ORDINANCE NO. \_\_\_\_\_\_\_\_\_\_\_

**AN ORDINANCE OF THE COUNTY OF SISKIYOU**

**AMENDING SECTIONS 1-5.09 AND 1-5.13 OF THE SISKIYOU COUNTY CODE REGARDING IMPOSITION OF PROPERTY LIENS**

THE BOARD OF SUPERVISORS OF THE COUNTY OF SISKIYOU ORDAINS AS FOLLOWS:

SECTION I: Section 1-5.09 of the Siskiyou County Code, entitled “Administrative citation imposing fine”, is hereby amended to read as follows:

“Sec. 1-5.09. Administrative citation imposing fine.

(a) Authority. To the extent otherwise consistent with law, all violations of any provision of this Code, Titles 1 through 10, inclusive, and hereinafter to include any and all additional titles as may be enacted and adopted by the Siskiyou County Board of Supervisors are subject to enforcement through the use of Administrative Citations in accordance with Government Code § 53069.4 and this section. Administrative citations imposing administrative fines or penalties may be issued for any violation of this Code in accordance with the following procedures.

(b) Notices Required.

(1) Notice to Comply. Whenever an Enforcement Officer charged with the enforcement of any provision of the Code determines that a violation of that provision has occurred, the Enforcement Officer may issue a warning of Administrative Citation to a Responsible Party. A warning shall be served as a prerequisite to the issuance of a first Administrative Citation and may be known as a Notice to Comply. The warning shall identify the Code section(s) violated and provide a description of the violation and how it can be corrected. The warning shall specify a time and date by which the violation shall be corrected, after which an Administrative Citation may be issued if the violation is not fully corrected. The Enforcement Officer shall provide for a reasonable period of time to correct the violation after considering the circumstances of the case, except that at least seven (7) days shall be allowed from the time and date of the warning for correction of the Code violation. A Notice to Comply shall not be required before the issuance of a second or subsequent Administrative Citation for a continuing or repeated violation.

(2) Direct Citation. Notwithstanding any other provision of this Chapter, no Notice to Comply is required, and an Administrative Citation may be issued directly forthwith by the Code Enforcement Officer, where any of the following circumstances exist:

i. Where the violation does not pertain to building, plumbing, electrical, or other similar structural or zoning issues; or

ii. Where the violation creates an immediate danger to health or safety; or

iii. Where the violation is a continuing or repeated violation for which a warning and first Administrative Citation has already been issued to the Responsible Party.

(c) Content of Administrative Citation. The Administrative Citation shall be issued on a form approved by the County Counsel. Administrative Citations shall contain the following information:

(1) The name and mailing address of the Responsible Party;

(2) The date(s), approximate time(s), and location that the violation was observed;

(3) The Code section violated and a description of the violation;

(4) A description of the action(s) required to correct the violation(s);

(5) The amount of the fine for the Code violation(s);

(6) A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;

(7) An order prohibiting the continuation or repeated occurrence of the Code violation(s) described in the Administrative Citation;

(8) A statement of appeal rights, including the time within which the citation may be contested and the place to obtain a Request for Hearing form to contest the Administrative Citation;

(9) The printed name, department, and the signature of the Enforcement Officer and the signature of the Responsible Party if it can be reasonably obtained during the service of the Administrative Citation as set forth in this chapter;

(10) A statement of any intent of the County to charge the Responsible Party for Administrative Costs pursuant to Section 1.5.06, Recovery of Enforcement Costs and the current amount of Administrative Costs. In the event of multiple violations, the Administrative Citation shall list the common administrative costs associated with all violations, any specific administrative costs attributable to an individual violation, and the total amount of all Administrative Costs.

(d) Service. The Notice to Comply or the Administrative Citation shall be served in the following manner:

(1) Personal Service. The enforcement officer, or an authorized designee, may hand deliver the Administrative Citation to the Responsible Party and may obtain the signature of the Responsible Party on the Administrative Citation. If the Responsible Party refuses or fails to sign the Administrative Citation, the failure or refusal to sign shall not affect the validity of service or the validity of the citation or any subsequent proceedings. If the Responsible Party served is not the property owner, then a copy of the Administrative Citation shall be mailed via first-class mail to each property owner at the address(es) shown on the last equalized assessment roll or as otherwise known.

(2) Certified and First Class Mail. If the Enforcement Officer is unable to effect personal service, then the Administrative Citation shall be delivered by certified mail return receipt requested and by first class mail, postage prepaid, addressed to the Responsible Party at the street address of the violation or other known address of the Responsible Party, and to each property owner at the address(es) shown on the last equalized assessment roll or as otherwise known. Service shall be deemed to have been completed upon the deposit of said Administrative Citation, postage prepaid, in any official United States postal box. The failure of the Responsible Party or owner to receive a properly addressed Administrative Citation shall not affect the validity of service or the validity of the citation or any subsequent proceeding.

