

**City Attorneys Department Spring Meeting
League of California Cities
May 1-3, 1996**

CIVILIZING CODE ENFORCEMENT

**JOAN R. GALLO
City Attorney**

**RENÉE A. GURZA
Deputy City Attorney**

OUTLINE

- I. INTRODUCTION**
- II. ADMINISTRATIVE CITATIONS and SB 814**
 - 1. The Administrative Citations Ordinance**
 - 2. SB 814**
 - 3. Administrative Citation Fines**
 - 4. Administrative Issues**
- III. ADMINISTRATIVE REMEDIES and SB 814**
 - 1. The Administrative Remedies Ordinance**
 - 2. Penalties and Costs**
 - 3. SB 814**
 - 4. Administrative Issues**
- IV. NUISANCE ABATEMENT ACTIONS**
- V. CIVIL COMPROMISES**
- VI. CONCLUSION**

ATTACHMENT A - ADMINISTRATIVE CITATIONS ORDINANCE

ATTACHMENT B - SB 814

ATTACHMENT C - ADMINISTRATIVE REMEDIES ORDINANCE

**CIVILIZING
CODE ENFORCEMENT**

I **INTRODUCTION**

Over the last couple of years, San José has been moving away from the use of criminal prosecution as the preferred approach to code enforcement and nuisance abatement.

The criminal process does not seem to work as an adequate deterrent in many situations. It is a slow, labor intensive process for both the City Attorney's Office and the Code Enforcement staff. When, after months of stalling and delay, pretrial compliance is actually achieved, most judges are not sympathetic to our insisting on a trial in order to impose penalties. Most of the court imposed fines do not go to the city, and there is an increasing pressure to make code enforcement more cost recovery. Furthermore, with the advent of Three Strikes and its impact on the courts, there is a real question as to whether most municipal code prosecutions should be on the court's overburdened calendar.

Instead, San José took a comprehensive look at the code enforcement process and adopted a number of administrative procedures which have been coupled with more frequent use of the civil courts.

II **ADMINISTRATIVE CITATIONS and SB 814**

1. The Administrative Citations Ordinance

The Administrative Citation is intended to be used for violations of the municipal code that are **transient** and **not continuing** in nature. Examples of regulations appropriate for this approach are: early yard waste set out, false burglar alarms, noisy animals, parking automobiles on front lawns, failure of vendors to carry a required permit, and violations of local smoking prohibitions.

The structure of the Administrative Citation process is intended to mirror, as much as possible, the new administrative approach to parking tickets. An enforcement officer issues an Administrative Citation that lists the code violation and the administrative fine amount and describes how to pay the fine or request a hearing to contest the citation. The Administrative Citation is contested through an administrative hearing process. The amount of the fine must be deposited in advance of the administrative hearing, but there is a procedure for a waiver of that deposit, if making the deposit causes a hardship.

The San José Administrative Citations Ordinance is provided in Attachment A.

2. SB 814

The major impediment to this approach was the fact that the administrative hearing officer's decision would be subject to review under administrative mandamus (CCP §1094.5), and we did not want to burden code enforcement staff with having to prepare detailed reports and appear at administrative hearings in order to create a sufficient administrative record.

Parking citations constitute *prima facie* evidence of the facts of a violation listed on the citation and are subject to *de novo* review by the Municipal Court (Cal. Veh. Code §40230). We similarly stated in our ordinance that an Administrative Citation constitutes *prima facie* evidence of the facts contained in the citation. Therefore, San José sponsored this legislation in order to provide similar *de novo* review of Administrative Citations by the Municipal Court.

There are few cases that even indirectly discuss the ability of cities to use administrative fines and penalties. As a charter city, we felt comfortable imposing civil fines pursuant to our police powers. Under City of Stockton v. Frisbie & Latta, (1928) 93 Cal. App. 277, cities and towns are not limited to the adoption of any particular mode of enforcing their regulations and civil remedies may be appropriate. There is also statutory authority in Government Code §36901 for the legislative body of a city to impose fines, penalties, and forfeitures, up to \$1,000. While the provision seems to be somewhat penal in nature, it does not specify such a limitation. An 1892 case, Ex Parte M. Green, 94 Cal. 387, concluded that where the power to impose fines has been conferred and no mode has been specified for their collection, it is within the power of a municipal corporation to adopt any reasonable mode for the collection of the fine.

Given the dearth of case law, one of the side benefits of Senate Bill 814 is that it provides clear statutory authority, in Government Code §53069.4, for an administrative enforcement approach by cities:

The legislative body of a local agency, as the term "local agency" is defined in Section 54951, may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty.

