

Chapter 9.70

ADMINISTRATIVE PENALTIES

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9.70.010 Purpose and intent. This Chapter 9.70 establishes an enforcement mechanism for all violations of the Ross Municipal Code. The procedures established in this Chapter 9.70 are in addition to any other procedures or legal remedies available to address violations of the Ross Municipal Code. (Ord. 642 (part), 2013).

9.70.020 Definitions

a. Administrative Citation. An Administrative Citation is an official notification, on a form meeting the criteria of this Chapter 9.70, of violation of any provision of the Ross Municipal Code. Administrative Citations require correction of the violations they identify and impose penalties on the Responsible Person(s).

b. Compliance Order. A Compliance Order is an official notification, on a form meeting the criteria of this Chapter 9.70, of violation of any provision of the Ross Municipal Code. Compliance Orders require correction of the violations they identify.

c. Enforcement Officer. An Enforcement Officer is any person appointed by the Town Manager to implement the provisions of this Chapter 9.70.

d. Responsible Person. A Responsible Person is any person who an Enforcement Officer determines is responsible for causing, maintaining, committing, or allowing a violation of the Ross Municipal Code. A Responsible Person includes without limitation any person who exercises legal or physical control over a property or business premises in the Town, such that the Responsible Person is capable of preventing or correcting violations of the Ross Municipal Code. (Ord. 642 (part), 2013).

9.70.030 Administration. The Town Manager shall administer this Chapter 9.70, and may establish appropriate rules, forms, and procedures for administration, consistent with the requirements of this Chapter 9.70. The Town Manager may appoint, or may designate another

Town official to appoint, one or more Enforcement Officers to issue Compliance Orders and Administrative Citations. (Ord. 642 (part), 2013).

9.70.040 Compliance Order issuance.

a. When an Enforcement Officer observes a correctable, continuing violation of the Ross Municipal Code creating no immediate danger to health or safety, the Enforcement Officer may issue a Compliance Order to any Responsible Person.

b. Each Compliance Order shall be in writing and shall include, without limitation, the following information:

1. The date of the violation(s) and, if different, the date of service of the Compliance Order.

2. The address or a definite description of the location where the violation(s) occurred or existed, and the approximate time the violation(s) occurred or was observed.

3. The name, address, and other identifying information of the Responsible Person(s).

4. A description of the violation(s), including citation to the section(s) of the Ross Municipal Code violated.

5. An order requiring correction of the violation(s) within thirty (30) days of the date of the Compliance Order, or within such other reasonable time as the Enforcement Officer may determine, and notifying the Responsible Person that a fine may be due if correction is not made before the expiration of the correction period.

6. An order prohibiting the continuation or repeated occurrence of the violation(s).

7. The fine schedule for the violation(s).

8. The name and signature of the Enforcement Officer.

c. If the Enforcement Officer determines that all violation(s) specified in the Compliance Order have been corrected within the time set forth in the Compliance Order, no further action shall be taken against the Responsible Person(s) regarding the violations. If all violation(s) specified in the Compliance Order are not corrected within the time set forth in the Compliance Order, the Enforcement Officer may issue an Administrative Citation to the Responsible Person(s). Issuance of an Administrative Citation does not alter any obligation to comply fully with the Compliance Order. (Ord. 642 (part), 2013).

9.70.050 Administrative Citation issuance.

a. An Enforcement Officer may issue an Administrative Citation to any Responsible Person when all violation(s) in a Compliance Order have not been corrected within the time set forth in that Compliance Order or when an Enforcement Officer observes one of the following:

1. A violation of the Ross Municipal Code that creates an immediate danger to health or safety.

2. A violation of Ross Municipal Code Section 9.20.030 “Power-driven machinery and portable gasoline engine-powered blowers”.

3. A violation of Ross Municipal Code Section 9.20.035 related to construction noise.

b. Each Administrative Citation shall be in writing and shall include, without limitation, the following information:

1. The date of the violation(s) and, if different, the date of service of the Administrative Citation.

2. The address or a definite description of the location where the violation(s) occurred or existed, and the approximate time the violation(s) occurred or was observed.

3. The name, address, or other identifying information of the Responsible Person(s).

4. A description of the violation(s), including citation to the section(s) of the Ross Municipal Code violated.

5. An order prohibiting the continuation or repeated occurrence of the violation.

6. The fine schedule for the violation.

7. A description of how, when, and where the fine must be paid.

8. A brief description of the Administrative Citation hearing process.

9. The name and signature of the Enforcement Officer.

c. Each violation of the Ross Municipal Code after the expiration of any correction period set forth in a Compliance Order constitutes a separate violation for every day such violation continues, and an Administrative Citation may be issued for each and every separate violation. (Ord. 642 (part), 2013).