(3) Posting. If personal service or service by first class mail cannot be completed as specified in subsection (d)(1) or (d)(2) above, or through an additional method of notice at the discretion of the County, the administrative citation may be posted in a conspicuous place in front of the property on which, or in front of which, the violation exists, or if the property has no frontage, upon any street, highway, or road then upon the portion of the property nearest to a street, highway, or road, or most likely to give actual notice to the owner and any person known by the Enforcement Officer to be in possession of the property. Failure of a posted notice to remain in place after posting or failure of any Responsible party to receive a copy of the Administrative Citation shall in no way affect the validity of the citation or any subsequent proceedings.

(e) Maximum Amount of Penalty; Fine Determination Matrix; Enforcement Costs.

 (1) Maximum Fine Amounts:

 i. Infraction. Where the violation would otherwise be an infraction, the administrative fine shall not exceed the maximum fine or penalty amounts for infractions set forth in Government Code § 25132(b).

 ii. Other. If this Code does not designate the violation as an infraction, the Code Enforcement Officer may impose an administrative fine or penalty up to One Thousand and no/100ths ($1,000.00) Dollars. A second or subsequent Administrative Citation for a continuing or repeated violation may issue for each calendar day the violation continues in an amount up to One Thousand and no/100ths ($1,000.00) Dollars per citation issued.

(2) Determination of Fine. The Code Enforcement Officer shall determine fines in the first instance. In making the determination, the Code Enforcement Officer may take into account the facts and circumstances of the violation, including without limitation:

 i. The length of the time the violations existed;

 ii. The culpability of the Responsible Party and the willfulness of the violation;

 iii. The number of previous violations of the same or related type committed by the Responsible Party within the preceding thirty-six (36) months;

 iv. The extent of the violation and the effect of the violation on neighboring properties;

 v. Attempts, if any, to comply with the applicable ordinances;

 vi. The time necessary to abate the violation; and

 vii. Any other information relevant to a determination of the fine.

(3) Enforcement Costs. In addition to a fine, the issuing County Department may also recover its administrative costs incurred in investigating, inspecting, abating, processing, remedying, and all other costs for activities incurred processing the citation pursuant to this chapter.

(f) Payment of the Penalty.

(1) The fine shall be paid to the County within thirty (30) days from the date of the Administrative Citation in accordance with the payment instructions printed on the citation form.

(2) Any fine paid pursuant to subsection (f)(1) shall be refunded if it is determined, upon appeal, that the person fined in the Administrative Citation was not responsible pursuant to this Code for the violation or that there was no violation as charged in the Administrative Citation.

(3) Payment of a fine under this Chapter shall not excuse or discharge any continuation or repeated occurrence of the Code violation that is the subject of the Administrative Citation.

(g) Appeal of Administrative Citation. Any recipient of an Administrative Citation may contest that there was a violation of the Code or that he or she is the Responsible Party or the amount of any fine imposed by completing a Request for Hearing form and returning it to the Director of the Department that issued the citation within seven (7) days from the date of the citation, together with an advanced deposit of the fine imposed or a completed hardship waiver application. Any Administrative Citation fine which has been deposited with the County shall be refunded if it is determined upon appeal that the person charged in the Administrative Citation was not responsible for the violation or that there was no violation as charged in the Administrative Citation.

The failure of a Responsible Party to file an appeal in accordance with the provisions of this section shall constitute a waiver of the Responsible Party's rights to administrative determination of the merits of the Administrative Citation and the amount of the penalty. If no appeal is filed or if the appeal is abandoned in writing or by a failure to appear at a hearing without being excused, the Administrative Citation shall be deemed a final administrative order, a forfeiture of the fine, and a failure to exhaust the Responsible Party's administrative remedies.

(h) Hearing setting; Advance Deposit Hardship Waiver.

(1) The director of the department receiving an appeal shall cause the matter to be set for hearing by notifying the Hearing Officer directly and/or by requesting County Counsel to coordinate with the Hearing Officer for setting and noticing of same.

(2) The Hearing Officer, or the County Counsel in cooperation with the Hearing Officer, shall notify the parties in writing, at least seven (7) days prior to the hearing date, of the date and location of the hearing. It shall be sufficient to provide notice to the appellant by using the address listed in the request for appeal.

(3) The director of the Department, or his or her authorized designee, may waive the requirement of an advance deposit and issue the advance deposit hardship waiver if the cited party submits to the department a completed hardship waiver application, including sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the director, or authorized designee, the person's actual financial inability to deposit the full amount of the fine with the County in advance of the hearing. The requirement of depositing the full amount of the fine shall be stayed unless and until the director of the department, or his or her authorized designee, makes a determination on the application to not issue the hardship waiver.

