ORDINANCE NO. 2020-464

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARVIN REPEALING CHAPTER 8.12 AND 8.20, OF TITLE 8 OF THE ARVIN MUNICIPAL CODE AND REPLACING THEM WITH CHAPTER 8.12, OF TITLE 8 NUISANCES

WHEREAS, the City of Arvin has the authority, under its police power, to enact regulations for the public peace, morals, and welfare of the city, Cal. Const. Art. XI, section 7; and

WHEREAS, the City Council of the City of Arvin finds that certain conditions constitute a public nuisance and are a threat to the public peace, safety and welfare of the City; and

WHEREAS, by declaring that violations of the Arvin Municipal Code constitute a public nuisance, the City Council has determined that by violating the City's laws contained in the Arvin Municipal Code, a person or entity creates a threat or danger to the public health, safety or welfare as a public nuisance; and

WHEREAS, Sections 36901, 38771 and 38773.5(a) of the California Government Code authorize the City of Arvin to enact ordinances declaring what constitutes a public nuisance, the procedures for abating nuisance conditions, providing for the recovery of costs and attorney fees to abate the nuisance, providing for the collection of civil penalties; and

WHEREAS, Section 2929.3 of the California Civil Code authorizes the City of Arvin to abate a public nuisance existing at residential properties acquired through foreclosure or a deed of trust and to charge fines for noncompliance; and

WHEREAS, Chapter 13 of Part 2 of Division 3 of Title 4 of the California Government Code authorizes local procedures for weed abatement; and

WHEREAS, the City Council finds that ensuring compliance with the Arvin Municipal Code and other regulations vital to the protection of the public's health, safety and quality of life throughout the City is an important public service; and

WHEREAS, the City Council desires to enhance and promote the maintenance of property and the enhancement of the livability, community appearance, and the social and economic conditions of the community; and

WHEREAS, the City Council finds that an effective code compliance program eliminates and prevents the spread of blight, deterioration and crime, makes neighborhoods safer and more livable, and promotes economic development and pride in the community; and

WHEREAS, the City Council recognizes that an effective code compliance program requires the drafting and adoption of regulations that can be effectively applied by City personnel in a fair and expedient manner; and

WHEREAS, the City Council has determined that it is in the public interest to adopt this ordinance which expressly declares that any and all violations of the Arvin Municipal Code constitute public nuisances, in order to facilitate the City's ability to protect the health, safety, and general welfare of the public through the use of the nuisance abatement procedures set forth in the Arvin Municipal Code and in other applicable laws, rules and regulations; and

WHEREAS, the City Council finds that the Arvin Municipal Code does not provide an adequate administrative remedy for properties harboring conditions that constitute a public nuisance; and

WHEREAS, the City Council has an interest in maintaining the City of Arvin in an orderly and esthetically pleasing condition, to keep property values in line with neighboring communities and to improve the quality of life for its residents, businesses, and visitors; and

WHEREAS, the City Council has determined that the adoption of this ordinance is necessary to achieve a more comprehensive code compliance program that will permit City personnel to immediately proceed with code compliance efforts in an expedient, efficient and fair manner for purposes of effectively protecting public health and safety.

NOW THEREFORE, the City Council of the City of Arvin does ordain as follows:

SECTION 1. The above recitals are incorporated are hereby by reference.

SECTION 2. Chapter 8.12 and 8.20, of Title 8, of the Arvin Municipal Code are repealed in their entirety and the following provisions are adopted in their entirety to read as set forth in Attachment "A," which is attached hereto and incorporated herein as if set forth in full.

SECTION 3: This ordinance shall take effect immediately upon its adoption. Within fifteen (15) calendar days after its adoption, the enacting ordinance shall be published once in a newspaper of general circulation.

//////

//////

//////

//////

//////

//////

//////

//////

//////

//////

//////

//////

//////

PASSED, APPROVED and **ADOPTED** by a four-fifths (4/5) vote on this 12th day of May, 2020.

I HEREBY CERTIFY that the foregoing Urgency Ordinance No. 2020-464 was duly adopted at its regular meeting held on the 12th day of May 2020, by the following roll call vote:

AYES: CM Martinez, CM Trujillo, CM Franetovich, MPT Robles, Mayor Gurrola

NOES: _____

ABSTAIN: _____

ABSENT: _____

ATTEST:

CECILIA VELA, City Clerk

CITY OF ARVIN

By: _____
JOSE GURROLA, Mayor

APPROVED AS TO FORM:

By: _____
SHANNON L. CHAFFIN, City Attorney
Aleshire & Wynder, LLP

I, _____, City Clerk of the City of Arvin, California, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Ordinance passed and adopted by the City Council of the City of Arvin on the date and by the vote indicated herein.

NOW THEREFORE, the City Council of the City of Arvin does ordain as follows:

Chapter 8.12 and 8.20, of Title 8, of the Arvin Municipal Code are repealed in their entirety and the following provisions are adopted in their entirety to read as follows:

Chapter 8.12

NUISANCES

Article 1. Unlawful Property Related Nuisances

Section 8.12.101 Neighborhood Preservation.

It shall be unlawful for any person owning, renting, leasing, occupying or having charge or possession of any real property in the City to maintain such property in a manner that any of the following conditions are found to exist thereon, except as may be allowed by the Arvin Municipal Code. These conditions meet one or more of the following criteria and are considered nuisances subject to abatement and cost recovery as proscribed in this Chapter: substantially detract from the appearance of the immediate neighborhood, reduce the property value in the immediate neighborhood, are an attractive nuisance, are materially detrimental to nearby properties and improvements, are a visual blight, are offensive to the senses, or are otherwise dangerous to public health, safety or welfare.

(a) Abandoned and Partial Buildings.

Buildings which are abandoned, vacant, partially destroyed, or left in an unreasonable state of partial construction. "An unreasonable state of partial construction" means any unfinished building or structure where the owner has been given written notice to complete the building or structure by the City's Building Official or designee, but fails to complete construction and obtain final approval from the City in accordance with applicable laws and regulations within the time period provided by the City's Building Official or designee.

(b) Broken windows.

Buildings with windows containing broken glass or no glass at all where the window is of a type which normally contains glass.

(c) Building Materials and Household Fixtures and Equipment.

Used or damaged lumber, junk, trash, debris, concrete, scrap metal, salvage materials and abandoned, broken, discarded or unused furniture, appliances, sinks, toilets, cabinets, or other household fixtures or equipment (i) stored so as to be visible at ground level from a public street, alley or from adjoining property, or (ii) stored in a manner out of view but in an unsecured area accessible to

minors, or (iii) stored in a manner as to harbor rodents, insects, or other vermin.

(d) Building Residue.

Residue from a fire or demolition such as concrete or brick foundations and flatwork.

(e) Construction Equipment.

Construction equipment or machinery of any type or description parked or stored on the property when 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 an adjoining property.

(f) Deteriorated Buildings.

Buildings which have become so deteriorated as to permit decay, excessive checking, cracking, peeling, chalking, dry rot, warping, or termite infestation.

(g) Deteriorated Improvements.

Walls, fences, hedges, driveways, sidewalks, walkways, and similar improvements which have become deteriorated, hazardous, defective, or unsightly.

(h) Encroachment.

The encroachment onto public property for which no encroachment permit has been issued or which is in violation of the provisions of an encroachment permit or any applicable law.

(i) Garbage Containers.

The leaving of any garbage, rubbish, recyclable, or green waste container in a front yard area visible from a public street, except during the times necessary for collection, which provides for containers are to be placed at curbside for collection within twelve (12) hours of the time of collection and shall be removed within twelve (12) hours after collection service is rendered.

(j) Graffiti.

Graffiti or other defacing words, letters or drawings which remain in excess of forty-eight (48) hours on the exterior of any building or fence or other structure that has not been removed or covered with paint matching the structure that was defaced.

(k) Hazardous Liquids and Other Substances.

Any property with pooled or flowing hazardous substances, including oil and similar liquids, which are not contained on site in approved storage containers and pursuant to all laws. Any property with excessive accumulations of oil and similar liquids on paved surfaces, buildings, walls, or fences. Any property where a hazardous substance is deposited, stored, released, or discharged in violation of any law.

(l) Hazardous Pools, Ponds, and Excavations.

Pools, spas, hot tubs, ponds, or other artificially confined bodies of water, and excavations, maintained in a hazardous manner which may affect the health or safety of the public, including providing a breeding place for mosquitoes and algae, failing to comply with State and local safety requirements for pools and spas, and failing to take adequate measures to prevent public access to the area.

(m) Landscape Materials.

The keeping, storage, depositing, or accumulation on the premises of dirt, sand, gravel, concrete, or other similar materials for an unreasonable period of time or in a manner as to harbor rodents, insects, or other vermin.

(n) Landscaping.

Front and visible side yards without acceptable landscaping, except for improved surfaces such as walks and driveways. Acceptable landscaping shall include any ground cover, decorative rock, redwood bark, lawn, turf and/or other material determined to be acceptable or required by the City Manager or his/her designee. Landscaping shall also be maintained in accordance with any approved permit, site plan, or landscaping plan.

(o) Land Use Entitlements.

The failure to comply with any condition imposed on an entitlement, permit, contract, or environmental document issued or approved by the City in connection with the property or any improvement located thereon.

(p) Laundry Hanging.

The hanging of clothing, laundry or routinely washed articles on porch/stair railings, fences, hedges, or other supporting structures located in front or side yards and visible from a public place.

(q) Occupied Vehicles.