9.70.060 Notices. All notices, including Compliance Orders and Administrative Citations, required under this Chapter 9.70 shall be served on the Responsible Person(s) in one of the following methods:

a. Notices may be personally served on a Responsible Person. When an Enforcement Officer issues a Compliance Order or an Administrative Citation in the presence of a Responsible Person, that Responsible Person shall be asked to sign the Compliance Order or Administrative Citation to acknowledge receipt. A Responsible Person’s failure or refusal to sign a Compliance Order or an Administrative Citation shall not affect the validity of that Compliance Order or Administrative Citation; and a Responsible Person’s signature on any Administrative Citation shall not constitute an admission of responsibility.

b. Notices may be mailed to the Responsible Person by certified mail, postage prepaid, return receipt requested, to the owner of the property where the violation occurred at the address

shown on the County's last property tax assessment rolls or to any other address known for the Responsible Person. Simultaneously, the same notice may be sent by first-class mail, postage prepaid. If a notice sent by certified mail is returned unclaimed, service by first-class mail shall nevertheless be effective if that mail is not returned.

c. The Enforcement Officer may post the property where the violation occurred in a conspicuous place when the Responsible Person resides at an unknown address. A copy of the notice shall also be sent to the owner of the property where the violation occurred at the address shown on the County's last property tax assessment rolls by certified mail, postage prepaid, return receipt requested.

d. If a Compliance Order or Administrative Citation is issued for violation of the Ross Municipal Code by a business or other organization, and if the Responsible Person cited is not the sole owner of that business or other organization, a copy of the Compliance Order or Administrative Citation and of any other notices required in connection with that Administrative Citation shall also be personally delivered or shall be sent by first-class mail, postage prepaid, to the owner or director of that business or other organization, as may be revealed by the Enforcement Officer's reasonable investigation.

e. If a Compliance Order or Administrative Citation is issued for a violation of the Ross Municipal Code existing on real property, and if the Responsible Person cited is not shown in the Official Records of the County of Marin as the sole owner in fee simple of the real property, a copy of the Compliance Order or Administrative Citation and of any other notices required in connection with that Administrative Citation shall also be personally delivered or shall be sent by first-class mail, postage prepaid, to any owners of interests in that property that may be affected by the violation, at the address shown on the last equalized County assessment roll, and at such other address as may be revealed by the Enforcement Officer's reasonable investigation.

f. If the Enforcement Officer does not succeed in serving the Responsible Person personally, and if the Enforcement Officer's reasonable investigation reveals no home or business address for the Responsible Person, and if the violation does not consist of any condition of real property, the Enforcement Officer shall cause the notice to be published once a week for four successive weeks in a local newspaper published at least once per week.

g. Service of any notice in accordance with these requirements may be proven by declaration or affidavit. Service is complete upon personal delivery, upon deposit with the United States Postal Service, or upon completion of publication according to subdivision f above. Failure of any person with an interest in the Compliance Order or Administrative Citation to receive properly served notice shall not affect the validity of any proceedings under this Chapter 9.70. (Ord. 642 (part), 2013).

9.70.070 Administrative Citation hearings.

a. Any Responsible Person may contest an Administrative Citation by requesting a hearing within ten (10) calendar days from the date of service of the Administrative Citation. The hearing request must be in writing on a form furnished by the Town, specifying in detail the basis for contesting the Administrative Citation. The Responsible Person requesting the hearing

shall deposit with the Town either the amount of the fine or an application for a Hardship Waiver as described in Section 9.70.080 below. If the deadline for requesting a hearing falls on a weekend or on another date that Town offices are closed for all of the normal business day, then the deadline shall be extended until 5:00 p.m. on the next regular Town business day.

b. The Town shall hold a hearing within thirty days of receiving a hearing request that complies fully with paragraph (a) above. The Responsible Person requesting the hearing, as well as any other persons upon whom the Administrative Citation was served under Section 9.70.060 above, shall be notified of the time and place of the hearing at least ten (10) days before the hearing date. Either the Responsible Person or the Town may request a continuance of the hearing to a mutually agreeable date, but in no event may the hearing begin later than sixty (60) days after the Town receives a hearing request, accompanied by either deposit of the fine or a completed Hardship Waiver application.

c. The Town Manager shall designate a Hearing Officer to hear and decide appeals of Administrative Citations. This Hearing Officer may, but need not, be an employee of the Town of Ross. The employment, performance evaluation, compensation, and benefits, if any, of this Hearing Officer shall not be directly or indirectly conditioned upon the number of Administrative Citations or the amount of administrative fines upheld by the Hearing Officer.

d. Failure to file an appeal request in accordance with this Section 9.70.070 shall constitute a waiver of the Responsible Person's right to contest any matters set forth in the Administrative Citation. (Ord. 642 (part), 2013).

