ORDINANCE NO. 1132

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO AMENDING SAN ANSELMO MUNICIPAL CODE TITLE 1 (GENERAL PROVISIONS) TO ADD CHAPTER 6 (ADMINISTRATIVE CITATIONS) TO THE CODE

WHEREAS, the Town Council recognizes that Municipal Code violations impact the health, safety and quality of life in the Town and that the current tools available to the Town for abating those violations are insufficient; and

WHEREAS, California Government Code section 53069.4 authorizes the Town to adopt an ordinance allowing for the imposition of administrative fines and penalties for Code violations; and

WHEREAS, the Town Council desires to establish an administrative citation process that will add to the other remedies that the Town may pursue to address a violation of the Municipal Code; and

WHEREAS, the Town Council wishes to include safeguards in the administrative citation process to ensure that Town staff do not abuse their authority and that residents’ due process rights are protected; and

WHEREAS, at its meeting of January 22, 2019, the Town Council conducted a duly noticed public hearing and requested revisions to the draft ordinance presented at the meeting; and

WHEREAS, at its meeting of February 12, 2019, the Town Council conducted a duly noticed public hearing and finds the proposed change to the Municipal Code necessary and in the best interest of the community.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO DOES ORDAIN AS FOLLOWS:

SECTION 1: The Town Council finds and determines that the adoption of this ordinance, which is intended to add tools for abating Municipal Code violations, is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061 because it can be seen with certainty that there is no possibility that adoption of the ordinance may have a significant effect on the environment. (14 Cal. Code Regs. § 15061(3)).

SECTION 2: San Anselmo Municipal Code Title 1 (General Provisions), Chapter 6 (Administrative Citations) is adopted to read as follows:

1-6.01 – Purpose and Intent.
A. The Town Council has determined that the enforcement of the San Anselmo Municipal Code throughout the Town is an important public service and is vital to the protection of the public’s health, safety and quality of life. Although the Town has several options for abating nuisances under Title 1, Chapter 2 of the Code, the Town Council has determined
that there is a need for an additional tool for addressing Code violations.

B. It is the purpose and intent of the Town Council to afford due process of law to any person who is directly affected by an administrative citation, including notice and an opportunity to be heard upon request.

1-6.02 Definitions.
The following definitions shall apply in interpretation and enforcement of this chapter:

“Administrative hearing officer” shall mean any person appointed by the Town Manager or other appointing authority designated under this Code to preside at administrative hearings.

“Compliance order” shall mean an official notification, on a form meeting the criteria of this chapter, of violation of any provision of the Municipal Code. Compliance orders require correction of the violations they identify.

“Enforcement officer” shall mean any Town employee or agent of the Town authorized by the Town Manager to enforce any provision of this Code.

“Municipal Code,” and “Code,” shall mean the San Anselmo Municipal Code, including all pertinent provisions of state codes and regulations as adopted therein, enacted by the Town Council of the Town of San Anselmo.

“Person” shall mean any individual or legal entity, including but not limited to, a corporation, partnership, or trust.

“Responsible party” means each person committing the violation or causing a condition on a parcel of real property located within the Town of San Anselmo to violate the San Anselmo Municipal Code; each person who has an ownership interest in that property; and each person who although not an owner, nevertheless has a legal right or a legal obligation to exercise possession and control over that property. In the event the person who commits the violation or causes the violating condition is a minor, then the minor’s parents or legal guardian shall be deemed the responsible party. In the event the violation or violating condition is most reasonably attributable to a business and not to an employee, then that business, to the extent it is a legal entity such that it can sue and be sued in its own name, and each person who is an owner of that business shall each be deemed responsible parties. In the event that the person committing the violation has been directed to do so by the owner or person with control over the property, the owner or person with control over the property shall be the responsible person.

1-6.03 Compliance Order issuance.
A. When an enforcement officer observes a correctable, continuing violation of the Municipal Code creating no immediate danger to health or safety, the enforcement officer may issue a compliance order on a form approved by the Town Manager, to a responsible party.
B. A compliance order shall contain all of the following information:
   1. The date and location of the violation and the approximate time the violation occurred;
2. The Code section violated and a description of how the section was violated;
3. An order requiring correction of the violation within thirty (30) days of the date of the citation, or within such other reasonable time as the enforcement officer may determine;
4. The amount of the fine that can be imposed for the violation if the violation is not corrected within the correction period;
5. An order prohibiting continuation or repeated occurrence of the Code violation;
6. The name and signature of the citing enforcement officer and the date of issuance for the compliance order.
7. The name, address, and other identifying information of the responsible party.

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 party regarding the violations. If all violations 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 party(ies). Issuance of an administrative citation does not alter any obligation to comply fully with the compliance order.