Any vehicle, recreational vehicle, motor home, camper, camper shell, or boat occupied by any person or persons overnight, except as may be permitted in an approved location for such purpose.

(r) Offensive Odors.

Stagnant water, refuse, rubbish, garbage, dead animal carcasses, offal, animal excrement or other waste materials which emit odors that are unreasonably offensive to the physical senses of a reasonable person of normal sensitivity or which may cause or attract rodents, insects, or other vermin.

(s) Personal Property.

The keeping, storage, depositing or accumulation of an excessive amount of personal property visible from a public street, alley and/or adjacent private property.

(t) Public Right-of-Way.

The keeping, storage, depositing or accumulation of landscaping materials, sporting equipment, garbage cans or any other personal property within the public right-of-way, including but not limited to greenways, landscaping medians, streets, sidewalks and alleyways.

(u) Safety Hazard.

The maintenance of property in a manner that presents an imminent safety hazard and/or creates a present and immediate danger to life, property, health or public safety.

(v) Sewage.

The failure to properly connect any inhabited improvements to a sewage disposal system or sanitary sewer and/or permitting sewage seepage or discharge upon the ground.

(w) Signs.

Improper existence and maintenance of signs relating to uses no longer conducted or products no longer sold on the property.

(x) Storage Containers and Dumpsters.

Storing or keeping boxes, containers, or dumpsters, in excess of seventy-two (72) consecutive hours, except when otherwise permitted by the Arvin Municipal Code, the City Manager or his/her designee when engaged in ongoing construction activity.

(y) Tarps and Other Temporary Use Items.

The keeping or using of tarps or other similar items intended to be used as a temporary protective cover or shelter in a state of disrepair or beyond the intended use period, when the item is stored so as to be visible at ground level from a public street, alley or from adjoining property. Temporary use items visible for more than thirty (30) consecutive calendar days or thirty (30) calendar days in any calendar year shall be presumed to be beyond their intended period of use.

(z) Tractor-Trailer.

Any semi-tractor-trailer truck, also known simply as a semi-trailer truck, tractor-trailer truck, semi-tractor truck, semi-truck, big rig, 18 wheeler, trailer truck or tractor truck, or combination of a tractor unit and one, or more, semi-trailers to carry freight and/or exceeding 10,000 lbs. parked or stored on any driveway, street, an unimproved surface or otherwise in violation of the Arvin Municipal Code; unless parking or storage on the street is authorized within the zoning district where it is parked or stored.

(aa) Unpermitted Construction or Alterations.

The building, construction or placement of any unpermitted structure or building, including but not limited to an unpermitted carport, driveway entrance, patio cover, pergola or improvements to a previously approved structure or building.

(bb) Vehicle Parts.

The keeping, storage, depositing, or accumulation on the premises of motor vehicle part(s) or scrap, including tires, which is:

(i) visible at ground level from a public street, alley or from adjoining property, or

(ii) contains more than personal use items unless allowed by previous City review or permit in appropriate commercial or industrial zones.

(cc) Vehicles, Including Motor Homes, Trailers, and Boats.

(i) Any vehicle, recreational vehicle, motor home, camper, camper shell, boat, or trailer parked or stored outside of a garage or carport on an unimproved surface or otherwise in violation of the Arvin Municipal Code.

(ii) Any inoperable vehicle, recreational vehicle, motor home, boat, or trailer parked or stored outside of a garage or carport

on a driveway, street, an unimproved surface or otherwise in violation of the Arvin Municipal Code.

(dd) Visibility Hazards.

The maintenance of property in such a manner as to cause a hazard to the public by obscuring the visibility of any public right-of-way, road intersection, pedestrian walkway, street sign, street light, or traffic signal.

Section 8.12.102 Weeds, Vegetation, and Rubbish.

No person, whether such person is the owner, agent, or person in control of any lot or parcel of land within the City, shall maintain, permit, or allow such premises, or adjoining public way, sidewalk, street and/or alley, to be maintained in any of the following conditions, which are declared to be a public nuisance. It is the duty of the property owner to destroy or remove all such prohibited materials.

(a) Refuge for Vermin.

Dead, decayed, diseased or hazardous trees, weeds, grass, rubbish, refuse, dirt, debris, or any other matter or material which may provide a breeding place or refuge for rodents, insects, or other vermin.

(b) Vegetation Near Chimneys.

Dead vegetative growth overhanging a structure or any tree branch or other vegetative growth which extends within ten feet (10') of the outlet of a chimney.

(c) Pollen.

Weeds which may produce pollen which is injurious to the health, safety, comfort, or welfare of the residents of the City.

(d) Fire Hazard: Fire Hydrants.

Weeds, rubbish, refuse, dirt, debris, or any other matter or material which may become a fire or health hazard, or is within thirty-six inches (36") of a fire hydrant.

(e) Overgrown Vegetation.

(i) Vegetative growth overhanging a public street by less than fourteen feet (14') in height or a public sidewalk by less than eight feet (8') in height.

(ii) Any overgrown vegetation, including but not limited to bushes, shrubs, trees, lawns, weeds and/or flowers.

(f) Other Vegetation.

Any other vegetation or materials which, because of lack of maintenance, create conditions which may become a fire or health hazard, including weeds which are otherwise subject to abatement by law.

(g) Trees and shrubs.

Any tree or shrub causing damage to the public right-of-way including but not limited to streets, sidewalks, alleyways, greenways and landscape medians.

Section 8.12.103 Garbage.

(a) Public right-of-way.

No person shall place, or cause to be placed, upon any public way, street, or sidewalk, any refuse matter, garbage, or filth which is hazardous to public health or safety or which obstructs the free passage of such street or sidewalk for more than one hour at a time, except as may be permitted by the Arvin Municipal Code.

(b) Private Property.

No person in control of any lot or parcel of land within the City, whether such person is the owner, agent, or tenant, shall maintain, permit, or allow any refuse matter, garbage, or filth which is hazardous to public health or safety to exist on such premises. Garbage shall be placed in approved containers.

(c) Summary Abatement.

The existence of one or more of these conditions shall be considered public nuisances subject to summary abatement and cost recovery as proscribed in this Chapter.

Section 8.12.104 Vacant Buildings: Nuisance and Abatement.

Vacant residential, commercial and industrial buildings and all yards surrounding the building must be maintained, actively monitored, and secured in accordance with the following standards or the property will be considered blighted and a nuisance subject to abatement pursuant to the procedures set forth in this Chapter, and any other available enforcement mechanisms.

"Vacant building" means real property with one or more structures, whether residential, commercial, or industrial, that is/are unoccupied or occupied by unauthorized persons. In the case of a multi-unit structure or complex, "vacant" shall mean when any one unit is unoccupied or occupied by unauthorized persons.

For commercial and industrial properties, "acceptable landscaping" means that at least fifty percent (50%) of the non-paved portions of the exterior yards (those that are visible to the general public) shall be covered with live trees, shrubs, lawns, or other live plant materials and the remaining portion of the non-paved portions of the exterior yards shall be covered with live trees, shrubs, lawns, or other live plant materials or shall have decorative landscaping installed, so long as weed block is used where decorative landscaping is installed.

For residential properties, acceptable landscaping shall include any ground cover, decorative rock, redwood bark, lawn and/or other material determined to be acceptable or required by the City Manager or his/her designee.

(a) Yard Maintenance.

Maintain all yards in compliance with any applicable development permits, site plans, and landscape plans. If there are no applicable development permits, site plans, or landscape plans, maintain all interior yards (those that are not visible to the general public) in a safe condition, including keeping all plant materials controlled to avoid overgrowth; maintain all exterior yards (those that are visible to the general public), including park strips, with acceptable landscaping, installed and maintained in a trimmed, live and healthy condition.

"Park strip" means that portion of a street right-of-way which lies between the property line and the outside edge of a gutter or gutter lip, including a driveway approach. Where no curb exists, "park strip" shall mean the area of property from the property line to the edge of the pavement.

(b) Building Exterior.

Maintain the exterior of the building, including, but not limited to, paint and finishes, in good condition.

(c) Broken Windows.

Board up broken windows within twenty-four (24) hours and replace broken windows within seventy-two (72) hours, subject to the provisions of subsection (g) of this section.

(d) Trash and Debris.

Remove all trash and debris within seventy-two (72) hours of their placement or abandonment on the property.

(e) Compliance with Laws.

Maintain the building in continuing compliance with all applicable State and local codes and regulations and any applicable City issued permits.

(f) Prevention of Criminal Activity.

Take all reasonable steps necessary to prevent criminal activity on the premises, including, but not limited to, the use and sale of controlled substances, prostitution and criminal street gang activity.

(g) Secure Property.

Secure the property, both structure and grounds, against trespassers, including maintaining all windows and doors with locks, replacing all broken doors or windows, and securing any other openings into the structure which are readily accessible to trespassers by boarding or such other means as shall be accepted by the City Manager or his/her designee. For purposes of securing the building and grounds, boarding up windows and doors and fully fencing the property shall be a disfavored technique and may only be used when it is determined by the City Manager or his/her designee that no other reasonable alternative exists. Properly maintained buildings and grounds should discourage trespassers. Alternative security measures are also available. When a building is boarded or the property fenced, the owner shall comply with standards established by the City Manager or his/her designee.

(h) Graffiti.

Remove all graffiti on the property within forty-eight (48) hours of placement on the property.

Section 8.12.105 Vacant Buildings: Vacant Building Plan.