9.70.080 Hardship waiver.

a. Any Responsible Person who requests a hearing to contest an Administrative Citation and who is financially unable to deposit the administrative fine may request a Hardship Waiver.

b. This request shall be filed with the hearing request. The request shall be accompanied by a sworn affidavit, and any other relevant supporting materials, demonstrating the Responsible Person's inability to deposit the fine in advance of the hearing.

c. The Town Manager or his or her designee shall decide within ten days of receipt of the Hardship Waiver request whether or not to issue a Hardship Waiver. The decision shall be in writing, and shall be served upon the Responsible Person requesting the waiver. The decision shall be final.

d. If the Town Manager or his or her designee decides that a Hardship Waiver is unwarranted, the Responsible Person shall deposit the full amount of the fine within ten days of service of the written decision, or within ten days from the date of the Administrative Citation, whichever is later. If the Responsible Person fails to deposit this fine before this due date, the Town may disregard the hearing request, and any scheduled hearing shall be cancelled. (Ord. 642 (part), 2013).

9.70.090 Hearing procedure.

a. On the date and at the time and place set forth in the notice of hearing, the Hearing Officer shall conduct an orderly hearing and shall accept evidence on which persons commonly would rely in the conduct of their business affairs. Formal rules of evidence shall not apply.

b. The Responsible Person contesting the Administrative Citation shall have the opportunity to testify and to present evidence, including witnesses, concerning the alleged violation. Any other interested party, including without limitation the property or business owner, employees, or neighbors, may also present evidence. The Hearing Officer shall limit the evidence to that which is relevant to establishing or refuting the violation alleged in the Administrative Citation.

c. If the Responsible Person or any other interested person fails to attend the scheduled hearing, that person shall have waived any right to present evidence on the matter.

d. The Administrative Citation and any other reports submitted by the Enforcement Officer shall constitute *prima facie* evidence of the facts recited in those documents.

e. The Hearing Officer may take the matter under consideration, may continue the hearing, and may request additional information from the Enforcement Officer or from the Responsible Person.

f. On the basis of a preponderance of the evidence, the Hearing Officer shall determine whether to affirm or dismiss the Administrative Citation. The Hearing Officer may not reduce, waive, or conditionally reduce the fines established by the Town.

g. The Hearing Officer shall make findings based on the record of the hearing, and shall issue a final written decision based on those findings. The written decision shall be served upon the Responsible Person along with notice regarding the right to further appeal.

h. If the Hearing Officer affirms the Administrative Citation, the Town shall retain any fine deposited by the Responsible Person. If the Hearing Officer affirms the Administrative Citation and the fine has not yet been deposited because of an approved Hardship Waiver, the Hearing Officer shall specify in the written decision a payment schedule for the fine, including the date upon which the fine will be overdue. If the Hearing Officer dismisses the Administrative Citation, any fine deposited with the Town shall be promptly refunded. (Ord. 642 (part), 2013).

9.70.100 Appeal to Town Council.

a. Any Responsible Person may appeal the decision of the Hearing Officer to the Town Council. An appeal to the Town Council must be requested within ten (10) calendar days from the date of the decision of the Hearing Officer. The request must be in writing on a form furnished by the Town, specifying in detail the basis for contesting the decision and accompanied by an appeal fee as set by resolution of the Town Council. If the deadline for requesting a hearing falls on a weekend or on another date that Town offices are closed for all of

the normal business day, then the deadline shall be extended until 5:00 p.m. on the next regular Town business day.

b. The Town Council shall hold a hearing within 60 days of receiving an appeal request that complies fully with paragraph (a) above. The Responsible Person requesting the hearing, as well as any other persons upon whom the Administrative Citation was served under Section 9.70.060 above, shall be notified of the time and place of the hearing at least ten (10) days before the hearing date.

c. Failure to file an appeal request in accordance with this Section 9.70.080 shall constitute a waiver of the Responsible Person's right to contest any matters set forth in the Administrative Citation and the decision of the Hearing Officer.

d. The Town Council shall follow the hearing procedure in Section 9.70.090. (Ord. 642 (part), 2013).