1-6.04 Administrative Citation Issuance.
A. An enforcement officer may issue an administrative citation to any responsible party on a form approved by the Town Manager, to a responsible party when all violations in a compliance order have not been corrected within the time set forth in the compliance order or when an enforcement officer observes one of the following:
1. A violation of the Municipal Code that creates an immediate danger to health or safety.
3. A violation of Municipal Code Section 4-7.203(c) (Construction Noise).

B. Each administrative citation shall be in writing and shall include, without limitation, all of the following information:
1. The date and location of the violation and the approximate time the violation occurred;
2. The Code section violated and a description of how the section was violated;
3. The amount of the fine imposed for the violation;
4. A description of the fine payment process, including a description of the time within which and the place where the fine shall be paid;
5. An order prohibiting continuation or repeated occurrence of the Code violation;
6. A description of the administrative citation review process, including the time within which to contest the administrative citation and the place from which to obtain a request for hearing form to contest the administrative citation;
7. The name and signature of the citing enforcement officer and the date of issuance for the administrative citation; and
8. The name, address, and other identifying information of the responsible party.

1-6.05 Notices.
A. All notices, including compliance orders and administrative citations, required under
this Chapter shall be served on the responsible party in one of the following methods:

1. Notices may be personally served on a responsible party. When an enforcement officer issues a compliance order or an administrative citation in the presence of a responsible party, that responsible party shall be asked to sign the compliance order or administrative citation to acknowledge receipt. A responsible party’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 party’s signature on any administrative citation shall not constitute an admission of responsibility.

2. Notices may be mailed to the responsible party 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 party. 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. Notices may be sent via electronic mail, where the email address is known.

3. The enforcement officer may post the property where the violation occurred in a conspicuous place when the responsible party 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.

4. If a compliance order or administrative citation is issued for violation of the Municipal Code by a business or other organization, and if the responsible party 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 compliance order or 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.

5. If a compliance order or administrative citation is issued for a violation of the Municipal Code existing on real property, and if the responsible party 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 compliance order or 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.

6. If the enforcement officer does not succeed in serving the responsible party personally, and if the enforcement officer’s reasonable investigation reveals no home or business address for the responsible party, 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.

7. 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 subsection six 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.

1-6.06 Administrative fine and payment.
A. The fine imposed pursuant to this chapter for a particular violation shall be in the amount set forth in the administrative citation fine schedule established by Town Council resolution. The administrative citation fine schedule shall specify the amount of any late payment charges imposed for failure to timely pay the fine and the amount of any repeat violations of the same Code provision by the same person within twelve (12) months of the initial administrative citation.

B. The administrative fine shall be paid to the Town of San Anselmo within 30 days from the date of service of the administrative citation. If, after a hearing requested pursuant to Section 1-6.06, the hearing officer determines that the administrative citation should be canceled, the responsible party shall be notified in accordance with section 1-6.05 and the administrative fine shall be refunded within 30 days.

C. Pursuant to California Government Code section 53069.4(a)(2), where a person is responsible for a continuing violation pertaining to building, plumbing, electrical, or other similar structural or zoning issues that do not create an immediate danger to health or safety, the Town shall provide a reasonable time to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties.

1-6.07 Administrative citation hearing request.
A. Any responsible party to whom an administrative citation is issued may contest the citation no later than ten (10) business days from the date of service of the administrative citation. The following steps are required to contest the citation:
   1. Complete a request for hearing form and return it to the Town of San Anselmo, specifying in detail the basis for contesting the administrative citation; and
   2. Either deposit the administrative fine with the Town of San Anselmo or provide notice that a request for an advance deposit hardship waiver has been filed pursuant to Section 1-6.09.
   3. If the deadline for requesting a hearing falls on a weekend or 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. Failure to file a hearing request in accordance with this section shall constitute a waiver of the responsible party’s right to contest any matters set forth in the administrative citation. Where a responsible party demonstrates that there is good cause for the delay in requesting a hearing, the Town Manager may allow the party to contest the administrative citation.

1-6.08 Time and notice for administrative citation hearing.
A. Only after a request for hearing form is filed and the responsible party requesting the
hearing has either deposited the administrative fine in full or obtained an advance deposit hardship waiver, shall the Town of San Anselmo set a date and time for an administrative hearing. The hearing shall be set for a date not less than 15 days nor more than 60 days after the administrative fine is deposited with the Town or an advance deposit hardship waiver is issued.

1. Before a hearing is scheduled, the Town Manager or a Town Department Head, shall review the administrative citation that is the subject of the hearing request. The Town Manager or Department Head may void the administrative citation where s/he determines that the citation was issued in error.

B. The Town shall send notice of the date, time and place of the hearing to the person requesting the hearing by certified mail with return receipt requested at least 10 days before the date of the hearing.

C. Any documentation, other than the administrative citation, which the enforcement officer has submitted, or will submit, to the hearing officer shall be served on the person requesting the hearing by certified mail with return receipt requested at least five (5) days before the date of the hearing.