For vacant properties, the City Manager or his/her designee may issue an Order to Submit a Vacant Building Plan to the property owner and require the payment of a fee as required under this section.

(a) Vacant Building Plan.

The Vacant Building Plan shall include the following information and shall be submitted within thirty (30) calendar days of service of the order:

(i) Name and address of person submitting the Vacant Building Plan;

(ii) Name and address of all property owners of the subject property;

(iii) The name and address of a local agent, if the property owner(s) is/are not local, that the City Manager or his/her designee may contact related to enforcement of this article;

(iv) The expected period of vacancy;

(v) A plan to make any buildings ready for occupancy that could not be legally occupied under State and local law at the time of submission of the plan;

(vi) If required by the City Manager or his/her designee, a plan to either occupy, sell, lease, or demolish the building within one hundred eighty (180) calendar days or such other time as determined reasonable by the City Manager or his/her designee under the circumstances;

(vii) A plan for actively monitoring, maintaining and securing the property and otherwise complying with this article;

(viii) A letter of written consent by the property owner(s) to the City Manager or his/her designee to allow City code enforcement inspectors to enter the property for inspections consistent to enforce the provisions of this article;

(ix) Any other information required by the City Manager or his/her designee in rules and regulations adopted by the City Manager or his/her designee under this article.

(b) Exception.

If the vacant building will be occupied within thirty (30) calendar days of service of the notice, the owner may notify the City Manager or his/her designee in writing of this fact and the owner will be excused from submitting a Vacant Building Plan.

(c) Vacant Building Plan Fee.

When a property owner is ordered to submit a Vacant Building Plan by the City Manager or his/her designee they shall also be required to pay a fee, not to exceed the costs of the City to monitor or inspect the building and to review and approve the Vacant Building Plan. The City Manager or his/her designee shall have discretion to determine the number of inspections required to monitor the subject building upon submission of the plan, based upon the type and condition of the property, and the history of violations at the subject property. There shall be no charge for the initial Vacant Building Plan. The amount of the fee for subsequent Vacant Building Plans shall be established by City Council Resolution.

(d) Appeal.

An Order to Submit a Vacant Building Plan and/or a decision by the City Manager or his/her designee rejecting a Vacant Building Plan are appealable in accordance with the procedures set forth in this Chapter except that both an Order to Submit a Vacant Building Plan and a rejection of a Vacant Building Plan must be appealed within fifteen (15) calendar days from service of the notice of the order or rejection.

(e) Approved Plan.

A Vacant Building Plan is enforceable immediately upon notice to the property owner of the approval of the Vacant Building Plan until the City Manager or his/her designee releases the property from the approved Vacant Building Plan. An approved plan shall be valid for no more than one hundred eighty (180) calendar days from the date of its approval. If a plan expires after one hundred eighty (180) calendar days and the City Manager or his/her designee has not yet released the property from the approved Vacant Building Plan, the property owner is automatically required to seek approval of a new Vacant Building Plan and pay a fee for that renewal as set forth in Subsection (c) of this Section.

(f) Noncompliance.

Failure by the property owner to submit a Vacant Building Plan or comply with a Vacant Building Plan that has been approved by the City Manager or his/her designee under this section or pay a fee as required under this section is a violation of the Arvin Municipal Code, subject to the abatement and cost recovery procedures set forth in this Chapter and any other available enforcement mechanisms.

(g) Transfer of Vacant Building.

The transferee of a vacant building is subject to the requirements of this Chapter. The transferee may apply to the City Manager or his/her designee to be released from the requirements of the Vacant Building Plan. It shall be in the City Manager's or his/her designee's discretion to grant such an application. The City Manager's or his/her designee's decision shall be final.

(h) Service.

Service of an Order to Submit a Vacant Building Plan, notice of rejection, or approval of a Vacant Building Plan shall be made on the property owner by personal service or first class mail. Where known, a copy may also be provided by email.

Section 8.12.106 Registration of Vacant Foreclosed Properties.

[Reserved]

Article 2. Violations of the Arvin Building Code

Section 8.12.201 Building Codes.

The Arvin Building Code shall mean the current versions of the California Building, Fire, Plumbing, Mechanical, Electrical, Administrative, Energy Code, Green Code and related codes, as well as the Uniform Administrative Code, Uniform Code for the Abatement of Dangerous Buildings, and International Property Maintenance Code, as incorporated by reference in the Arvin Municipal Code with local amendments, except that the procedures for abatement, conducting appeals, and cost recovery shall be those set forth in this Chapter.

Section 8.12.202 Dangerous Buildings.

The Uniform Code for the Abatement of Dangerous Buildings and California Health and Safety Code shall apply to the determination of whether a building is dangerous except that the procedures for abatement, conducting appeals, and cost recovery shall be those set forth in this Chapter.

Section 8.12.203 Nuisances.

Violations of the Arvin Building, California Health and Safety Code, Uniform Administrative Code, Dangerous Building Codes, and International Property Maintenance Code are considered public nuisances subject to abatement and cost recovery as proscribed in this Chapter.

Article 3. Management of Real Property Violations

Section 8.12.301 Findings, and Purpose.

(a) Findings.

Just as the physical conditions of structures and properties within the City can constitute public nuisances, so too can the behavior of persons on properties within the City constitute public nuisances. The abatement of behavioral nuisances is as important to the City in its fight against blight, decay, deterioration and crime as is the abatement of other nuisances created by physical conditions.

The owners of real properties within the City are responsible for monitoring their properties and for taking appropriate action if a nuisance exists thereon, whether that nuisance be created by existing physical conditions or by nuisance creating behaviors, or the combination of conditions.

Many nuisances can be avoided with active property management. Lack of proper management of real property can create an environment which is conducive to behaviors which become a nuisance with repetition and lack of abatement and corrective measures.

If a property owner does not fulfill his or her responsibilities, it is necessary for the safety, health and welfare of the neighborhoods, and the City as a whole, that the City be able to undertake abatement action. The provisions of this article are necessary to protect the health, property, and integrity of this community.

Nothing in this Article exempts property owners from compliance with Federal, State, or local laws, including, but not limited to, laws on housing, eviction, retaliatory conduct, discriminatory conduct, or invasion of privacy.

(b) Purpose.

The purpose of this Article is to set forth the management of activities conducted and enforce minimum standards relating to or conditions on real property to protect the public health, safety and welfare; and to put in place remedies which will permit the City to take effective, efficient administrative or other legal action against property owners who permit or suffer nuisance creating behaviors or conditions to occur on their properties on a continuing basis, in order to compel such owners to abate the nuisance creating behaviors or conditions and control the environment, both physical and behavioral, on such real properties.

The provisions of this Article are complimentary, cumulative, supplementary, and additional to any other legal remedies available, whether found in the Arvin Municipal Code, State or Federal laws, regulations, or case law.

It is not the intent or purpose of this Article to subject owners or managers to any legal liability resulting from a tenant's actions away from the owner's or manager's own property, unless it can be shown that the problem tenant

is also creating a nuisance or committing a crime on the owner's or manager's property.

(c) Enforcement Responsibility.

Enforcement of this Article shall fall within the responsibility of the City Manager or his/her designee(s).

Section 8.12.302 Definitions.

(a) Department.

The Arvin Police Department, Fire Department (as may be provided by contract), Development Services Department, Planning Department, and/or Public Utilities Department.

(b) Response Costs.

All actual and reasonable costs incurred by the Department(s) in responding to a nuisance, including, but not limited to, costs of personnel, including salaries and benefits, administrative overhead, costs of equipment and materials used in the response, and costs related to investigation of the underlying call for service. Response costs do not include costs covered by a user fee.

Section 8.12.303 Dual Responsibility.

(a) Owners.

Every person or entity owning, possessing, or having charge or control of real property within the City is required to manage that property and control the environment thereon in a manner so as not to violate the provisions of this Chapter, and the owner shall be liable for violations of the provisions of this Chapter regardless of any contract or agreement with any third party regarding the property.

(b) Lessees.

Every occupant, lessee, or holder of any possessory interest in real property is required to:

(i) comply with all laws applicable to the property;

(ii) to supervise anyone utilizing, using, or occupying the property, with or without the consent of the owner, consistent with this Chapter; and

(iii) to maintain the property in a manner so as not to violate the provisions of this Chapter.

Section 8.12.304 Multiple Response Nuisances.

(a) If a Department of the City is required to respond to a violation(s) of the provisions of this Chapter more than once in any one hundred twenty (120) calendar day period, including a second response during the same day or night as the first response, the person or persons who own the property where the nuisance took place, except as provided below; the person or persons residing on or otherwise in control of the property where the nuisance took place; the person or persons who organized or sponsored the activity or event causing the nuisance; and all persons who engaged in any activity resulting in the public nuisance shall be jointly and severally liable for the violation(s), regardless of whether the City issues an administrative citation or initiates a code enforcement action. The multiple response shall apply to the same or similar nuisances occurring during the applicable time period.

(b) It is a public nuisance and a violation of this Chapter for the person or persons who own the property, whether through their agent, lessee, sublessor, sublessee, or occupant of any premises in the City to permit, by their own acts or omissions, any of the following activities to repeatedly occur on the real property of the owner. "Repeated" shall mean more than one occurrence upon the real property in any one hundred twenty (120) calendar day period.

(i) Use and Sale of Controlled Substances.

The illegal manufacturing, sale, use or possession of controlled substances or other illegal drugs and substances.

(ii) Coming and Going for Sales or Use of Controlled Substances.

