

## CHAPTER TWO: PROHIBITED ACTIVITIES

### Subchapter 2.01: Property Maintenance and Nuisance Abatement

#### *Division 1. General*

##### **2.01.010 Title.**

The ordinance codified in this subchapter may be referred to and cited as the *Property Maintenance and Nuisance Abatement Ordinance* of the Town of Colma.

[*History:* formerly § 1.11.110; ORD. 494, 9/11/96; ORD. 638, 12/14/05]

##### **2.01.020 Findings.**

The City Council finds that:

(a) The following amendments to Subchapter 2.01, Chapter 2 of the Colma Municipal Code, are enacted under Government Code Sections 36900-36901 and 53069.4;

(b) The administrative citation process added to this subchapter, which is set forth in Division 2, shall be in addition to all other legal remedies, civil or criminal, available to the Town to address a violation of the Colma Municipal Code;

(c) The administrative citation process in this subchapter may be used to enforce any violation of the Colma Municipal Code. The use of the process is at the sole discretion of the Town; and

(d) Enforcement of the Colma Municipal Code and applicable federal and state laws throughout the Town is vital to protection of the public's health, welfare, safety and quality of life, and essential to the sizeable public investment the City Council has made and will continue to make throughout the community. Enforcement starts with the drafting of precise regulations that can be effectively applied in administrative enforcement hearings and judicial proceedings, continues with efforts at achieving voluntary compliance with applicable laws and regulations, and culminates in the pursuit of judicial and administrative remedies.

[*History:* formerly § 1.11.120, ORD. 494, 9/11/96; ORD. 638, 12/14/05; ORD. 710, 9/12/12]

##### **2.01.030 Policy.**

(a) It is the policy of the City Council to enforce all federal, state and municipal laws, rules and regulations to protect the general public health, safety and welfare without discrimination against or in favor of any person who makes a complaint or who is the subject of a complaint, based on race, religion, color, creed, national origin, sex, sexual orientation, marital status, age, or on any sensory, mental or physical disabilities, or because of a relationship to any public official.

(b) The emphasis of the Town's code enforcement program shall be to abate life, health and safety issues, to require proper maintenance of properties, and to seek compliance with

conditions in discretionary land use approvals. Alleged violations brought to the attention of staff shall be investigated quickly and shall be resolved fairly and equitably.

(c) This policy statement is directory, not mandatory.

[*History:* formerly § 1.11.130, ORD. 494, 9/11/96; ORD. 638, 12/14/05; ORD. 710, 9/12/12]

#### **2.01.040 Purpose and Intent.**

The purpose and intent of the regulations contained herein are as follows:

(a) To define as public nuisances and violations those conditions which constitute visual blight or which could result in conditions which are harmful or deleterious to the public health, safety and welfare;

(b) To develop regulations that will promote the sound maintenance of property and the enhancement of the livability, community appearance, and the social, economic and environmental conditions of the community;

(c) To ensure that all property improvements and land and other uses permitted by the Town pursuant to the Colma Municipal Code, are maintained in compliance with all applicable laws, rules and regulations, and, where applicable, within the parameters of the applicable land use entitlement and conditions of approval;

(d) To establish guidelines and procedures for the abatement of nuisances in a manner that affords due process and procedural guarantees to affected property owners and tenants;

(e) To provide for the administration and enforcement of the Colma Municipal Code through an administrative process where possible; and

(f) To recover Town costs incurred in the abatement of violations.

[*History:* formerly § 1.11.140, ORD. 494, 9/11/96; ORD. 601, 6/25/03; ORD. 630, 5/11/2005; ORD. 638, 12/14/05]; ORD. 658, 6/13/07; ORD. 710, 9/12/12]

#### **2.01.050 Definitions.**

As used in this Subchapter:

*Public nuisance* includes anything which is declared by the City Council to be or likely to become injurious to health or safety or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstruct the free passage, accessibility, or use, in the customary manner, of any public park, square, street or highway; and includes a condition of visual blight. Enumeration of such nuisances in Section 2.01.060 shall not be deemed exclusive.

*Visual blight* means any unreasonable or unlawful condition or use of premises or of building exterior which by reason of its appearance as viewed from public street or from neighboring premises, is detrimental to the property of others.

[History: formerly § 1.11.150, ORD. 494, 9/11/96; ORD. 638, 12/14/05; ORD. 710, 9/12/12]

## **2.01.060 Public Nuisance Conditions.**

It is a public nuisance for any person owning, leasing, renting, occupying or having charge of any property within the city to allow on such property or maintain any one or more of the following conditions or activities:

- (a) Land in such topography, geology or configuration (whether in natural state or as a result of grading operations, excavation or fill) which causes erosion, subsidence, or surface water drainage problems of such magnitude as to be injurious or potentially injurious to the public health, safety and welfare or to adjacent properties;
- (b) Buildings or other structures which are abandoned, partially destroyed, partially constructed or allowed to remain unreasonably in a state of partial construction;
- (c) The failure to close, by means acceptable to the Code Enforcement Officer, all doorways, windows and other openings into vacant structures;
- (d) Buildings, walls, fences, driveways, sidewalks, walkways, parking areas or other improvements to real property which are so defective, unsightly, deteriorated or in disrepair that the same causes depreciation of the values of surrounding property or is materially detrimental to nearby properties and improvements;
- (e) Broken windows constituting hazardous conditions or inviting trespassers and malicious mischief;
- (f) Overgrown vegetation that is:
  - (1) Likely to harbor rats, vermin or other nuisances,
  - (2) Causing detriment to neighboring properties,
  - (3) Causing or adding to a fire hazard,
  - (4) Hanging over public sidewalks
- (g) Dead, decayed, diseased or hazardous trees, weeds, and other vegetation:
  - (1) Constituting a danger to public health, safety and welfare, or
  - (2) Detrimental to nearby property, or
  - (3) Causing or adding to a fire hazard;
- (h) Pools, ponds and excavations, which are not properly marked and fenced off, and could pose a danger to children or other members of the public;