D. The responsible party requesting a hearing may request one continuance, but in no event may the hearing begin later than 90 days after the request for hearing form is filed, and the administrative fine is deposited with the Town or an advance deposit hardship waiver is issued.

1-6.09 Administrative hearing officer’s decision

A. The Town Manager shall designate the administrative hearing officer for the administrative citation hearing. The hearing officer may, but need not, be an employee of the Town of San Anselmo.

B. The responsible party 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 party 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 party.

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. After considering all of the testimony and evidence submitted at the hearing, the administrative hearing officer shall, within 30 days, file a written decision with the enforcement officer. The decision shall uphold, modify, or reverse the administrative citation as to each named responsible party. The decision shall list all findings in support
of the hearing officer's determination and the imposition of any administrative fine or penalty.

H. Upon filing the decision with the enforcement officer, the administrative hearing officer shall also serve the decision on the responsible party by hand or by certified mail, return receipt requested.

I. If the administrative hearing officer's decision reverses the administrative citation as to a responsible party, any fine deposited with the Town shall be promptly refunded and the case shall be terminated as to that party.

J. If the administrative hearing officer's decision upholds the administrative citation, the Town shall retain the fine deposited by the responsible party. If the administrative hearing officer upholds the administrative citation and the fine has not been deposited pursuant to a hardship waiver, the administrative hearing officer shall specify in the decision a payment schedule for the fine.

K. The administrative hearing officer's decision shall be final and conclusive, unless it is appealed to the Town Council under section 1-2.01 of this Code. Within 20 days after the Council's decision on an appeal, a responsible party held liable under the decision may seek judicial review by filing an appeal to be heard by the Superior Court pursuant to California Government Code Section 53069.4(b). A copy of the notice of appeal shall be served in person or by first-class mail upon the Town by the responsible party.

1-6.10 Advance deposit hardship waiver.

A. Application. Any person who intends to request a hearing to contest issuance of an administrative citation under Section 1-6.06, and who is financially unable to make the advance deposit of the fine, may request a waiver as follows:

1. The advance deposit hardship waiver application must be filed with the Town Finance Department within ten (10) days of the date of the administrative citation.

2. The Finance Director or his or her designee may waive the requirement of an advance deposit and issue the advance deposit hardship waiver only if the cited party submits to the Finance Director a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the Director the person's financial inability to deposit with the Town the full amount of the fine in advance of the hearing. The Finance Director 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 of the Finance Director shall be in writing and state the reasons for his or her determination to issue or not issue the advance deposit hardship waiver. The determination of the Finance Director is final and shall be mailed to the person applying for the hardship waiver by certified mail, return-receipt requested, postage prepaid.

3. The requirement of depositing the full amount of the fine as described in subsection 1-6.06 shall be stayed until the Finance Director makes a determination regarding the advance deposit hardship waiver application.

4. If the Finance Director determines not to issue the advance deposit hardship waiver, the person shall remit the deposit to the Town within ten (10) days of the date of that decision or thirty (30) days from the date of the administrative citation, whichever is later.
1-6.11 Collection of unpaid fines, penalties and related costs

A. Unpaid fines or penalties and their related costs, arising from administrative citations or other administrative enforcement actions as provided by this Code shall be a debt to the Town of San Anselmo and subject to all remedies for debt collection as allowed by law.

B. The Town shall be entitled to interest from the date the administrative hearing officer’s order becomes final or 30 days after the first fine was imposed, whichever date is later.

C. The Town may also recover its collection costs, including, but not limited to, reasonable attorney’s fees and costs.

D. Where an administrative enforcement action relates to a specific property, administrative costs may also be recovered by the method prescribed in California Government Code Section 54988.

E. Where an administrative enforcement action also involves abatement of a public nuisance, administrative costs related to abatement of the public nuisance may also constitute abatement costs recoverable by special assessment against the real property on which the nuisance exists. Such special assessments shall be confirmed, collected and satisfied in accordance with the procedures set forth in section 1-2.06.

SECTION 3: Severability. The Town Council hereby declares every section, paragraph, sentence, clause and phrase is severable. If any section, paragraph, sentence, clause or phrase of this ordinance is for any reason found to be invalid or unconstitutional, such invalidity, or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, sentences, clauses or phrases.

SECTION 4: Inclusion in the San Anselmo Municipal Code. It is the intention of the San Anselmo Town Council that the text in Section 2 be made a part of the San Anselmo Municipal Code and that the text may be renumbered or re-lettered and the word "Ordinance" may be changed to "Section", "Chapter", or such other appropriate word or phrase to accomplish this intention.

SECTION 5: This Ordinance shall go into effect thirty (30) days from its adoption, and shall be posted or published as required by State law.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the San Anselmo Town Council on February 26, 2019, and was adopted at a regular meeting of the San Anselmo Town Council on March 12, 2019, by the following vote:

AYES: Brown, Greene, Colbert, Coleman, Wright
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:

Matt Brown, Mayor

Carla Kacmar, Town Clerk