administrative penalty shall be imposed or that an administrative penalty of a different amount is warranted;
- (b) An appeal of an administrative fine imposed for violations of chapter 6, (article III) shall be heard by the treasurer-tax collector as the hearing examiner. An appeal of an administrative fine imposed for violations of chapter 7 of this Code shall be heard by the director of animal services as the hearing examiner. An appeal of an administrative fine imposed for violations of chapters 9A, 10, 11 14 (excluding the "potential for significant environmental damage" clause of section 14-8(c)(8)), 14C, 25 and/or chapter 35 of this Code shall be heard by the director of planning and development as the hearing examiner. An appeal of an administrative fine imposed for violations of chapter 14 involving native oak tree removal shall be heard by the agricultural commissioner as the hearing examiner. An appeal of an administrative fine imposed for violations of chapter 15 and chapter 18 (articles III, IV and V) of this Code shall be heard by the fire chief as the hearing examiner. An appeal of an administrative fine imposed for violations of chapters 16, 18 (article I), 29

(article II), 34A and/or 34B of this Code shall be heard by the director of public works as the hearing examiner. An appeal of an administrative fine imposed for violations of chapter 44 of this Code shall be heard by the director of housing and community development as the hearing examiner. The above-specified hearing examiner may, at his or her discretion, appoint an alternate hearing examiner. The administrative fine appeal hearing shall be set no sooner than twenty days and no later than forty-five days following a request for an appeal hearing, unless otherwise waived by the appellant in writing. Notice of the appeal hearing shall be mailed at least twelve calendar days before the date set for the hearing. Failure to appear timely will cause the administrative fine to become a final order or decision.

- (c) In reviewing the fine, the hearing examiner shall consider the factors set forth in subsection (a) of this section, and shall uphold the fine imposed by the director or his or her designee, eliminate the fine, or modify it. The decision of the hearing examiner shall constitute the final administrative order or decision of the local agency within the meaning of Government Code Section 53069.4(b)(1) and (c). The hearing examiner shall serve a copy of his or her written decision on the appellant by first class mail to the address provided by appellant in the written notice of appeal.
- (d) Alternate Hearing Examiner. Should the specified hearing examiner deem it appropriate to appoint an alternate hearing examiner, such alternate hearing examiner shall have the experience, subject matter expertise and/or knowledge of administrative procedure to properly perform those duties. An experienced public agency employee, licensed professional (attorney, engineer, accountant, health professional, etc.) or qualified administrative law judge may, as deemed appropriate by the specified hearing officer, be appointed to such duties.

Sec. 24A-8. Enforcement and collection.

When an administrative fine or penalty becomes a final order under this section or Government Code section 53069.4, the county may proceed to collect the fine or penalty as follows:

- (a) In the event a civil action is commenced to collect the administrative penalty, the county shall be entitled to recover all costs associated with the collection of the penalty. Costs

include, without limitation, staff time incurred in the collection of the penalty and those costs set forth in Code of Civil Procedure section 1033.5.

- (b) An administrative penalty shall accrue interest at the same annual rate as any civil judgment. Interest shall accrue commencing on the 20th day after the penalty becomes a final decision or order.
- (c) The amount of any unpaid administrative fine, plus interest, plus any other costs as provided in this chapter, may be declared a lien on any real property owned by the owner within the county against whom an administrative penalty has been imposed, as follows:
 - (1) Notice shall be given to the owner before recordation of the lien, and shall be served in the same manner as a summons in the civil action pursuant to Code of Civil Procedure section 415.10 et seq.;
 - (2) The lien shall attach when the county records it with the county recorder's office. The lien shall specify the amount of the lien, the date of the code violations, the date of the final decision, the street address, legal description, and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the record owner of the parcel; and
 - (3) In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, the county shall record a notice of the discharge containing the information specified in subsection (2) of this section.
- (d) The county may withhold issuance of licenses, permits and other entitlements to a responsible party on any project, property, or application of any kind whenever an administrative penalty remains unpaid.
- (e) County may take such other actions as are allowed for enforcement of a civil judgment as provided for pursuant to the Enforcement of Judgment Law, California Code of Civil Procedure section 680.010 et seq.

Sec. 24A-9. Judicial review.

Any person aggrieved by a final administrative order or decision imposing an administrative fine may seek review with the superior court in Santa Barbara County pursuant to Government Code section 53069.4.

SECTION TWO

This ordinance shall take effect and be in force thirty days from the date of its passage, and before the expiration of fifteen days after its passage it shall be published, with the names of the members of the Board of Supervisors voting for and against the same, in the Santa Barbara NewsPress, a newspaper of general circulation published in the County of Santa Barbara.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this ___th day of _____, 2011 by the following vote:

AYES:

NOES:

ABSTAINED:

ABSENT:

JONI GRAY
Chairperson, Board of Supervisors
County of Santa Barbara
State of California

ATTEST:
CHANDRA WALLAR
Clerk of the Board

By: _____
Deputy Clerk

APPROVED AS TO FORM:
DENNIS A. MARSHALL
County Counsel

By: _____
Kevin E. Ready, Sr.
Senior Deputy County Counsel