- (i) Neglected machinery that is not properly stored or fenced off so as to prevent illicit use by children or other members of the public;
- (j) The accumulation or storage of junk, including tires, lumber, household appliances or parts thereof, inoperable vehicles, or parts thereof, furniture, sinks, toilets, cabinets or other household fixtures, equipment or parts thereof, rubbish, garbage, debris or salvage materials, which constitute a fire hazard or safety hazard and/or are stored or accumulated in such a manner as to constitute visual blight or to be visible from a public street, alley or adjoining property;
- (k) Packing boxes, lumber, trash, dirt and other debris deposited for unreasonable periods either inside or outside buildings, visible from the street or nearby property which constitutes visual blight or is offensive to the senses or is detrimental to nearby property values;
- (l) Heavy commercial vehicles, construction equipment or machinery of any type or description parked or stored without a permit on property where it is readily visible to the general public, except while excavation, construction or demolition operations covered by an active building permit are in progress on the subject property or on adjoining property;
- (m) Improper maintenance of signs on property relating to uses no longer conducted or products no longer sold on property;
- (n) Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage, accessibility, or use, in the customary manner, of any public park, square, street, or highway.
- (o) Any property maintained in such a manner as to result in substantial amounts of gases, oil, or hazardous materials flowing onto public rights-of-way or accumulating on paved surfaces, soil, buildings, walls or fences;
- (p) Property maintained so as to establish a prevalence of depreciated values, impaired investments, and social and economic maladjustments to such an extent that the capacity to pay taxes is reduced and tax receipts from such particular area are inadequate for the cost of public services rendered therein;
- (q) Any automobile service station or automotive repair facility which has been closed, vacant or inoperative for a period exceeding sixty days;
- (r) Specialty structures which have been constructed for a highly specific single use only, and which are not enclosed or shielded, and which are unfeasible to convert to other uses, and which are abandoned, partially destroyed or are permitted to remain in a state of partial destruction or disrepair, for over one year, such as, but not limited to: greenhouses, tanks for gas or liquid, lateral support structures and bulkheads, utility high-voltage towers and poles, utility high-rise support structures, electronic transmitting antennas and tower, structures which support or house mechanical and utility equipment and are located above the roof lines of existing buildings, high-rise freestanding chimneys and smokestacks, recreational structures such as tennis courts and cabanas, and all other specialty structures not listed in this subsection but determined to be a specialty structure by the city;

(s) Presence of abandoned, dismantled, wrecked or inoperable motor vehicles, motorcycles, recreational vehicles, trailers, campers, boats or parts thereof, except:

(1) When completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property, or

(2) When stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed vehicle dealer, a junk dealer, or when such storage or parking is necessary to the operation of a lawfully conducted business or commercial enterprise.

(3) (Abandoned vehicles enforcement proceeding is treated in more detail in Chapter Six, Subchapter Four of the code, and such proceeding is an alternative to, or in conjunction with, the proceedings set forth in this subchapter.)

(t) Obstruction or encroachment of any public property, including but not limited to any street, easement, right-of-way, alley, highway, right-of-way, park, building, or other land dedicated to public use;

(u) Causing, maintaining or permitting graffiti (as that term is defined in the California Government Code): (1) to remain on exterior walls or facades of any building, fence, wall, or other structure of whatever nature; or (2) to remain upon the exterior of any motor vehicle, van or truck which is parked on public streets or driveways or is otherwise visible to the public;

(v) Storage of hazardous materials in such a manner as to be injurious or potentially injurious to the public health, safety and welfare or to adjacent properties;

(w) The use, in any residential zoning district or residential planned development district of the Town, of barbed wire, concertina wire, razor-cut wire or other such similar fencing material in a dangerous or unsightly fashion;

(x) Stacking or storage of any combustible material, including but not limited to wood, firewood, and any material which would increase or may cause an increase of the hazard or menace of fire, in the front yard or side yards. Stacking or storage may be done only in the rear yard at least three feet from any and all sides of a habitable building;

(y) Any condition recognized in law or in equity as constituting a public nuisance, or any condition existing on property which constitutes visual blight;

(z) A violation of any provision of, or condition of approval imposed in connection with, a lease, permit, license, franchise, agreement, certificate or other entitlement issued by the Town of Colma;

(aa) A violation of any obligation or condition set forth in any agreement recorded with the County Recorder, such as Covenants, Conditions and Restrictions (CC&R's), for which the Town of Colma is a direct or third-party beneficiary;

(bb) A violation of any provision of applicable law, including, without limitation, the Colma Municipal Code, or any county, state or federal law. Except as otherwise provided in the Colma

Municipal Code, every act or condition prohibited or declared unlawful by this Code, and every failure or omission to act as required by this Code is a violation of this Code.

[*History:* formerly § 1.11.210, ORD. 494, 9/11/96; ORD. 601, 6/25/06; ORD. 638, 12/14/05; ORD. 710, 9/12/12]

### **2.01.070 Responsibility for Proper Property Maintenance.**

(a) Every owner of real property within the Town is required to maintain such property in a manner so as not to violate the provisions of this subchapter and such owner remains liable for violations thereof regardless of any contract or agreement with any third-party regarding such property.

Every occupant, lessee, or holder of any interest in real property, other than as owner of that real property, is required to maintain such property in the same manner as is required of the owner by Section 2.01.070(a), and the duty imposed by Section 2.01.070(a) on the owner of that property shall in no instance relieve those persons herein referred to from that duty.