The gathering, or coming and going, of people who purchase or use controlled substances on the premises.

(iii) Prostitution.

The occurrence of prostitution.

(iv) Gang Activities.

Unlawful activities of a criminal street gang as defined in Penal Code Section 186.22.

(v) Noise and Unruly Behavior.

Noise and unruly behavior as set forth within the Arvin Municipal Code.

(vi) Firearms and Weapons.

The unlawful discharging of a firearm or brandishing of a weapon by any person.

(vii) Graffiti and Trash.

The presence of graffiti or other defacing words, letters, or drawings, or trash and debris on the property for a forty-eight (48) hour period.

(viii) Abandoned and Inoperable Vehicles.

The presence of abandoned vehicles or improperly stored inoperative, wrecked, or dismantled vehicles on the property, occurring on any one or more properties of the same owner within the City of Arvin.

(ix) Animal Disturbances.

Animal disturbances, including but not limited to competitive fighting between animals.

(x) Violent Criminal Acts.

Violent criminal acts, charged or not, including, but not limited to, rapes, assaults, battery, homicides, stabbings, and/or shootings.

(xi) Gaming activities.

Illegal gaming activities.

(xii) Stolen Vehicles.

Maintenance, storage, and/or dismantling of any stolen vehicle upon the property.

Section 8.12.305 Notice to Property Owner.

The City Manager, his/her designee, or the Department(s) shall, within a reasonable period of time from the date of occurrence of any activity listed in Section 8.12.304, and/or any other provision of this Chapter, notify the property owner of the unlawful activity. The notice shall include the location of the property, the name of the person(s) conducting the unlawful activity (if known and appropriate), a description of the illegal activity, suggested remedies and a warning of the enforcement of this Article if the activity described is not abated within the time prescribed in the notice. The notice shall be served on the owner of the property, via regular mail, at the address listed on the latest tax assessment roll or as otherwise actually known to the City Manager.

The Notice shall be in substantially the following form:

[DATE OF NOTICE]

IMPORTANT NOTICE REGARDING PUBLIC NUISANCE

NOTICE IS HEREBY GIVEN THAT, pursuant to Arvin Municipal Code, on _____, 20__, at _____ a.m./p.m., the _____ Department found that an activity or event occurred at the below-listed premises causing a public nuisance as follows: [short description of the nuisance and the applicable Arvin Municipal Code section(s) violated].

ADDRESS:

WARNING

IF THE DEPARTMENT RESPONDS TO THE SAME OR SIMILAR TYPE OF NUISANCE WITHIN ONE HUNDRED TWENTY (120) DAYS OF THIS NOTICE, OR ANY ONE HUNDRED TWENTY (120) DAY PERIOD AFTER A FURTHER RESPONSE, INCLUDING BUT NOT LIMITED TO A RESPONSE LATER TODAY OR TONIGHT, THE COSTS OF THE RESPONSE WILL BE IMPOSED UPON:

1. ALL GUESTS CAUSING THE NUISANCE

2. ALL SPONSORS OF THE GATHERING

3. ALL RESIDENTS OF THE PREMISES

4. ALL PERSONS IN CONTROL OF THE PREMISES

5. ALL OWNERS OF THE PREMISES THAT RESIDE ON OR ADJACENT TO THE PREMISES, OR ARE PRESENT AT THE PREMISES WHEN THIS NOTICE IS FIRST POSTED

Property owners who do not reside on or adjacent to the above premises, and who are not present when this Notice is first posted, are also jointly and severally liable for the penalties or costs, if the next disturbance occurs after seven (7) calendar days following the mailing of this Notice to said owner.

THIS NOTICE MUST REMAIN POSTED ON THE PREMISES UNTIL ONE HUNDRED TWENTY (120) CONSECUTIVE CALENDAR DAYS HAVE ELAPSED WITH NO CALLS FOR SERVICE FOR THE NUISANCE, UNLESS THE PREMISES ARE REPOSTED. THERE IS A $100 FINE FOR UNAUTHORIZED REMOVAL OF THIS NOTICE

[Name and Signature of Individual Issuing This Notice]

[Phone Number]

Date:

The notice shall remain posted for the entire one hundred twenty (120) calendar day period and unless the premises are reposted, shall not be removed until one hundred twenty (120) consecutive calendar days have elapsed without a call for service.

Section 8.12.306 Violations.

Violations of this Article are subject to the abatement and cost recovery procedures as set forth in this Chapter and any other available enforcement mechanisms.

Property owners who do not reside on or adjacent to the property, and who are not present when the notice is first posted, are jointly and severally liable for the penalties and/or abatement and enforcement costs, if the next disturbance occurs after seven (7) calendar days following the mailing of the notice.

The residents, owners, and persons in control of such property shall be responsible for ensuring that such notice as provided within Section 8.12.305 is not removed or defaced and shall be liable for a civil penalty of one hundred and no/100ths dollars ($100.00) in addition to any other penalties and costs which may be due under this Chapter, if such notice is removed or defaced.

Section 8.12.307 Relocation Costs.

If the City incurs any costs or expenses for relocating tenants resulting from the enforcement of this Chapter, the owner shall be required to reimburse the City for all such costs and expenses.

Article 4. Additional Nuisance Related Activities

Section 8.12.401 Obstructing Public Passageways.

It shall be unlawful for a person to stand or sit idly in or upon any street, alleyway or sidewalk in a manner that hinders or obstructs the passage of persons passing along the same, or stand in or at the entrance of or approach to any church, hall, theater, public place, or public assemblage in any manner to obstruct such entrance or approach.

Section 8.12.402 Breach of Peace.

No person shall make in any public place, including but not limited to parks, greenways, landscaping medians, common city spaces, streets, sidewalks and/or alleyways, or suffer to be made on his/her premises or upon the premises under his/her control, any disorder or tumult to the disturbance of the public peace; and no person shall utter in the presence of two (2) or more persons lewd or obscene words or epithets or address to another any words, language, or expressions having a tendency to create a breach of the peace. "Disturbance" and "breach of the peace" mean causing an annoyance or engaging in disorderly conduct or interfering with the peace and order of a neighborhood, community, or meeting.

Section 8.12.403 Unruly Behavior.

A gathering of five (5) or more persons on any public or private property in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, as a result of conduct constituting a violation of law shall be considered a nuisance subject to the

abatement and cost recovery procedures set forth in this Chapter and any other available enforcement mechanisms. Illustrative of such unlawful conduct is excessive noise or traffic, obstruction of public streets by crowds or vehicles, public drunkenness, the service of alcohol to minors, fights, disturbances of the peace, litter. In addition to the remedies provided for in this Chapter, a gathering constituting a public nuisance may be abated by the City by all reasonable means including, but not limited to, an order requiring the gathering to be disbanded and citation and/or arrest of any law violators under any applicable local laws and State statutes.

Section 8.12.404 Interference with Right of Assembly.

No person, except with legal authorization or authority, shall disturb or interrupt any school procession, funeral or funeral procession, or any lawful procession, church service, or assembly of people.

Section 8.12.405 Public Urination.

No person shall evacuate their bowels or bladder in any public place, or upon any private property, at a place not provided for that purpose.

Section 8.12.406 Swimming in Ditches, Canals, Rivers or Fountains.

No person shall bathe or swim in any ditch, canal, river or fountain within the City, unless the area is authorized by the City to be utilized swimming purposes.

Section 8.12.407 Motor Vehicle Racing.

It is unlawful for any person to operate, conduct, maintain, promote, or participate or engage in any motor vehicle race within the City, unless such race is expressly allowed by City permit or occurs in a facility permitted for such activity. For the purposes of this section, "motor vehicle" shall mean any vehicle which is self-propelled and shall include without limitation any automobile, racing car, motorcycle, or other self-propelled vehicle, whether or not the same is licensed by the State to operate on public streets. "Motor vehicle race" shall mean any race, speed, or other contest involving one or more motor vehicles or in which a motor vehicle is timed for operation over a measured distance.

Section 8.12.408 Criminal Street Gangs.

(a) Prohibited Acts.

It is unlawful for any person who is a member of a criminal street gang, as that term is defined in California Penal Code Section 186.22(f), or who is in the company of or acting in concert with a member of a criminal street gang, to loiter or idle in a public place as defined in this section under any of the following circumstances:

(i) With the intent to publicize a criminal street gang's control or dominance over certain territory in order to intimidate

nonmembers of the gang from entering, remaining in, or using the public place or adjacent area.

(ii) With the intent to conceal ongoing commerce in illegal drugs or other unlawful activity.

(iii) In such a manner that would warrant a reasonable person to believe that the purpose or effect of that behavior is to enable the criminal street gang to establish control or dominance over the public place or adjacent area, to intimidate nonmembers of the gang from entering the public place or adjacent area, or to conceal unlawful activity.

(b) Public Place.

For purposes of this section, a "public place" means the public way and any other location open to the public, whether publicly or privately owned, including but not limited to any street, sidewalk, avenue, highway, road, curb area, alley, park, playground or other public ground or public building, any common area of a school, hospital, apartment, office building, transport facility, shop, or privately owned place of business to which the public is invited, including any place of amusement, entertainment, or eating place.

"Any public place" also includes the front yard area, driveway and walkway of any private residence, business, or apartment.

(c) Powers of Law Enforcement Officers Not Limited.

Nothing in this Section shall be construed in any way to limit the power or right of a law enforcement officer to make any investigation, detention or arrest as such law enforcement officer would be permitted to make in absence of this Section.

(d) Parental Control.