9.70.110 Judicial review. Any person aggrieved by the decision of the Town Council on appeal of an administrative decision of a Hearing Officer may obtain review of that decision by filing a petition for review in the Marin County Superior Court, according to the requirements of Government Code Section 53069.4. (Ord. 642 (part), 2013).

9.70.120 Administrative Citation fines and collection. Except where otherwise provided in the Ross Municipal Code, the amount of the fine shall be as follows:

a. For any violation of the Ross Municipal Code that would otherwise be an infraction the fine imposed by an Administrative Citation for that violation shall be One Hundred Dollars (\$100.00) for a first violation; Two Hundred Dollars (\$200.00) for a second violation of the same provision of the Ross Municipal Code within a twelve-month period; and Five Hundred Dollars (\$500.00) for each additional violation of that same provision within a twelve-month period.

b. For any violation of local building and safety codes the fine imposed by an Administrative Citation for that violation shall be One Hundred Dollars (\$100.00) for a first violation; Five Hundred Dollars (\$500.00) for a second violation of the same ordinance within one year; and One Thousand Dollars (\$1,000.00) for each additional violation of that same provision within one year of the first violation.

c. For any violation of the Ross Municipal Code that would otherwise be a misdemeanor, the fine imposed by an Administrative Citation for that violation shall be One Hundred Fifty Dollars (\$150.00) for a first violation; Three Hundred Dollars (\$300.00) for a second violation of the same provision of the Ross Municipal Code within a twelve-month period; and Five Hundred Dollars (\$500.00) for each additional violation of that same provision within a twelve-month period.

d. Fines for Administrative Citations shall be payable directly to the Town of Ross and are due immediately upon service of the Administrative Citation. Such fines constitute a debt owed to the Town of Ross.

e. Payment of the fine associated with any Administrative Citation shall not excuse the violation, nor shall it bar other or further enforcement activity by the Town.

f. Any fine paid for an Administrative Citation shall be refunded if it is determined after a hearing under this Chapter 9.70 that the violation charged in the Administrative Citation did not exist or occur.

g. If payment of a fine is not received by the Town within thirty days of its due date, the fine is overdue unless a timely hearing request including an application for a Hardship Waiver has been filed according to Section 9.70.070. If a Hardship Waiver application is denied, the fine is overdue unless the full amount is deposited within ten days of service of the written decision denying the Hardship Waiver, or within thirty days from the date of the Administrative Citation, whichever is later. If a Hardship Waiver is granted, but the hearing officer affirms the Administrative Citation, the Hearing Officer shall set forth a payment schedule for the fine that shall specify the date on which the fine becomes overdue. In such case, the fine shall be overdue on that date, unless a timely appeal from the Hearing Officer's determination is filed with the Town Council. If any such appeal is dismissed, or if the Town Council affirms the Administrative Citation, the fine shall be due within ten days of the Town Council decision. In such case, the fine shall be overdue on that date, unless a timely appeal from the Town Council decision is filed with the Marin County Superior Court. If any such appeal is dismissed, or if the decision of the court affirms the Administrative Citation, the fine shall be overdue ten days after service by the court or by the Town of notice of entry of judgment or of dismissal, or twenty days after entry of judgment or of dismissal, whichever is first. A late penalty equal to 50% of the total fine shall be assessed for any overdue fine.

h. If a fine is overdue, and if the violation of the Ross Municipal Code for which the fine was assessed occurred on or was a condition of real property, the outstanding fine and late penalty shall constitute a lien against that real property. The Enforcement Officer shall prepare and file with the Town Clerk a report stating the amount due and owing.

The Town may record notice of this lien after a hearing before the Town Council to consider any protest or objection to the lien. The Enforcement Officer shall serve notice of the hearing upon the owner of record of the real property, based on the last equalized assessment roll or the supplemental roll, whichever is more current. The notice of hearing shall include the time, date, and place of the hearing and the amount of the lien to be imposed, and shall be served according to Section 9.70.060.

If the Town Council determines that the lien should be imposed, the Enforcement Officer may cause notice of the lien to be recorded with the County Recorder. Once recorded, the lien shall have the force and effect and priority of a judgment lien governed by the provisions of Section 697.340 of the Code of Civil Procedure, and may be extended as provided in Sections 683.110 to 683.220, inclusive, of the Code of Civil Procedure.

i. The remedies set forth in this section are not exclusive. The Town may collect past due fines for Administrative Citations, and penalties for late fines, by the use of the small claims court or by any other legal remedy. (Ord. 642 (part), 2013).