[*History:* formerly § 1.11.212, ORD. 494, 9/11/1996; ORD. 601, 6/25/2003; ORD. 638, 12/04/05; ORD. 710, 9/12/12]

### **2.01.080 Declaration of Public Nuisance.**

Each condition described in Section 2.01.060 is hereby declared to be a public nuisance, subject to abatement pursuant to the procedures set forth in this subchapter, including, without limitation by rehabilitation, demolition or repair. The procedures for abatement set forth in this subchapter shall not be exclusive and shall not in any manner limit or restrict the Town from abating public nuisances in any other manner provided by law.

[*History:* formerly 1.11.214, ORD. 494, 9/11/96; ORD. 601, 6/25/2003; ORD. 638, 12/04/05; ORD. 710, 9/12/12]

### **2.01.090 Violations -- Misdemeanor or Infraction, and Civil Fine.**

(a) Every person who violates, creates, maintains or permits the existence of a public nuisance shall be guilty of a separate and distinct offense for each and every day, or any portion thereof, of which such public nuisance exists or is permitted to exist by such person, and shall be punishable accordingly.

(b) Every person who violates, creates, maintains or permits the existence of a violation of, Section 2.01.060 of this subchapter shall be guilty of a misdemeanor, unless the City Attorney determines that the violation should be prosecuted as an infraction, pursuant to Colma Municipal Code Section 1.05.010 et seq.

(c) The Town may assess administrative penalties in the amounts set forth in Section 1.05.020(c) or (d) of the Colma Municipal Code for every violation of Section 2.01.060 of this subchapter by issuing an Administrative Citation pursuant to the procedures set forth in this subchapter. Administrative penalties assessed by an Administrative Citation shall be payable directly to the Town of Colma, Citations c/o Finance Department, 1198 El Camino Real, Colma, CA 94014.

(d) The remedies in this ordinance shall be cumulative.

[History: formerly § 1.11.216, ORD. 494, 9/11/96; ORD. 601, 6/25/03; ORD. 638, 12/14/05; ORD. 710, 9/12/12]

### **2.01.100 Code Enforcement Officer.**

(a) The City Manager shall appoint a Code Enforcement Officer for the Town of Colma. The Code Enforcement Officer is authorized to request the assistance of the Building Official, Fire Marshal, Police Chief and any other City officials or Departments that he or she deems necessary to assist in investigations.

(b) The Code Enforcement Officer is authorized to write and issue written Administrative Citations for every violation of Section 2.01.060 of this subchapter.

[History: formerly § 1.11.218, ORD. 494, 9/11/96; ORD. 638, 12/04/05; ORD. 710, 9/12/12]

### **2.01.110 Inspections.**

(a) The City Manager, Code Enforcement Officer, Building Official, any Colma peace officer, and any other person specifically selected by the City Manager to inspect for code violations, are each authorized to enter upon any property or premises to ascertain whether the provisions of this Code or applicable state codes are being obeyed, and to make any examinations and surveys as may be necessary in the performance of their enforcement duties. Such examinations and surveys may include, without limitation, the taking of photographs, samples or other physical evidence. All inspections, entries, examinations and surveys shall be done in a reasonable manner. If an owner, occupant or agent of private property refuses to give permission to enter the property in order to inspect it, the Code Enforcement Officer, or other official, may seek an inspection warrant pursuant to the procedures provided for in California Code of Civil Procedure Sections 1822.50 through 1822.57.

(b) The Code Enforcement Officer shall keep an itemized report of all costs incurred by the Town to abate any public nuisance or collect any related penalties or costs so that these costs may be charged to the violator, and/or against the property in the event of nonpayment, in accordance with this subchapter.

[History: formerly § 1.11.220, ORD. 494, 9/11/96; ORD. 638, 12/14/05; ORD. 710, 9/12/12]

### **2.01.120 Method of Service.**

(a) *Manner of Service.* The Code Enforcement Officer shall serve a Notice of Violation under section 2.01.130, an Administrative Citation under section 2.01.160, and an Administrative Hearing Officer's Order under section 2.01.250 (collectively referred to herein as the "Notice") on each person accused of violating this Code and on each person who occupies, leases, rents, or is in charge of the property where the violation occurred, by one of the methods set forth in the following paragraphs:

(1) *Personal Delivery.* A Notice may be served by personal delivery of a copy of the Notice to the person to be served. Service of a summons in this manner is deemed complete at the time of such delivery. The date upon which personal delivery is made shall be entered on or affixed to the face of the copy of the summons at the time of its delivery. However, service of a summons without such date shall be valid and effective.

(2) *Leaving with Another Person at Business or Residence.* If a copy of the Notice cannot with reasonable diligence be personally delivered to the person to be served, as specified in paragraph (a), a Notice may be served by leaving a copy of the Notice at the person's dwelling house, usual place of abode, usual place of business, or usual mailing address other than a United States Postal Service post office box, in the presence of a competent member of the household or a person apparently in charge of his or her office, place of business, or usual mailing address other than a United States Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the Notice by first-class mail, postage prepaid to the person to be served at the place where a copy of the Notice were left. Service of a Notice in this manner is deemed complete on the 10th day after the mailing.

(3) *Service on Owner(s).* If any owner of the affected property is not served under paragraphs (1) or (2), the Code Enforcement Officer shall also serve a Notice on that owner in the same manner as set forth in paragraphs (1) or (2), except that if the owner of record after diligent search cannot be found, the Notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of 10 days and publishing it in a newspaper of general circulation published in San Mateo County each day on which the newspaper is published for 10 days.

(b) *Personal Service on an Organization*

(1) *Service on Corporation.* A Notice may be served on a corporation by delivering a copy of the Notice by any of the methods prescribed by California Code of Civil Procedure, including but not limited to the following methods:

(A) To the person designated as agent for service of process as provided by any provision in section 202, 1502, 2105, or 2107 of the Corporations Code; or

(B) To the president, chief executive officer, or other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a controller or chief financial officer, a general manager or a person authorized by the corporation to receive service of process.