Any parent(s), legal guardian(s), or other adult person(s) authorized by said parent(s) or guardian(s) to have the care and custody of a minor, who knowingly permits or by insufficient control allows a minor to violate the provisions of this Chapter is guilty of a misdemeanor subject to the penalties set forth in this Chapter and/or the Arvin Municipal Code, including but not limited to Section 1-2.02.

(e) Penalties: Notice to Disperse.

Any person who violates a provision of this Section is guilty of a misdemeanor subject to the penalties set forth in this Chapter and/or the Arvin Municipal Code, including but not limited to Section 1-2.02. Minors shall be dealt with in accordance with the California Welfare and

Institutions Code and in accordance with any policies and procedures established by the City for handling juvenile cases.

Prior to arresting any person or issuing a citation for violating the provisions of this Section, the officer shall give the person an opportunity to disperse or remove themselves from the area. If the person does not leave or returns to the area during the following eight (8) hours, the person may be arrested or issued a citation.

The requirement in this Section to provide notice to disperse shall in no way be construed to prohibit law enforcement officers from detaining and questioning persons suspected of violating this Chapter before issuing the notice to disperse.

Section 8.12.409 Additional Legal Nuisances.

It shall be unlawful for any person to keep or maintain a public nuisance in the City. For the purposes of this Section, public nuisances shall include but not be limited to any of the following:

(a) Attractive Nuisance.

An attractive nuisance, defined as any condition, instrumentality or machine which is or may be unsafe or dangerous to children by reason of their inability to appreciate the peril therein, and which may reasonably be expected to attract children to the premises and risk injury by playing with, in, or on it, whether in a building or on the premises.

(b) Conditions Declared a Nuisance by City Council.

Any condition declared to be a public nuisance by the City Council.

(c) Civil Code Section 3480, Nuisance.

Acts constituting a public nuisance as defined by Civil Code section 3480.

(d) Depreciation of Property Value.

Maintenance of property in such condition of deterioration or disrepair that the same causes depreciation of the value of surrounding property or is materially detrimental to nearby properties and improvements.

Section 8.12.410 Violation(s) of the Arvin Municipal Code.

Any violation(s) of the Arvin Municipal Code, emergency order of the director of civil defense and local emergency, or uncodified ordinance enacted by the City Council to address a local emergency,

shall be a public nuisances subject to provisions of this Chapter and shall be considered a nuisance per se.

Article 5. Nuisance Enforcement

Section 8.12.501 Enforcement Options.

Nuisances under this Chapter may be enforced by one or more of the following nonexclusive remedies:

(a) Abatement.

Abatement and cost recovery proscribed in this Chapter.

(b) Administrative Citation.

Administrative citation proscribed in this Chapter.

(c) Criminal Complaint or Citation.

Misdemeanor enforcement pursuant to Section 1.08, of Title 1 of the Arvin Municipal Code and/or as proscribed in this Chapter.

(d) Injunction.

Injunctive Relief.

(e) Receivership.

Receiverships pursuant to Health and Safety Code section 17980.7.

(f) Unlawful Business Practice.

Unlawful business practices pursuant to Business and Professions Code section 17200.

(g) Red Light Abatement.

Red Light Abatement Act as set forth in Penal Code section 11570.

(h) Drug abatement.

California Drug Abatement Act set forth in Health and Safety Code section 11570.

(i) State Housing Law.

State housing law as set forth in Health and Safety Code section 17910 et seq.

(j) Other.

Any other available remedy set forth in the Arvin Municipal Code or State law.

Section 8.12.502 Violations New and Separate Offenses.

In addition to the penalties provided by this Chapter, each such person shall be guilty of a new and separate offense for each and every day during any portion of which any violation of the provisions of this Chapter, or the provisions of any Chapter adopted by reference within the Arvin Municipal Code is committed, continued, or permitted by such person and shall be punished accordingly.

In all cases where the same offense is made punishable or is created by different clauses or sections of the Arvin Municipal Code, the City Attorney may elect under which to proceed.

Section 8.12.503 Criminal Penalties.

Violations of the provisions of this Chapter, or the provisions of any Chapter adopted by reference within the Arvin Municipal Code for conduct that is not otherwise considered lawful under State law, shall be considered misdemeanors and are punishable by a fine of one thousand dollars ($1,000.00) and/or six (6) months incarceration within the Kern County Jail. Each and every day, or portion thereof, a violation exists is a new and separate offense. The City may also pursue all applicable civil and administrative remedies, including but not limited to injunctive relief and administrative citations.

Should a court of competent jurisdiction subsequently determine that the criminal penalty provision renders the provisions of this Chapter, or the provisions of any Chapter adopted by reference within the Arvin Municipal Code unlawful, the City intends that the misdemeanor provision be severable from the remaining penalty provisions and the City will only pursue non-criminal remedies for violations of this Chapter.

Section 8.12.504 Administrative Penalties.

(a) The administrative citation penalty for all violations of this Chapter, within a rolling twelve-month period, deemed Misdemeanors shall be as follows:

(1) First administrative citation: two hundred fifty and no/100ths dollars ($250.00) per violation;

(2) Second administrative citation: five hundred and no/100ths dollars ($500.00) per violation;

(3) Third administrative citation: one thousand and no/100ths dollars ($1,000.00) per violation; and

(4) One thousand and no/100ths dollars ($1,000.00) per violation for each subsequent administrative citation.

(b) The administrative citation penalty for all violations of this Chapter, within a rolling twelve-month period, deemed Infractions shall be as follows:

(1) First administrative citation: one hundred and no/100ths dollars ($100.00) per violation;

(2) Second administrative citation: two hundred and no/100ths dollars ($200.00) per violation;

(3) Third administrative citation: five hundred and no/100ths dollars ($500.00) per violation; and

(4) Five hundred and no/100ths dollars ($500.00) per violation for each subsequent administrative citation.

Section 8.12.505 Notification of Abatement.

(a) Notice.

Except when the City elects to enforce through another process, such as through an administrative citation process, whenever the City or such City official having enforcement authority determines that property within the City constitutes a public nuisance in violation of this Chapter and seeks to abate the same, the enforcement official shall give written notice to the owner of the property and/or lessee of the property stating the violations with reference to the applicable code sections.

(b) Time to Correct.

The notice shall set forth a reasonable time limit for correcting the violation(s) and may also set forth suggested methods of correcting the same. Reasonable time to correct shall be dependent on the type and severity of the violation. The reasonable time to correct may, at the sole discretion of the City or such City official having enforcement authority over the violation, be extended or shortened.

(c) Service of Notice.

Notice shall be given either by personal service or by depositing the notice in the United States mail, postage prepaid, addressed to the property address of the residence. A copy may also be provided to the owner of such lot or parcel of land either by personal service or by depositing the notice in the United States mail, postage prepaid, to the name and address as it appears on the last available equalized assessment roll, supplemental roll of the County of Kern. If no such address appears, then a copy of the notice may be mailed to the property address, and is presumed to be notice to the owner. In order for an absentee owner to be subject to the penalties and costs described in Article 7 of this Chapter, notice must be provided by any method authorized by this subsection.

A copy of the notice may also be posted on the property in a conspicuous place. Where known, a copy may also be provided to the owner or occupant by email in the City's discretion. The failure of any person to receive the notice required by this section shall not affect the validity of any proceedings taken under this Chapter.

The notice shall bear the date of personal service or mailing and shall be in substantially the following form:

NOTICE TO ABATE PROPERTY NUISANCE

Site Address:

Assessor Parcel Number:

Date:

Notice is hereby given that the above-described property is a public nuisance in violation of the following codes: [set forth applicable code(s)]. A nuisance exists because [describe the nuisance]. You must abate the nuisance within [set forth applicable days]. There will be no further notice.

If the nuisance is not removed within the required time, the nuisance may be abated by the City of Arvin or a contractor hired by the City to remove the nuisance. The property owner will be billed for the cost of such abatement plus administrative fees. In addition, the property owner or other responsible party may be issued a citation and/or billed for the City's enforcement costs.

If you receive an invoice from the City for abatement, you will have fifteen (15) days from the issuance to pay the invoice. If you do not to pay the invoice within fifteen (15) days, the unpaid amount will be added to your property taxes as a special assessment against your property.

All persons having any objections to the proposed abatement may file an appeal in accordance with [identify code section]. The appeal must be in writing, filed with the City Clerk at 200 Campus Dr., Arvin, California 93203, and received within [specify number of days] from the date of this Notice. The appeal must state the basis for the appeal with sufficient specificity so that the City Manager or Hearing Officer can understand the basis for the appeal and must include the name, address, and telephone number of the person filing the appeal. Failure to file a timely appeal will result in the City proceeding with the work required at your expense in a timely fashion without further notice or hearing.

If the nuisance condition(s) create an imminent danger to the public, the appeal may be considered after abatement of the nuisance.

DATED: this _____day of _____, 20__.

(d) Calendar Days.

Unless otherwise specified, days as used in this Article shall mean calendar days.

Section 8.12.506 Recording.

At the time the abatement notice is served, the enforcement official may file in the Office of the County Recorder a notice of pending administrative action and include a copy of the abatement notice. After the nuisance is abated and abatement costs have been paid, the enforcement official shall cause the recorded notice to be removed.

Article 6. Abatement and Administrative Citation Appeals

Section 8.12.601 Appeals of Abatement Notices and Actions.