Of course, few bills emerge through the legislative process as originally proposed. There are two important elements in this bill which were added along the way:

- a. The California Attorneys for Criminal Justice added the provision that administrative fines for infractions cannot be higher than applicable statutory maximums. Since cities determine which municipal code violations are infractions, this change should not pose a problem.
- b. The California Apartment Association wanted to ensure that landlords are given

an opportunity to correct certain violations, such as illegal fences, prior to the imposition of fines. Therefore, a provision was added to the bill requiring that the enabling ordinance include a provision setting forth a “reasonable period of time” to correct continuing violations prior to the imposition of a fine for building, plumbing, electrical code and other structural or zoning violations.

Since, the Administrative Citations approach will work best for violations of the municipal code which are transient and not continuing in nature, rather than set forth a period time to correct these “continuing” types of violations, we explicitly stated in our ordinance that the Administrative Citation ordinance shall **not** apply to “continuing” violations of building, plumbing, electrical codes and other structural or zoning issues.

A copy of SB 814 is provided in Attachment B. The provisions relevant to Administrative Citations are found in SECTION 2 of the bill.

3. Administrative Citation Fines

The amount of the fine is set by resolution. In San José, the standard fine is \$25 for a typical municipal code violation. However, higher fines are established for more serious violations, after consideration of factors such as: what constitutes a reasonable fine amount for the violation, the staff time involved to identify and address the code violation, and what fine amount would act as a reasonable deterrent to the behavior or act at issue. We also have provided for penalties and interest on late payments of administrative fines.

As an example: while responsible parties are provided with warnings for the first and second false burglar alarms, our administrative fine is \$100 for a third false burglar alarm in sixty-days; \$250 for the fourth in this period; and \$500 for any subsequent false alarms during this same sixty-day period. Between July 1, 1995 and March 15, 1996, the City of San José issued approximately 1,500 Administrative Citations for false burglar alarms. Of those, approximately 60, or 4%, were appealed. Administrative Citation fines (including penalties and interest for late payments of fines) for false burglar alarms during this period totaled \$174,000 and approximately \$126,200 was received without necessity for a collection action, for a collection rate of approximately 73%. Unpaid fines presently are being collected by our Finance Department, but eventually may be turned over to a collection agency if the volume becomes too great.

4. Administrative Issues

This administrative approach allows staff of various departments, in addition to police officers and code enforcement officers, to enforce their own ordinances. The hearing officer can be in the administrative department that issues the citation or can be centrally designated to handle all challenges. It may be reasonable to use the existing parking ticket hearing officer.

In San José, this ordinance currently is being implemented on a pilot project basis to work out the procedures and to allow training for staff in its use. It is just beginning to have an effect. Staff has embraced this approach enthusiastically because it is so streamlined, convenient and “user” friendly.

III **ADMINISTRATIVE REMEDIES** *and* **SB 814**

1. The Administrative Remedies Ordinance

This approach has been used successfully in dealing with continuing and ongoing violations of the zoning code and the building, plumbing, and electrical codes. It affords Code Enforcement staff with greater control over their cases and an ability to respond to code violations more quickly than is possible through the criminal process.

Under this approach, an enforcement officer issues a Compliance Order to a responsible party that sets forth a description of the municipal code violation(s) identified at the property, a description of what the responsible party is required to do to bring the property into compliance, and the date by which compliance must be achieved. The Compliance Order also provides notice that administrative penalties of up to \$2,500 per day begin to accrue if compliance with the Compliance Order is not achieved by the compliance date listed on the Order and describes the appeals process.

If Code Enforcement staff determines upon reinspection of the property that compliance with the Compliance Order was not achieved by the compliance date, a public hearing is scheduled before an administrative hearing body and notice of the hearing is provided to the responsible party. Both Code Enforcement staff and the responsible party attend the hearing and present their case, after which the administrative hearing body issues its decision. In San José, the hearings are conducted by a commission of citizens called the Appeals Hearing Board. The decision may contain an order to correct any violations determined to exist, together with an order to pay administrative penalties and costs to the city, in amounts determined by the administrative hearing body.

This ordinance has proved very effective in gaining rapid compliance. A copy of the San Jose Administrative Remedies Ordinance is provided in Attachment C.

2. Penalties and Costs

Under the Administrative Remedies Ordinance, the administrative hearing body is authorized to impose administrative penalties of up to \$2,500 per day for each ongoing code violation, up to a total penalty of \$100,000. General law cities may want to

consider whether, under Government Code §36901, the fine should have a \$1,000 per day limitation. The Ordinance lists factors that the administrative hearing body may consider in establishing the penalty amount, such as: the duration and seriousness of the violation, any good faith efforts of the responsible party to achieve timely compliance, the frequency of violations by the responsible party, the impacts of the violation on the community, and the economic impact of a penalty on the responsible party.

The Ordinance also authorizes the administrative hearing body to order a responsible party to reimburse the city for its administrative costs incurred in pursuing the enforcement action, such as the costs to investigate the matter, perform inspections, and prepare the case for administrative hearing. The Ordinance allows the city to collect these costs and penalties owed as a personal obligation of the responsible party or by placing a lien on the responsible party's real property when the violation pertains to that real property.