(2) *Service on unincorporated association, general or limited partnership.* A Notice may be served on an unincorporated association (including a partnership) by delivering a copy of the Notice:

(A) If the association is a general or limited partnership, to the person designated as agent for service of process in a statement filed with the Secretary of State or to a general partner or the general manager of the partnership; or



(B) If the association is not a general or limited partnership, to the person designated as agent for service of process in a statement filed with the Secretary of State or to the president or other head of the association, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a general manager, or a person authorized by the association to receive service of process.

(3) *Service on business organization, form unknown.* A Notice may be served on a business organization, form unknown, by leaving a copy of the Notice during usual office hours with the person who is apparently in charge of the office of that business organization, and by thereafter mailing a copy of the Notice by first-class mail, postage prepaid, to the person to be served at the place where a copy of the Notice was left. Service of a Notice in this manner is deemed complete on the 10th day after the mailing. Service of a Notice pursuant to this paragraph is not valid for a corporation with a registered agent for service of process listed with the Secretary of State.

(c) *Service of Other Notices and Documents.* All other notices and documents required by this subchapter to be served on a party may be served by mail to the party on whom it is to be made at the address last given by the person on a document filed with the Code Enforcement Officer. However, once a party appears in an administrative matter through an attorney, service shall be made by mail on the respondent's attorney.

(d) *Service by Mail.* To serve any document by mail, the document shall be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, at the address specified in this Municipal Code. Service is complete at the time of the deposit.

(e) *Actual Notice Not Required.* The failure of any person to receive actual notice required under this paragraph shall not affect the validity of any proceedings taken under this subchapter.

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

[*History:* formerly 1.11.222, ORD. 494, 9/11/96; ORD. 638, 12/14/05; ORD. 710, 9/12/12; ORD. 722, 6/12/13]

[*References:* GOV'T CODE § 38773.1; CCP § 415.10, 415.20, 415.30, 415.95, 416.10, 416.40]

## ***Division 2. Compliance Procedures***

### **2.01.130 Notice of Violation; Time to Correct.**

(a) Whenever the Code Enforcement Officer determines that a violation of Section 2.01.060 of this subchapter is occurring or exists, the Officer may issue a written Notice of Violation to any person responsible for the violation.

(b) The Notice of Violation issued pursuant to this subchapter shall contain the following information:

- (1) The date, approximate time, and address (or definite description of the location where no address exists) of the violation(s) observed by the Code Enforcement Officer;
- (2) The section(s) of this Code or applicable federal or state code(s) violated and a description of the violation(s);
- (3) The actions required to correct the violation(s) and the date by which the correction must be completed;
- (4) A statement explaining that if the violation is not corrected by the correction date set forth in the Notice of Violation to the satisfaction of the Code Enforcement Officer, the Town may pursue any remedy set forth in Section 2.01.090 of this subchapter, including issuance of an Administrative Citation, carrying administrative penalties in the amounts set forth in this subchapter, which will begin to accrue immediately on the date the Administrative Citation is issued, and continue to accrue on a daily basis thereafter until the violation is corrected, may be issued; and
- (5) The name and signature of the Code Enforcement Officer, and the date of issuance.

[History: formerly 1.11.224, ORD. 494, 9/11/96; ORD. 638, 12/14/05; ORD. 710, 9/12/12]

#### **2.01.140 Failure to Correct.**

(a) If the Code Enforcement Officer determines that all violations have been corrected within the time specified in the Notice of Violation, no further action shall be taken.

(b) In the event a person shall fail, neglect or refuse to comply with the Notice of Violation, the Code Enforcement Officer may:

- (1) Refer the violation to the city attorney for legal action, including the institution of a civil or criminal lawsuit;
- (2) Record a Notice of Violation against the Property on which the violation exists;
- (3) Issue an Administrative Citation, assessing penalties against the violator in accordance with this subchapter; or
- (4) Seek an abatement warrant pursuant to the procedures provided for in California Code of Civil Procedure Sections 1822.50 through 1822.57, authorizing the Town to enter onto the property where the violation exists and abate the nuisance.
- (5) Use of procedures set forth in this subchapter shall be at the sole discretion of the Town, and use of one procedure shall not preclude use of any other procedure set forth in this subchapter or any remedy otherwise available to the Town in law or equity.

[History: formerly 1.11.226, ORD. 494, 9/11/96; ORD. 638, 12/14/05; ORD. 710, 9/12/12]

**2.01.150 Recordation of Notice of Violation.**

(a) The Town may cause a notice of violation, Administrative Citation, or any other written instrument relating to abatement proceedings against a property to be recorded against the property on which the code violation or nuisance exists, pursuant to Government Code Section 38773.5(e). The notice shall state that there is a pending action involving the property, include contact information for the property owner or other violator, and shall contain sufficient information to identify the code violations or the nuisance conditions that are present on the property.

(b) An owner of a property against which a notice has been recorded pursuant to this section may appeal the decision to record the notice in accordance with section 1.02.270 of the Colma Municipal Code.

[History: formerly § 1.11.228, ORD. 494, 9/11/96; ORD. 638, 12/14/05; ORD. 710, 9/12/12]

**2.01.160 Administrative Citation.**

(a) An Administrative Citation, assessing administrative penalties, and issued pursuant to this subchapter shall contain the following information:

(1) The date, approximate time, and address (or definite description of the location where no address exists) of the violation(s) observed by the Code Enforcement Officer;

(2) The section(s) of this Code or applicable federal or state codes violated and a description of the violation(s);

(3) The amount of the administrative penalty for the violation, or a reference to Section 1.05.020 of the Colma Municipal Code, the date by which the penalty is due and payable to the Town, and an explanation of how the fine shall be paid;

(4) An explanation that administrative penalties begin to accrue on the date of issuance of the Administrative Citation and continue to accrue on a daily basis until the violation(s) is corrected as set forth in the Notice of Violation and to the satisfaction of the Code Enforcement Officer, and an explanation that administrative costs may also be assessed against the violator in the Town's discretion in accordance with Section 2.01.190;

(5) The process for appealing the issuance of the Administrative Citation, including how and the time within which the to do so; and

(b) The name and signature of the Code Enforcement Officer, and the date of issuance.