(i) Appeal Hearing Procedure. At the prescribed time and place of hearing, the Hearing Officer shall consider relevant evidence from all parties as to whether the violation of the Code specified in the Administrative Citation occurred and whether the appellant caused or contributed to the violation of the Code on the date specified in the Citation.

(1) The Administrative Citation and any additional documents submitted by the Enforcement Officer shall constitute prima facie evidence of the respective facts contained in those documents.

(2) The formal rules of evidence or procedure in any proceeding subject to this Chapter shall not apply. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. The hearing officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will cause undue consumption of time.

(3) The hearing shall be conducted in the English language. The proponent of any testimony by a witness who does not proficiently speak the English language shall provide an interpreter.

(4) The failure of any appellant of an Administrative Citation to appear at the scheduled hearing shall constitute a failure to exhaust administrative remedies, but shall not prevent the hearing from proceeding provided notice has been given in accordance with this Chapter.

(5) The Hearing Officer may continue the hearing and request additional information from the parties prior to issuing a written decision.

(6) At the conclusion of the hearing, and based on the evidence before it, the Hearing Officer shall determine whether to uphold or deny the Administrative Citation, and shall state the reasons for that decision in a written order. The Hearing Officer's decision shall be final.

i. If the Hearing Officer determines that the Administrative Citation should be upheld, then the fine amount identified in the Citation, or as otherwise adjusted by the Hearing Officer, shall be immediately collectable by the Department.

ii. If the Hearing Officer determines that the Administrative Citation should not be upheld, the Hearing Officer shall order the Citation dismissed, and the Department shall return the advance deposit, if such deposit was provided.

(7) A copy of the written decision and administrative order shall be served personally or by first class United States mail, postage prepaid, upon each appellant and all other parties to the hearing.

(j) Right to Judicial Review. Pursuant to Government Code § 53069.4, within twenty (20) days after service of the final order or decision of the Administrative Hearing Officer, a person contesting the final administrative order or decision may seek review by filing an appeal with the Superior Court.

(k) Interest. Any administrative fine and penalty shall accrue interest at the same annual rate as any civil judgment. Interest shall accrue commencing on the 30th day after the penalty becomes a final decision or order.

(l) Enforcement and Collection of Fines. The County may collect any past due Administrative Citation fine or late payment charge, and may also recover its collection costs, by use of all available legal means. The failure of any person to pay a fine assessed by an Administrative Citation, or a late payment charge or collection costs related to an Administrative Citation, by the due date shall constitute a debt to the County. The County may seek payment of the debt by use of all available legal means, including but not limited to the following:

(1) The county may refer the debt for collection.

(2) The County may file a civil action in the Superior Court or the Small Claims Court to recover the debt.

(3) The County may withhold issuance of licenses, permits and other entitlements to the property owner on any project, property, or application of any kind whenever an administrative fine remains unpaid.”

SECTION II: Section 1-5.13 of the Siskiyou County Code, entitled “Special assessment and lien proceedings”, is hereby amended to read as follows:

“Sec. 1-5.13. Special assessment and lien proceedings.

(a) Should any administrative or abatement costs assessed not be paid within ninety (90) calendar days from the date of a final Administrative Order, and/or have not been successfully challenged by a timely writ of mandate, the Board of Supervisors may, in accordance with Government Code § 25845 and/or Government Code § 54988, and in addition to any other legal remedy, order all such costs to be placed on the County tax roll as a special assessment against the subject property and/or may record a lien on the subject property subject to any applicable limitations of Government Code § 54988(a)(3) and (4).

(b) Accounting and Hearing Notice.

(1) The County shall prepare an accounting of all costs past due for each parcel. If real property under more than one ownership has been included in the Administrative Order, the account shall show such costs for the property owned by each owner separately.

(2) The County shall provide the owner of the property which would be subject to the special assessment and/or proposed lien a written notice in plain language of the proposed special assessment and/or proposed lien and a description of the basis for the amounts comprising the same.

(3) Said notice shall explain the owner's right to appear before the Accounting Hearing Board to be heard regarding the amount of the proposed special assessment and/or proposed lien.

(4) Said notice shall specify the time and date that the Accounting Hearing Board will hold the hearing on said accounting. The notice shall be sent a minimum of forty-five (45) days prior to the date of the hearing.

(5) Said notice shall be mailed by certified mail to the last known address of the owner of the property. If service cannot be accomplished, as determined by the Enforcement Officer, by certified mail, the accounting and appeal notice shall be posted conspicuously along the frontage of the property or if the property has no frontage, upon any street, highway, or road then upon the portion of the property nearest to a street, highway, or road, or most likely to give actual notice to the owner and any person known by the Enforcement Officer to be in possession of the property.