The owner or any other person interested in the property, land, or lots affected by the abatement notice set forth in Section 8.12.505 may file an appeal with the City Clerk subject to the following procedures:

(a) Appeal in Writing.

The appeal shall be in writing. The appeal shall state the basis for the appeal with sufficient specificity so that the hearing officer or City Manager can understand the basis for the appeal and shall include the name, address, and telephone number of the person filing the appeal.

(b) Time to Appeal.

The appeal shall be received by the City Clerk within fifteen (15) calendar days from the date upon the notice. The time requirement for filing an appeal shall be deemed jurisdictional and may not be waived.

(c) Dismissal of Appeal.

Appeals not timely filed or not setting forth the basis for the appeal are defective and shall be dismissed.

(d) Hearing Officer.

Appeals shall be heard by a hearing officer appointed by the City Manager or the City Manager.

(e) Timing of Appeal and Abatement.

The hearing on an appeal from an abatement notice shall be held prior to the abatement except in those circumstances where the enforcement official has determined that the nuisance condition(s) present an immediate danger to the public health and safety, including, but not limited to, hazardous materials, or where the time of year increases the potential for a fire. In those circumstances the appeal hearing may be held after the abatement.

Section 8.12.602 Procedures for Conduct of Appeal.

(a) Scheduling of Hearing.

The City Clerk shall schedule a hearing before the hearing officer or City Manager no sooner than ten (10) calendar days and not more than sixty (60) calendar days from the date the appeal was filed with the City Clerk. Upon determining good cause exist, the hearing officer or City Manager may extend the date for scheduling the hearing.

(b) Notice of Hearing.

Written notice of the date, time and place of the hearing shall be given at least ten (10) calendar days prior to the date of the hearing to the appellant either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the appellant's address shown on the appeal, or, if no address is provided on the appeal, at the address to which the official's decision was previously sent. Where known, a copy may also be provided by email. The failure of any person to receive such notice shall not affect the validity of any proceedings taken under this Chapter. Service by normal delivery mail in the manner described above shall become effective on the date of mailing.

(c) Scope of Hearing and Burden of Proof.

At the date, time and place stated in the notice, the hearing officer or City Manager shall hear and consider all relevant evidence, objections or protests, and shall receive testimony from the appellant, the enforcement official and his/her designees, and interested persons relative to the issues of the hearing. Except where otherwise provided by the governing code or statute, the burden of proof and production of evidence shall be with the City and the burden of proof shall be preponderance of the evidence. Preponderance of the evidence means the burden of proof is met if there is a greater than 50% chance that, based on all the reasonable evidence shown, the City's claims are true and appellant did in fact commit the violation(s). The City meets its burden of proof by presenting physical and testimonial evidence to prove their case and the proposition that it is more likely to be true than not true that appellant committed the violation(s).

(d) Hearing Procedures.

The hearing shall be conducted in accordance with the following procedures:

(i) All hearings shall be recorded. Any party may, at their sole expense, have the hearing transcribed by a certified shorthand reporter.

(ii) Hearings need not be conducted according to the technical rules of evidence.

(iii) Any relevant evidence shall be admitted if it is of the type of evidence in which reasonable persons are accustomed to rely on the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this State.

(iv) Oral evidence shall be taken only on oath or affirmation. The hearing officer or the City Manager shall have the power to administer oaths.

(v) Irrelevant and unduly repetitious evidence shall be excluded.

(vi) Each party shall have the right to: (1) call and examine witnesses on any matter relevant to the issues of the hearing; (2) introduce documentary and physical evidence; (3) cross-examine opposing witnesses on any matter relevant to the issues of the hearing, subject to the control of the hearing officer or the City Manager, including the imposition of reasonable alternatives to cross-examination; (4) impeach any witness regardless of which party first called the witness to testify; (5) rebut the evidence; and (6) be represented by anyone who is lawfully permitted to do so.

(vii) The hearing officer or the City Manager may take official notice, either during the hearing or after submission of the matter for decision, of any fact which may be judicially noticed by the courts of this State or of official records, regulations, rules, and decisions of State and local agencies, boards and departments and of City ordinances. In addition, the hearing officer or the City Manager may take official notice of matters in its own files and of prior proceedings under this chapter involving the same issues. If applicable, the hearing officer or the City Manager may also take official notice of any generally accepted technical or scientific

matter within their expertise. The parties present at the hearing shall be informed of the matters to be noticed, and those matters should be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority.

(e) Orders and Subpoenas.

Upon a showing of good cause, relevance to the proceedings, that there is no reasonable alternative means of gathering the information, and that the requesting party is not engaged in a fishing expedition, the hearing officer may do the following:

(i) At the request of either the City or the appellant, issue orders for attendance of witnesses at the hearing, or production of documents on a date certain. In no event shall the date for the production of documents be less than ten (10) calendar days after the date the order was issued. Failure by a party to comply with an order of attendance or production may be considered a violation of this Code and, at the petition of a party, the hearing officer may impose a civil fine of up to one hundred and no/100ths dollars ($100.00) at the time of the hearing and may take such failure into consideration in making his or her determination of the hearing.

(ii) At the request of either the City or the appellant, direct the City Clerk, on behalf of the City, to issue subpoenas for attendance of witnesses at the hearing or production of documents on a date certain. In no event shall the date for production of documents be less than ten (10) calendar days from the date the subpoena was issued. Disobedience of such subpoena or the refusal to testify, upon other than constitutional grounds, shall constitute a misdemeanor.

(f) Inspections.

Inspect the premises involved in the hearing at any time prior to a decision, to investigate or confirm the existence of the violation(s) or conditions which are on appeal; provided, that: consent is granted by a person with the lawful right to grant consent or an inspection warrant is obtained; reasonable notice of such inspection is given to the owner before the inspection is made; the parties are given an opportunity to be present during the inspection; the hearing officer or the City Manager shall place in the record the material facts and the conclusions drawn from the inspection either orally at the time of the hearing or in writing after the hearing; and each party then shall have a right to rebut or explain the matters so stated by the

hearing officer for the record either at the hearing or by filing a written statement within ten (10) calendar days after the hearing.

(g) Continuance of Hearing.

The hearing officer or the City Manager may provide for reasonable continuances of the hearing, on its own initiative or at the request of a party, as necessary to properly conduct the appeal.

(h) Decision.

At the conclusion of the hearing, the hearing officer or the City Manager shall deliberate and reach a decision within fifteen (15) calendar days. The decision and the reason(s) for the decision shall be reduced to writing. The hearing officer or the City Manager may affirm, reverse, modify, or set aside the abatement order, suspension or revocation of a permit or license, citation, decision or order issued pursuant to this Code as the facts and law warrant, subject to the following limitations:

(i) The hearing officer shall not have authority to waive any requirements of the Arvin Municipal Code or any state law.

(ii) Nothing in these procedures shall be deemed to authorize the hearing officer or the City Manager to deviate from unambiguous provisions of the governing code or statute, or well established interpretations of the same, based upon expert opinions or other reliable evidence.

(i) Service and Filing of Decision.

A copy of the decision shall be sent by mail or otherwise to the appellant. Where known, a copy may also be provided by email.

(j) Finality of Decision.

The decision of the hearing officer or the City Manager shall be final with no further administrative appeals. Unless the governing ordinance or statute provides otherwise, if the appellant seeks further relief, the appellant shall file a petition for writ of mandate in superior court, pursuant to Code of Civil Procedure sections 1094.5 and 1094.6, within ninety (90) calendar days of the date of the decision.

Section 8.12.603 Nuisance Abatement.

(a) Abatement with No Appeal.

Where no appeal has been timely filed, and the nuisance condition(s) have not been abated as directed by the abatement notice, the enforcement

official shall thereupon cause the same to be removed and may enter upon private property, in compliance with state and/or federal law, for the purpose of so doing.

(b) Abatement After Appeal.

Where an appeal has been timely filed and the hearing officer or the City Manager has finally determined that removal or abatement shall be required, and the nuisance condition(s) have not been removed as directed by the hearing officer or the City Manager, the enforcement official shall thereupon cause the same to be removed and may enter upon private property for the purpose of so doing.

(c) Property Owner Abatement.

At any time prior to the actual abatement, any property owner may remove nuisance condition(s) at his/her own expense.

Section 8.12.604 Method of Abatement by the City.

City abatement of the nuisance may be performed by contract or by City crews. When the abatement is performed by contract, the contractor shall keep an account of the cost of the abatement on each separate parcel of land where work is performed, including adjoining sidewalk and street/alley areas, and shall submit an itemized written report showing such cost to the enforcement official for verification. When the abatement work is performed by City crews, the City shall keep an account of the cost of the abatement on each separate parcel of land where work is performed, including adjoining sidewalk and street/alley areas, and shall submit an itemized report showing such cost to the enforcement official for verification.

Section 8.12.605 Costs of Abatement.

The City may recover its abatement and enforcement costs in accordance with this Chapter.

Section 8.12.606 Administrative Citation Appeals.

The purpose of this Section is to provide for a uniform and consistent procedure for the conduct of administrative hearings that are not part of a property nuisance abatement action. This Section is also designed to identify the appeal and hearing procedures to be followed where procedures are not otherwise identified in the governing code, statute, rule, or regulation, or where there is a reference to following the procedures in this Section, whether expressly or by implication.

(a) Standing.

Only the person issued an administrative citation sought to be appealed from has standing and a right to appeal under this Article. A notice of appeal that fails to allege standing may be rejected as defective.

(b) Time to Appeal.