[History: formerly § 1.11.230, ORD. 494, 9/11/96; ORD. 638, 12/14/05; ORD. 710, 9/12/12]

## **2.01.170 Administrative Penalties.**

(a) *Accrual of Penalties.* Administrative penalties shall immediately begin accruing on the date the Administrative Citation is issued and shall continue to accrue on a daily basis thereafter until each and every violation is corrected in compliance with the terms set forth in the Administrative Citation.

(b) *Penalties for Infractions.* Except where otherwise provided in the Code, the amount of the administrative penalty imposed by an Administrative Citation for any violation that would otherwise be prosecuted as an infraction pursuant to this subchapter shall not exceed the amounts set forth in section 1.05.020 of the Colma Municipal Code as penalties for an infraction.

(c) The Code Enforcement Officer, in its discretion, may impose an administrative penalty in some lesser amount than those set forth in Section 1.05.020(c) of (d) of the Colma Municipal Code for any violation that would otherwise be prosecuted as an infraction, taking some or all of the following factors into consideration, in determining the amount of the penalty:

- (1) The duration of the violation;
- (2) The frequency, recurrence and number of violations, related or unrelated, by the same violator;
- (3) The seriousness of the violation;
- (4) The good faith efforts of the violator to come into compliance;
- (5) The economic impact of the penalty on the violator;
- (6) The impact of the violation on the community; or
- (7) Such other factors as justice may require.

(d) *Penalties for Misdemeanors.* Except where otherwise provided in the Code, or where otherwise required by law, any violation of this subchapter that would otherwise be prosecuted as a misdemeanor shall be punishable by a fine not to exceed one thousand dollars (\$1,000.00) per day, or by imprisonment in the County jail for up to six (6) months, or by both such fine and imprisonment.

(e) The Code Enforcement Officer may, in his or her sole discretion, suspend the imposition of administrative penalties for any period of time during which:

- (1) The violator has filed for necessary permits;
- (2) Such permits are required to achieve compliance; and

(f) Such permit applications are actively pending before the Town, state or other appropriate governmental agency.

[History: formerly § 1.11.232, ORD. 494, 9/11/96; ORD. 638, 12/14/05; ORD. 710, 9/12/12; ORD. 722, 6/12/13]

**2.01.180 Satisfaction of Administrative Citation.**

- (a) Administrative penalties assessed by an Administrative Citation are due and shall be paid to the Town no later than 30 days from the date that the Administrative Citation or order is issued, unless some other date is specified in the Citation.
- (b) Upon receipt of an Administrative Citation, the person responsible for the violation shall do the following:
  - (1) Correct the violation(s) as set forth in the Administrative Citation; and
  - (2) Pay the administrative penalty due and owing to the Town on or before the due date for such penalty.
- (c) If the violator gives written notice to the Code Enforcement Officer that the violation has been corrected as set forth in the Administrative Citation and the Code Enforcement Officer finds that the violation has been so corrected, the Code Enforcement Officer shall deem the date the written notice was postmarked or personally delivered to the Code Enforcement Officer or the date of compliance, whichever first occurred, to be the date the violation was corrected. If no written notice is provided to the Code Enforcement Officer, the violation will be deemed corrected on the date that the violation is corrected as set forth in the Administrative Citation to the satisfaction of the Code Enforcement Officer.
- (d) Payment of the administrative penalty shall not excuse or discharge the failure to correct the violation(s) nor shall it bar further enforcement action by the Town.
- (e) If the person responsible for the violation(s) fails to correct the violation(s) set forth in the Administrative Citation, subsequent administrative citations may be issued for the same violation(s), or the Town may take any other action it deems necessary to gain compliance.

[History: formerly § 1.11.234, ORD. 494, 9/11/96; ORD. 638, 12/14/05; ORD. 710, 9/12/12]

**2.01.190 Administrative and Abatement Costs.**

- (a) *Administrative Costs for Issuance of Citation.* An Administrative Citation may include a charge to recover the administrative costs incurred by the Town in its attempt to have the violation corrected and in issuing the Notice of Violation and Administrative Citation. The amount of the charge shall include, without limitation, the costs of staff time (including attorneys fees) incurred to investigate the violation, issue the Notice of Violation and Administrative Citation, and otherwise gain compliance from the violator, as well as the costs of preparing, printing and mailing all correspondence with the violator, including the Notice of Violation and Administrative Citation, and any other direct costs incurred by the Town in issuing the Notice and Citation.

(b) *Administrative Costs for Collection of Administrative Penalty.* If an administrative penalty is not paid within the time limit specified in the Administrative Citation, an administrative cost may be added to the administrative penalty already due and owing to recover the administrative costs related to gaining compliance and collecting any unpaid penalty. The amount of the charge shall include the costs of staff time (including attorney fees) recover the penalty, the costs of preparing, printing and mailing related notices and correspondence to the violator demanding payment and any other direct costs incurred by the Town in collecting the unpaid penalty.

(c) *Abatement Costs.* If a violation is abated by the Town pursuant to this subchapter, the costs of abatement, shall be billed to the property owner and be due and payable within 30 days of the date the billing is mailed to the property owner. The costs of abatement shall include, but not be limited to, direct and indirect personnel costs, including attorneys fees and court costs incurred in abating the violation, the costs of all materials required to do the abatement, the cost to prepare all necessary or required notices, specifications, contracts and other documentation and all other costs incurred by the Town to complete the abatement.