(c) Accounting Hearing.

(1) Accounting Hearing Board. The Accounting Hearing Board shall be the person or body authorized by the Board of Supervisors through resolution to act as the Accounting Hearing Board.

(2) Conduct of the Hearing. The Siskiyou County Board of Supervisors shall adopt rules by resolution governing the conduct of the Accounting Hearing Board.

(d) Accounting Hearing Board's Recommendation.

(1) After considering all the testimony and evidence submitted at the hearing, the Hearing Board shall close the hearing and take the matter under submission. The Hearing Board may issue its recommended ruling on the matter at the hearing date or within a reasonable time after the close of the hearing. The Hearing Board's recommendation shall be in the form of a resolution recommending that the Board of Supervisors confirm, discharge, or modify the proposed special assessment and/or proposed lien against the property. If imposition of a special assessment is recommended pursuant to Government Code section 25845, the Hearing Board shall also recommend that a notice of abatement lien be recorded against the subject property, unless the Hearing Board determines it is in the County's best interest to not record a lien.

(2) The Hearing Board's ruling shall be determined by a preponderance of the evidence and shall determine whether or not the costs contained within the accounting are reasonably related to the costs of abatement, enforcement and administrative costs incurred by the County. The Hearing Board shall also consider any protests or objections to the accounting.

(3) For any costs detailed in the accounting, the Hearing Board may only waive or reduce costs subject to all of the following:

(A) That good cause exists to grant the waiver or reduction and that such action is in the County's best interest; and/or

(B) That a cost associated with enforcing the Administrative Order is not reasonably related and necessary to the enforcement of the Administrative Order.

(4) The property owner listed on the Administrative Order shall be served with a copy of the ruling in person or by first class mail within ten (10) days of the Hearing Board's adoption of the written ruling.

(e) Finalization of the Hearing Board Decision.

(1) The written recommendation of the Hearing Board on a proposed special assessment and/or lien shall be considered by the Board of Supervisors at the Board's next available meeting following issuance of the recommendation.

(2) The Board of Supervisors may adopt the recommendation without further notice of hearing, or may set the matter for a de novo hearing before the Board. If the Board adopts the recommendation, the Board's ruling is final.

(A) A de novo hearing before the Board shall be conducted pursuant to the rules adopted for the Accounting Hearing Board. Notice of the hearing shall be provided to the property owner at least ten (10) days in advance of the hearing. At the conclusion of the hearing, or within a reasonable time after the close of the hearing, the Board of Supervisors will adopt a resolution confirming, discharging, or modifying the special assessment and/or proposed lien.

(f) Notice of Special Assessment and/or Lien. Upon the Board of Supervisors' adoption of the resolution confirming the cost accounting of the enforcement action and imposing the special assessment and/or lien, the Enforcement Officer shall notify the property owner by certified mail, return receipt requested, that they must pay the account in full within thirty (30) days to the Enforcement Officer in order to avoid the imposition of the special assessment and/or recording of the lien against the property. In the case of a lien, if the lien amount is not paid by the date stated in the letter, the Enforcement Officer shall prepare and have recorded in the office of the County Recorder of Siskiyou County a notice of lien. The notice shall:

(1) Identify the record owner or possessor of property;

(2) Set forth the last known address of the record owner or possessor;

(3) Set forth the date upon which abatement of the nuisance was ordered;

(4) Set forth the date the abatement was complete;

(5) Include a description of the real property subject to the lien; and

(6) State the lien amount.

(g) Lien. Upon the recordation of a Notice of Lien, the amount claimed shall constitute a lien upon the described premises, pursuant to Section 25845 or Section 54988 of the Government Code.

(h) Lien Conditions. The payment of, administrative costs, and/or the cost of abating nuisances pursuant to this chapter shall be a condition precedent to the issuance of any and all pending future permits or entitlements for use requested from the County by any person found responsible for the payment of such costs.

SECTION III: This ordinance amendment has been determined to be exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines (i.e., the “general rule exemption because it can be seen with certainty that the proposed amendment does not have the potential to result in a significant impact on the environment.”)

SECTION IV: Constitutionality: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

SECTION V: This ordinance shall become effective 30 days after its passage and shall, within 15 days of adoption, be published once in a newspaper of general circulation, printed and published in the County of Siskiyou.

PASSED AND ADOPTED this \_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 2023 at a regular meeting of the Board of Supervisors by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Ed Valenzuela, Chair

Siskiyou County Board of Supervisors

ATTEST:

Laura Bynum, Clerk,

Board of Supervisors

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Deputy