The appeal shall be received by the City Clerk within fifteen (15) calendar days after the service of the administrative citation appealed from. The time requirement for filing an appeal shall be deemed jurisdictional and may not be waived.

(c) Notice of Appeal.

A notice of appeal shall contain the following:

(i) The name, address, and telephone numbers of the appellant;

(ii) A brief description of the administrative citation being appealed;

(iii) A statement of the relief sought;

(iv) The reasons why such relief should be granted;

(v) A statement of the appellant, "under penalty of perjury," that the facts stated in the appeal are true of the appellant's own knowledge, except as to matters which are not within the appellant's knowledge and are not of public record, and as to those matters that the appellant believes the facts stated to be true.

(d) Amended Appeal.

Upon a showing of good cause, the City Manager or his/her designee, may, in his/her discretion, permit the filing of an amended appeal, after fifteen (15) calendar days, in which case the appeal shall be considered in the same manner as if it had been timely filed.

(e) Deficient Appeal.

If, in the opinion of the City Clerk, the appeal or an amended appeal fails to comply substantially with the requirements of this section, the City Clerk may give written notice of such insufficiency to the appellant at any time within fifteen (15) calendar days after the appeal is presented, stating with particularity the defects or omissions therein. Failure of the appellant to file an amended appeal within fifteen (15) calendar days of the date of service of such notice of insufficiency shall constitute a waiver of the appeal. Failure of the City Clerk to give notice of any insufficiency within fifteen (15) calendar days shall result in the appeal being heard on its merits, without regard to any insufficiency.

(f) Procedures for Conducting the Appeal.

Upon receipt of an appeal, or if notice of insufficiency is given in accordance with this section, upon receipt of an amended appeal within the time specified, the City Manager or his/her designee shall appoint a hearing officer and the procedures set forth in Section 8.12.602 shall apply to the conduct of the appeal.

Section 8.12.607 Supplemental Rules and Regulations.

The City Manager may adopt written rules, regulations, policies and procedures that are consistent with the intent or provisions of this Chapter, as may be necessary or desirable to aid in the administration or enforcement of the provisions of the Arvin Municipal Code.

Article 7. Cost Recovery and Penalties

Section 8.12.701 Findings and Purpose.

The Council finds that substantial public resources are spent each year to enforce the Arvin Municipal Code and State laws, as well as Federal and County laws that may fall within the jurisdiction of the City, enacted to protect the public health, safety and welfare. The Council finds that the responsibility of these costs should be properly placed on those persons responsible for violating the Arvin Municipal Code or Federal, State and County laws and/or causing public nuisances. The Council further finds that the recovery of costs incurred by the City to enforce these laws and to collect penalties issued to those persons causing public nuisances and/or violating these laws is important in deterring future violations and maintaining the integrity of the City's code enforcement system. The purpose of this article is to provide a means for the City of Arvin under its police power authority and other applicable law to recover these costs and penalties from those persons responsible for creating, causing, committing or maintaining a public nuisance or Arvin Municipal Code or other law violation.

Section 8.12.702 Definitions.

Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this article.

(a) Abatement Costs.

The actual and reasonable costs incurred by the City to abate a public nuisance. These costs include all direct and indirect costs to the City that result from the total abatement action, including, but not limited to, investigation costs, costs to enforce the Municipal Code and any applicable Federal, State or County law, clerical and administrative costs to process paperwork, costs incurred to provide notices and prepare for and conduct administrative appeal hearings, and costs to conduct actual abatement of the nuisance. Costs include

staff costs, administrative overhead, costs for equipment, such as cameras and vehicles, staff time to hire a contractor, and reasonable attorneys' fees incurred by the City. Costs also include those incurred in seeking cost recovery. Abatement costs may be established in the Master Administrative Fee Schedule.

At any administrative hearing, judicial action or special proceeding where the City elects to recover attorneys' fees in connection with an abatement action, the prevailing party shall be awarded attorneys' fees not to exceed the amount of reasonable attorneys' fees incurred in the action, hearing or proceeding.

(b) Bona Fide Encumbrancer.

A person who (i) receives a lien or encumbrance on the subject property after the City incurs abatement costs or enforcement costs and (ii) at the time he or she acquired the interest did not have actual or constructive knowledge of the City's interest in the property.

(c) Bona Fide Purchaser.

A person who (i) purchases any portion of the subject property after the City incurs abatement costs or enforcement costs and (ii) at the time he or she acquired his or her portion of the subject property did not have actual or constructive knowledge of the City's interest in the property.

(d) Enforcement Costs.

All actual and reasonable costs incurred by the City to enforce compliance with the Municipal Code and any applicable Federal, State, County or City public health and safety law that are not included within abatement costs. These costs include, but are not limited to, actual cost of the enforcing department services including, but not limited to, costs of personnel, including costs of worker's compensation benefits, fringe benefits, administrative overhead, costs of equipment, costs of materials, costs related to investigations pursuant to the Municipal Code or Federal, State or County law, costs related to issuing and defending administrative or court citations, costs incurred investigating and abating violations of the Municipal Code or Federal, State or County law violations, and reasonable attorneys' fees. Enforcement costs include multiple response and similar costs as permitted by this Chapter. Costs also include those incurred in seeking cost recovery.

(e) Enforcing Department.

The departments or divisions of the City that directed and are responsible for the enforcement of the Arvin Municipal Code or

applicable Federal, State or County law or the abatement of a public nuisance.

(f) Noticed Party.

The person or entity that is required to be noticed in the underlying abatement or enforcement action in which costs were incurred, but in all cases must include the record owner(s) of the property for property related violations. A "noticed party" should be notified for purposes of cost or penalty recovery in the same manner as they were required to be noticed, either by the Municipal Code or applicable Federal, State or County law, in the abatement or enforcement action which resulted in the incurring of costs or penalties sought to be recovered under this article.

(g) Penalties.

Fines imposed by administrative citations issued pursuant to the Arvin Municipal Code or other penalties specifically identified in the Arvin Municipal Code or permit relating to a specific use. Penalties for purposes of this article do not include criminal fines.

(h) Public Nuisance.

A public nuisance as declared or defined in this Chapter or any other provision of the Arvin Municipal Code.

(i) Record Owner.

The person to whom land is assessed as shown on the last available equalized assessment roll, supplemental roll of the County of Kern, or as otherwise known to the enforcement official or his/her designee by virtue of more recent or reliable information.

(j) Responsible Party.

A person or entity identified by the Arvin Municipal Code or law as responsible for creating, causing, committing, or maintaining the violation(s) of the Arvin Municipal Code or law and/or responsible for the abatement of a Arvin Municipal Code or law violation(s), including public nuisance, as defined in this Chapter.

(k) Subject Property.

The real property that is the subject of any enforcement or abatement action by the City for which the City incurred costs sought to be recovered under this article.

Section 8.12.703 Abatement and Enforcement Costs and Penalties.

(a) Special Assessment and Lien or Personal Obligation.

The cost of abating a public nuisance and/or enforcing this Chapter or applicable Federal, State or County law shall either be a special assessment and lien on the subject property or the personal obligation of the owner of the subject property and/or the person responsible for creating, causing, committing or maintaining the public nuisance or violating this Chapter or Federal, State or County law. If there is more than one responsible party, each responsible party shall be jointly and severally liable for the costs. Costs incurred by the City are recoverable even if a public nuisance, Arvin Municipal Code, or other law violation is corrected by the property owner or other responsible party.

(b) Applicability.

This article shall govern the procedures used to recover all abatement and enforcement costs incurred by the City in the abatement of a public nuisance or violation of this Chapter and/or the enforcement of this Chapter or other law pursuant to the procedures and authority found in the Arvin Municipal Code. Additionally, this article shall govern the procedures used to recover administrative penalties and costs as well as multiple response costs imposed pursuant to the procedures and authority found in the Arvin Municipal Code.

(c) Cumulative Remedies.

The remedies provided in this Article shall be cumulative to any other provided in the Arvin Municipal Code or by law.

(d) Payment Plan.

Nothing in this Article shall prevent the City at any time from accepting payment for unpaid costs or penalties in whole or by way of a payment plan.

Section 8.12.704 Invoice of Costs.

(a) Invoice.

The invoice shall notify the noticed party of the following:

(i) A description of the abatement or enforcement action taken by the City, where applicable a description of the property subject to the abatement or enforcement, and the total amount of the costs incurred by the City. The requirements of this subsection may be met by

providing the noticed party with a copy of the report required by subsection (a) of this section.

(ii) That should the noticed party fail to pay the costs within thirty (30) calendar days from the date of service of the invoice the costs may be collected in any or all of the following ways: by a collection agency as a personal obligation, by the City Attorney's Office through judicial action, or as a special assessment and lien attached to the subject property.

(iii) That the noticed party has a right to administrative review of the accounting of the costs incurred by the City by filing a written request for such review with the City Clerk within fifteen (15) calendar days of the date of the invoice, and that a failure to request administrative review will be deemed a waiver of a right to review of the amount of the costs.

(iv) That before a special assessment is placed on the subject property, the costs will be confirmed by the City Council and a notice will be issued at least fifteen (15) calendar days before the Council meeting.

(v) That the invoice may be recorded as a Notice of Costs or Penalties in the Kern County Recorder's Office.

(b) Recording.

The enforcing department may record the invoice as a Notice of Costs or Penalties in the Kern County Recorder's Office. Once payment is received for the outstanding costs and/or penalties, or any reduction of costs following administrative review, and no further action will be taken under this article, the enforcing department shall record a Notice of Satisfaction.