[History: formerly § 1.11.236, ORD. 494, 9/11/96; ORD. 638, 12/14/05; ORD. 701, 9/12/12]

#### **2.01.200 Delinquent Payments.**

(a) *Late Fee.* A late fee of ten percent (10%) of any unpaid administrative penalty, administrative cost or abatement cost, shall be levied on the amount unpaid on the last day of each month after the due date.

(b) *Interest.* In addition to the late fee described above, delinquent fines accrue interest at the rate of 1% per month, exclusive of penalties, from the due date.

(c) *Collection of Delinquent Penalties and Costs.* The Town may pursue any legal remedy to collect an overdue administrative penalty, administrative cost, or abatement costs including, but not limited to, recording the debt as a personal obligation or property lien as described in Division 4 of this subchapter.

(d) *Issuance of Permits.* If any administrative penalty assessed in connection with an Administrative citation issued because the violator lacked a required permit is delinquent, the Town may withhold issuance of the permit until the delinquent fine, and any applicable penalties and interest, have been paid in full.

[History: formerly § 1.11.238, ORD. 494, 9/11/96; ORD. 638, 12/14/05; ORD. 710, 9/12/12]

#### **2.01.210 Summary Abatement to Protect Health, Safety or Welfare.**

(a) If the Code Enforcement Officer, or another Town employee designated by the City Manager, determines that conditions caused by a violation of Section 2.01.060 of this subchapter are so severe that they present an immediate danger to the health, safety or welfare of person(s) or property or to the general welfare of the Town unless immediately corrected, and that there is not time to seek a court order or administrative order granting the

Code Enforcement Officer permission to abate the violation, the violation may be summarily abated without compliance with this subchapter. Summary abatement shall include only such actions as are required to alleviate those conditions that present the immediate health and/or safety concerns, and may include, without limitation, boarding of windows, doors, and other openings; removal of junk and debris; and/or securing the perimeter of the property.

(b) If summary abatement is performed, the Town shall provide the party responsible for the nuisance with a post-abatement hearing to contest the validity of the summary abatement as soon as practicable after the summary abatement occurs pursuant to the procedures for administrative hearing set forth in Colma Municipal Code, Chapter One, Subchapter Twelve, sections 1.12.010 et seq., or whatever procedures the Town determines should be applicable in the interest of justice.

The Code Enforcement Officer shall document the health and and/or safety conditions that require summary abatement; all corrective measures taken in the abatement; and the costs thereof.

[*History:* formerly § 1.11.240, ORD. 494, 9/11/96; ORD. 638, 12/14/05; ORD. 710, 9/12/12]

### ***Division 3. Contesting and Appealing Administrative Citations and Fines***

#### **2.01.220 Request for Appeal.**

Any recipient of an Administrative Citation may contest the Citation by filing a Notice of Appeal and Request for Administrative Hearing with the City Clerk accompanied by the specified filing fee as set by resolution of the City Council, no later than fifteen (15) calendar days from the date of issuance of the Administrative Citation. The Notice of Appeal and Request for Administrative Hearing shall include a detailed written explanation of all grounds for the appeal. The appellant may not raise any grounds other than those specified in the Notice of Appeal and Request for Hearing at the appeal hearing. A recipient of an Administrative Citation who fails to file an appeal in accordance with the provisions of the section shall be deemed to have waived his or her rights to an appeal hearing and to have failed to exhaust his or her administrative remedies.

[*History:* formerly § 1.11.242, ORD. 494, 9/11/96; ORD. 638, 12/14/05; ORD. 710, 9/12/12]

#### **2.01.230 Administrative Hearing.**

Upon receipt of a Notice of Appeal and Request for Administrative Hearing, the Town shall initiate the process for holding an administrative hearing set forth in Colma Municipal Code, Chapter One, Subchapter Twelve, sections 1.12.010 et seq. The appointment of the Hearing Officer and the conduct of the appeal hearing shall be in accordance with the procedures of that subchapter.

[*History:* formerly § 1.11.244, ORD. 494, 9/11/96; ORD. 638, 12/14/05; ORD. 710, 9/12/12]

### **2.01.240 Failure To Exhaust Administrative Remedies.**

The appeal hearing on an Administrative Citation serves to provide a full opportunity to each person subject to an Administrative Citation to object to the determination that a violation has occurred, that the violation continues to exist, and the remedy, and the Hearing Officer's decision shall be final. In addition, the failure of any person who is subject to an Administrative Citation, to appear at the appeal hearing shall constitute a failure to exhaust administrative remedies.

[*History:* formerly § 1.11.246, ORD. 494, 9/11/96; ORD. 638, 12/14/05; ORD. 710, 9/12/12]

### **2.01.250 Findings and Order.**

(a) At the place and time set forth in the notice of appeal hearing, the Hearing Officer shall conduct a hearing on the Administrative Citation.

(b) No later than thirty (30) calendar days after the conclusion of the appeal hearing, unless otherwise stipulated by the parties, the Hearing Officer shall issue a written administrative order to uphold, modify or cancel the Administrative Citation, which notice shall include the hearing officer's determination regarding:

(1) The existence of the violation; and

(2) The failure of the violator or property owner to take required corrective action within the required time period.

(c) The administrative order shall include the reasons for the hearing officer's decision which may be based on any or all of the following factors:

(1) The duration of the violation;

(2) The frequency, recurrence and number of violations, related or unrelated, by the same violator;

(3) The seriousness of the violation;

(4) The good faith efforts of the violator to come into compliance;

(5) The economic impact of the penalty on the violator;

(6) The impact of the violation on the community; or

(7) Such other factors as justice may require.

(d) If the Hearing Officer determines that the Administrative Citation should be upheld, the Hearing Officer's administrative order may include:

(1) An order to correct the violation, including a schedule for correction and re-inspection for compliance, where appropriate;



(2) A confirmation or reduction of the penalties imposed by the Administrative Citation, and a payment schedule for any unpaid administrative penalties, where appropriate;

(3) Administrative costs as provided in Section 2.01.190, as well as the actual costs of the appeal hearing (e.g., payment of the Hearing Officer, any cost for the hearing facility and any other related costs), and any and all direct costs incurred by the Town to prepare for and attend the hearing, including, but not limited to, costs of printing and mailing the notice of hearing and any related documents and correspondence; staff costs, including attorneys' fees, incurred in investigating, preparing for and attending the hearing; and costs for all re-inspections necessary to enforce the Hearing Officer's order. The Hearing Officer may establish a payment schedule for any unpaid administrative costs, where appropriate; and

(4) Any other remedy provided in this Code.

(e) If the Hearing Officer finds that no violation has occurred or that the Administrative Citation should not be upheld for some other reason, the Hearing Officer's administrative order shall specify those facts supporting his conclusion, and may terminate all further actions related to the Administrative Citation.

(f) The Hearing Officer, in its discretion, may suspend the imposition of applicable penalties for any period of time during which:

(1) The violator has filed for necessary permits;

(2) Such permits are required to achieve compliance; and

(g) Such permit applications are actively pending before the city, state or other appropriate governmental agency.

[*History*: formerly § 1.11.248, ORD. 494, 9/11/96; ORD. 638, 12/14/05; ORD. 710, 9/12/12; ORD. 722, 6/12/13]

### **2.01.260 Right of Judicial Review.**

(a) A person contesting the order of the Hearing Officer's issued pursuant to this subchapter may seek review in the San Mateo Superior Court by filing an appeal pursuant to Section 53069.4(b) of the California Government Code within 20 days after service of the Hearing Officer's order, or may file a petition for writ of mandate pursuant to Section 1094.5 or 1094.6 of the California Code of Civil Procedure.

(b) The procedure and fees for an appeal or writ proceeding conducted pursuant to this Section shall be as set forth in California Government Code Section 53069.4(b) and (d).

If no notice of appeal of the Hearing Officer's order is filed with the Superior Court within the period set forth in this Section, the order or decision shall be deemed final and confirmed.

[*History*: formerly § 1.11.250, ORD. 494, 9/11/96; ORD. 638, 12/14/05; ORD. 710, 9/12/12]

### **2.01.270 Report of Compliance after Administrative Order.**

If the Code Enforcement Officer determines that compliance has been achieved after an Administrative Citation or Hearing Officer's order has been issued, the Code Enforcement Officer shall file a report with the City Manager indicating that compliance has been achieved ("Report of Compliance").

[History: formerly § 1.11.252, ORD. 494, 9/11/96; ORD. 638, 12/14/05; ORD. 710, 9/12/12]

### **2.01.280 Compliance Dispute.**

(a) If the Code Enforcement Officer does not file a Report of Compliance, despite a request from a violator or property owner who believes that compliance has been achieved to do so, the violator or property owner may request a compliance hearing before the Hearing Officer by filing a request for an administrative hearing with the City Clerk.

(b) The administrative hearing shall be noticed and conducted in the same manner as an appeal hearing on an Administrative Citation, as provided in sections 2.01.220 and 2.01.230 of this subchapter.

(c) The Hearing Officer shall determine if compliance has been achieved and, if so, when it was achieved.

[History: formerly § 1.11.310, ORD. 494, 9/11/96; ORD. 638, 12/14/05; ORD. 710, 9/12/12; ORD. 722, 6/12/13]

## ***Division 4 – Enforcement; Recovery of Administrative Penalties and Costs and Abatement Costs***

### **2.01.290 Failure to Comply With Administrative Citation or Hearing Officer's Administrative Order.**

At its discretion the Town may pursue any and all legal and equitable remedies, including, without limitation, those provided for in this Division, for the recovery of administrative penalties, administrative costs or abatement costs owed to the Town. Pursuit of one remedy does not preclude the pursuit of any other remedies until the total debt has been recovered. Any property owner or violator who fails to pay any administrative penalties, administrative costs or abatement costs owed to the Town shall be liable for the costs of any action brought by the Town to secure payment of the delinquent amount, including all court costs and attorneys fees.

[History: formerly § 1.11.320, ORD. 494, 9/11/96; ORD. 638, 12/14/05; ORD. 710, 9/12/12]

### **2.01.300 Obligation as Lien or Special Assessment.**

(a) Pursuant to California Government Code Sections 38773, 38773.1, and 38773.5, and any successor statutes, all administrative penalties, as well as all administrative costs and abatement costs incurred by the City to abate a nuisance, whether imposed by the Code

Enforcement Officer or Hearing Officer, pursuant to this subchapter in connection with real property that have not been timely paid in full, or been successfully challenged by a timely appeal or writ of mandate, may be made a lien or a special assessment against the real property on which the violation occurred in accordance with the procedures set forth in this Section.

(b) Prior to recording any lien or special assessment, the Code Enforcement Officer shall prepare and file with the City Manager a report stating the amounts due and owing. Thereupon, the City Manager shall fix a time and place for hearing the report and any protests or objections thereto. At least ten (10) days before the hearing date, the City Manager shall serve the property owner with a copy of the Code Enforcement Officer's report and a notice of the time and place of the hearing, and shall advise the owner that he or she may appear and protest any penalty, charge and/or cost contained in the report and that the penalties and costs may be made a lien or a special assessment against the real property on which the violation occurred. Such notice shall be served as provided in this Section 2.01.120 of this subchapter. The report and notice shall also be posted conspicuously on the subject property.

(c) Any person whose real property is subject to a lien or special assessment pursuant to this subchapter may file a written protest with the City Manager or may protest orally at the hearing. Each written protest or objection must contain a description of the property in which the protesting party is interested and the grounds of such protest or objection.