Section 8.12.705 Administrative Review of Costs.

(a) Right to Administrative Review.

A noticed party shall have the right to administrative review of the invoiced costs incurred by the City by filing a written request for such review with the City Clerk within fifteen (15) calendar days of the date of the invoice. A failure to timely request administrative review will be deemed a waiver of a right to review of the amount of the costs.

(b) Procedures for Administrative Review.

If a request for administrative review is timely filed, the City Clerk shall deliver a copy of the invoice of costs incurred by the City and request for administrative review to the City Manager or his/her designee, which may include the appointment of a hearing officer, who shall set a date and time to review the invoice of costs with the requesting party. The administrative

review shall be an informal proceeding where the enforcement department and requesting party may present any evidence they deem pertinent to the amount of the costs. The scope of review shall be limited to the amount of the costs.

(c) Decision.

The City Manager or his/her designee may affirm or reduce the costs if he/she determines that they are not supported by the evidence or upon a showing that the costs were unnecessary or unreasonable. The City Manager or his/her designee will not pass upon the validity of the underlying enforcement action or the amount of any penalties.. The decision shall be memorialized in writing. The City Manager or his/her designee may approve a payment plan for the costs.

(d) Time for Payment.

The requesting party shall have thirty (30) calendar days from the date of the decision to pay the costs, unless a payment plan is approved, in which case the costs shall be paid in accordance with the payment plan.

(e) Prior Hearing.

There is no right to administrative review if the costs have already been approved by a court of competent jurisdiction. There is no right to administrative review to confirm costs under this section if they have been previously upheld in an abatement or other administrative hearing held under the Arvin Municipal Code.

Section 8.12.706 Recovery of Penalties.

Administrative penalties unpaid after the required time set forth in the Municipal Code, or within fifteen (15) calendar days from the final decision after an appeal, may be collected in the manner set forth in this article except the City is not required to send an invoice under Section 8.12.704. Interest shall accrue at a rate of ten percent (10%) per year on unpaid penalties until paid. Penalties and interest may only be made a lien or special assessment upon a subject property when the record owner of the property was issued and properly noticed with the citation or other basis for the penalty.

Section 8.12.707 Recovery of Abatement and Enforcement Costs.

Abatement and enforcement costs unpaid after the required time set forth in this Chapter may be collected in the matter set forth in this article. To collect costs under these procedures, the City must send an invoice under Section 8.12.704.

Interest shall accrue at a rate of ten percent (10%) per year on unpaid costs until paid.

Section 8.12.708 Personal Obligation.

Any costs or penalties subject to collection under this Chapter may be recovered as a personal obligation against the responsible party and may be referred to a collection agency or the City Attorney's Office for collection. Upon referral of these costs and obligations, the collection agency and the City Attorney's Office may seek collection through any legal means provided to them, including judicial action. Nothing in this section shall be affected by or affect the City's use of any other procedure provided in this article or by law to collect unpaid costs and penalties. In a judicial action to recover abatement costs, the City Attorney's Office may elect to recover attorneys' fees. In any action in which the City Attorney's Office elects to recover attorneys' fees under this section, attorneys' fees will be recovered by the prevailing party.

Section 8.12.709 Special Assessment and Lien.

(a) Collection.

Unpaid penalties, abatement costs, and enforcement costs that relate to a property related violation may be confirmed by the City Council as a special assessment and collected with property taxes or as a judgment lien.

(b) Notice.

Notice of a public meeting to confirm the penalties and/or costs shall be provided to all noticed parties by the enforcing department or City Clerk at least fifteen (15) calendar days before the meeting. The notice shall: (i) contain a description of the subject property sufficient to enable the person(s) served to identify it; (ii) shall state that the City intends to collect unpaid costs or penalties by placing a lien or a special assessment on the subject property; (iii) shall specify the day, hour and place where the Council will hear and pass upon the penalties and/or costs; (iv) shall specify that the property may, in some cases, be sold after three (3) years by the Tax Collector pursuant to Revenue and Tax Code Section 3691 for unpaid delinquent assessments or be subject to judicial foreclosure before the three (3) years; and (v) shall specify that any noticed party may appear at the Council meeting and present objections to the lien or assessment.

(c) Service of Notice.

Notice shall be given either by personal service or by depositing the notice in the United States mail, postage prepaid, addressed to the owner of such lot or parcel of land and/or lessee as it appears on the

last available equalized assessment roll, supplemental roll of the County of Kern, or as otherwise known to the City by virtue of more recent or reliable information. If no address appears or is known to the City, then a copy of the notice may be mailed to the property address. A copy of the notice may also be posted on the property in a conspicuous place. Where known, a copy may also be provided by email. The failure of any person to receive the notice required by this section shall not affect the validity of any proceedings taken under this Chapter.

(d) Confirmation by City Council.

During the City Council meeting the Council may adopt a resolution confirming the amount of the penalties and costs, or any lesser amount, based upon staff reports and any public comments received during the meeting. The City Council shall take into consideration whether any noticed party sought administrative review of the costs and shall only reduce the costs if:

(i) the noticed party sought administrative review, and

(ii) the decision of the City Manager or his/her designee is not supported by substantial evidence in the record. The basis for the code enforcement action will not be the subject of the City Council's consideration.

Where the costs have already been approved by a court of competent jurisdiction or the penalties have been previously upheld in an abatement or other administrative hearing held under the Arvin Municipal Code, the City Council shall simply confirm the costs or penalties.

The City Council may confirm the costs for more than one property in a single resolution. If the City Council confirms the costs, the procedures set forth in this section may be utilized.

(e) Time to Contest Confirmed Special Assessment or Lien.

The validity of any special assessment or lien levied under the provisions of this section shall not be contested in any action or proceeding unless such action or proceeding is commenced within thirty (30) calendar days after the special assessment is confirmed by the City Council.

(f) Recording.

Immediately upon the City Council's confirmation of costs or penalties, the City Clerk shall record a Notice of Special Assessment and Lien in the Office of the County Recorder, which shall constitute a lien on that property for the amount of the assessment, except that if any real property to which the lien would attach has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of taxes that included the special assessment imposed under this section would become delinquent, then the lien that would otherwise be imposed by this section shall not attach to real property and the costs of abatement and enforcement relating to the property shall be transferred to the unsecured roll for collection.

(g) Form of Notice of Special Assessment and Lien.

The Notice of Special Assessment and Lien for recordation shall be in the form substantially as follows:

NOTICE OF SPECIAL ASSESSMENT AND LIEN

(Claim of the City of Arvin)

Under authority vested by provision of Chapter __, Article __, of the Arvin Municipal Code, the City of Arvin did on or about the ___ day of _____, 20__, assess [describe penalties, abatement costs, enforcement costs] on the real property hereinafter described; and the same has not been paid nor any part thereof and the City of Arvin does hereby claim a lien for such [penalties, abatement costs, and enforcement costs] to wit: the sum of _____ dollars, plus legal rate of interest to be accrued from the date of recording this lien, and any and all administrative costs to file and record the lien. The same shall be a lien upon the real property until it has been paid in full and discharged of record.

The real property hereinafter mentioned, upon which a lien is claimed, is that certain parcel of land in the City of Arvin, County of Kern, State of California, more particularly described as follows:

DATED: this ___ day of _____, 20___

_____ City of Arvin

(Job Title)

(h) Collection with Taxes.

After confirmation and recordation, a copy may be turned over to the Kern County Tax Collector. At that point, it will be the duty of

the Tax Collector to add the amounts of the respective assessments to the next regular tax bills levied against the lots and parcels of land for municipal purposes. Those amounts 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 procedures and sale in the cases of delinquency as provided for with ordinary municipal taxes.

(i) Foreclosure.

After confirmation and recording, the lien may also be foreclosed by judicial or other sale in the manner and means provided by law. The City may recover from the record property owners any costs incurred regarding a foreclosure action.

(j) Priority.

A special assessment and lien imposed under this Article shall have the priority of a tax lien, unless prohibited by State law, in which case the special assessment and lien shall have the priority of a judgment lien.

(k) Release of Lien.

Once payment in full is received for the special assessment and lien, including applicable penalties, administrative fees and interest charges; or the amount is deemed satisfied pursuant to a subsequent administrative or judicial order; or the City has entered into some other arrangement with the property owner for satisfaction of the assessment; the enforcing department shall either record a Notice of Satisfaction or provide the property owner or financial institution with the Notice of Satisfaction so they can record the Notice with the Kern County Recorder's Office.

(l) Refund.

The City Council may order a refund of all or part of a tax paid pursuant to this Article if it finds that all or part of the tax has been erroneously levied. A tax or part thereof shall not be refunded unless a claim is filed with the City Clerk in accordance with the City's claim filing requirements, and in no event later than November 1st after the tax became due and payable. The claim shall be verified by the person who paid the tax, or his/her guardian, executor or administrator.

Article 8. Judicial Review and Severability

Section 8.12.901 Judicial Review.

Judicial review of a decision made under this Chapter may be had by filing a petition for a writ of mandate with the superior court in accordance with the provisions of the California Code of Civil Procedure section 1094.5. Any such petition shall be filed within ninety (90) calendar days after the day the decision becomes final as provided in California Code of Civil Procedure section 1094.6, which shall be applicable for such actions.

Section 8.12.902 Severability.

If any article, section, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Chapter. The Council hereby declares that it would have adopted this chapter and adopted each article, section, sentence, clause or phrase thereof, irrespective of the fact that any one or more articles, sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.