(d) At the time fixed for hearing, the City Manager shall consider the report and protests or objections by the violator or of the property owner potentially subject to the lien or special assessment. The City Manager may revise, correct or modify the report as the City Manager considers just. Thereafter, the City Manager shall make a written determination confirming, discharging or modifying the amount of the lien or special assessment. A copy of the written determination shall be served on the property owner in any manner provided for service in this subchapter within thirty (30) days of the hearing.

(e) The lien may be recorded as provided in section 2.01.310. Thereafter, the lien may be foreclosed and the property upon which it was recorded may be sold by the filing of a complaint for foreclosure in a court of competent jurisdiction and the issuance of a judgment to foreclose, as provided by law.

(f) Alternatively, the Town may elect to seek collection of the outstanding administrative penalties, administrative costs and abatement costs as a special assessment against the real property on which the nuisance existed. After recordation of the lien the Town shall provide a copy of the notice of recordation, proof of service and the recorded lien to the tax collector so that the tax collector can add the described special assessment payments to the next regular tax bill levied against the property and the special assessment shall be collected at the same time and in the same manner as ordinary municipal taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as are provided for ordinary municipal taxes, as set forth in Section 38773.5 of the Government Code. At the time of imposing the assessment, notice shall be given by certified mail to the property owner, if the property owner's identity can be determined from the county assessor's or county recorder's records. The notice shall specify that the property may be sold after three years by the tax collector for unpaid delinquent assessments. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice. The assessment may be

collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrance for value has been created and attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

(g) The lien may be foreclosed and the property upon which it was recorded sold, by the filing of a complaint for foreclosure in a court of competent jurisdiction, and the issuance of a judgment to foreclose.

(h) The Town may also elect to seek collection of the outstanding administrative penalties, administrative costs and abatement costs as a special assessment against the real property on which the nuisance existed. After recordation the lien the Town shall provide a copy of the notice of recordation, proof of service and the recorded lien to the tax collector so that the tax collector can add the described special assessment payments to the next regular tax bill levied against the property and the special assessment shall be collected at the same time and in the same manner as ordinary municipal taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as are provided for ordinary municipal taxes, as set forth in Section 38773.5 of the Government Code.

*[History: formerly § 1.11.330, ORD. 494, 9/11/96; ORD. 638, 12/14/05, ORD. 643, 4/12/06; ORD. 710, 9/12/12; ORD. 722, 6/12/13]*

### **2.01.310 Recording of Lien; Interest.**

(a) The lien shall not attach until the Code Enforcement Officer records a certificate listing unpaid administrative penalties, administrative costs and/or abatement costs with the Office of the County Recorder of San Mateo County, California. The certificate shall specify the amount of the lien or special assessment, the street address, legal description and assessor parcel's number of the parcel on which the lien or special assessment is imposed, and the name and address of the record owner of the parcel. Once recorded, the lien or special assessment shall have the force and effect and priority of a judgment lien governed by the provisions of Sections 697.340 of the California Code of Civil Procedure and may be extended as provided in Section 683.110 to 686.220, inclusive, of the California Code of Civil Procedure.

(b) Interest shall accrue on the principal amount of the judgment lien remaining unsatisfied pursuant to law.

(c) Any fees incurred by the Town for processing, recording of the lien or special assessment and providing notice to the property owner may be recovered by the Town as part of its foreclosure action to enforce the lien or special assessment.

*[History: ORD. 710, 9/12/12]*

### **2.01.320 Satisfaction of Lien.**

If payment in full is received by the Town for outstanding administrative penalties and costs, the City Clerk shall either record a notice of satisfaction, or provide the property owner or financial institution with a notice of satisfaction so they may record it, with the Office of the County Recorder. Such notice of satisfaction shall cancel the Town's lien or special assessment.

[History: ORD. 710, 9/12/12]

### **2.01.330 Personal Obligation.**

Instead of making administrative penalties, administrative costs or abatement costs owed to the Town a special assessment against the real property under this Division, or in addition thereto, the Town may make the costs the personal obligation of the property owner, tenant or other person creating, causing, committing or maintaining the nuisance. In such a case, all of the procedures for the attachment of a lien to real property set forth in this Division shall apply, except those specifically related to the assessment of the property.

[History: ORD. 710, 9/12/12]

### **2.01.340 Treble Damages.**

On entry of a second or subsequent civil or criminal judgment for abatement of a public nuisance within two years from the entry of the first judgment, the Town may seek an order requiring the property owner or other party creating the nuisance to pay treble the amount of the Town's costs incurred to abate the nuisance, except in cases under Health and Safety Code Section 17980.

[History: ORD. 710, 9/12/12]

## ***Division 5. - Criminal Enforcement***

### **2.01.350 Civil or Criminal Actions Available.**

(a) Nothing in this subchapter shall be deemed to prevent the Code Enforcement Officer or designee from instituting a civil or criminal action for any violation of this subchapter. The City Council authorizes the Code Enforcement Officer to issue criminal citations (notice to appear) for any violation of this subchapter of the Colma Municipal Code.

(b) The Town of Colma City Attorney's office is authorized to criminally prosecute and/or civilly enforce any violations set forth in (a) above.

(c) Any person convicted of a violation of this subchapter in a civil or criminal action shall be punished in accordance with subchapter 1-05 of this Code.

[History: ORD. 710, 9/12/12]

### **2.01.360 Attorneys Fees.**

Notwithstanding anything in this subchapter to the contrary, in any action or proceeding that arises out of or in connection with this subchapter, including, without limitation, a civil or criminal action or administrative hearing in connection with a violation of this subchapter, or a civil foreclosure action to enforce a lien or special assessment, the prevailing party in such action or proceeding shall be entitled to recover its reasonable attorneys fees from the other party. The amount of attorney fees awarded in such action or proceeding shall not exceed the amount of reasonable attorneys fees incurred by the Town in the action or proceeding.

*[History: ORD. 710, 9/12/12]*