Compliance is overwhelmingly achieved before the compliance date. Code Enforcement estimates that they actually issue a little over 1,000 Compliance Orders in a calendar quarter. Only about 7 cases a quarter reach the Appeals Hearing Board because compliance was not achieved by the compliance date. Additionally, from the time this approach was implemented near the beginning of 1994, Code Enforcement has requested the City Attorney's Office to present their case on only 2 occasions when they knew in advance that the responsible party would be represented at the Board hearing by an attorney.

Since this Ordinance was implemented at the end of 1993, the City has imposed approximately \$340,000 in administrative penalties and costs. To date, the largest administrative penalty paid to the City in any one case is \$38,900. The largest lien which has placed against a single property is \$50,800.

3. SB 814

This Administrative Remedies Ordinance is subject to administrative mandamus (CCP Section 1094.5). When we enacted this ordinance, we were concerned about the applicable statute of limitations. CCP §1094.6(e) sets a 90-day statute of limitations for employment actions, as well as decisions revoking or denying an application for a permit, license or other entitlement or decisions denying an application for any retirement benefit or allowance. Therefore, once we decided to sponsor SB 814 to address our Administrative Citation concern, we also sought to amend this section to include decisions "**imposing a civil or administrative penalty, fine, charge, or cost.**" (See SECTION 1 of the bill in Attachment B.) Thus, cities now, by resolution or ordinance, can make challenges to the administrative process subject to the 90-day statute of limitations.

4. Administrative Issues

The major difficulty in implementing this ordinance was training staff to fully complete a Compliance Order and prepare the necessary, detailed report for the administrative hearing body. Code Enforcement staff prepares a report for the administrative hearing body that summarizes the relevant observations, inspections and other pertinent facts of a case, as well as the administrative costs incurred by the city in pursuing the enforcement action. The report also contains a staff recommendation of an administrative penalty amount, together with the reasons supporting that amount.

Additionally, this report sets forth a detailed recommendation to the administrative hearing body of the relevant findings and conclusions that flow from the facts presented and a recommended decision based upon those findings and conclusions designed to meet the standards for administrative findings set forth in Topanga Assn. for a Scenic Community v. County of Los Angeles, (1974) 11 Cal.3d 506.

It is important to create a sufficient administrative record under this process because the decision may be challenged by a writ of administrative mandamus. We try to ensure that the administrative record clearly reflects that the administrative findings and decision are supported by substantial evidence.

A Writ of Mandate has been filed in only two cases so far. The trial court upheld the decision of the Appeals Hearing Board in both. One decision was appealed and the decision of the Board was upheld in an unpublished decision.

Once staff has learned how to complete the Compliance Orders and draft their reports to the Appeals Hearing Board, this enforcement technique certainly can be more efficient and requires less attorney involvement than traditional code enforcement.

IV NUISANCE ABATEMENT ACTIONS

Civil suits are an effective alternative: where a business creates a nuisance, but it is not technically violating any municipal code provision, for example, a liquor store that has patrons hanging around outside and disturbing the peace; where the code violations are so extreme that immediate closure of the business is warranted; or where drug dealing or gang activity are involved. The new element for us is that in recent cases, as part of the community policing effort, active neighborhood support is elicited. The community support in documenting problems and the willingness to sign declarations has made the motions for preliminary injunction more compelling.

We recently succeeded in closing down a liquor store that was creating a serious neighborhood problem. In addition to alleging a public nuisance pursuant to California Code of Civil Procedure §731 and the applicable municipal code sections, we alleged a cause of action for unfair competition pursuant to California Business and Professions Code §17200, *et. seq.* (this cause of action is not available to smaller cities).

After closure of the liquor store, the number of alcohol-related violations and narcotics-related violations in the vicinity of the liquor store have decreased dramatically. The total number of liquor-related offenses decreased by 77%. The total number of narcotics-related offenses decreased by 67%. The total number of incidents reported in the vicinity decreased by 54%.

The Police Department credits the closing of this liquor store with far-reaching beneficial effects. Not only has it turned around the immediate problems, but since the case garnered so much publicity, the beat officers find that they get a lot of attention when they suggest to a business or property owner that they might be the next "Charlie's."

V CIVIL COMPROMISES

We continue to use criminal citations in most situations where the Police Department enforces the Code, especially where the Police Department wants to actually remove someone from the scene. We will also continue to use the criminal process for violations involving hazardous materials or sewer disposal regulations. The Municipal Court has been willing to impose jail sentences under these circumstances. However, where jail time is not our goal, we have found that a civil compromise can serve the same function in preventing recurrence as does probation and it is more readily agreed to than a guilty plea.

In a recent case, the civil compromise resulted in civil penalties and restitution to the City for past violations in the total amount of \$150,000. Additionally, the civil compromise included an injunction which specifies very stiff civil penalties for any future violations.

This injunction will be overseen by the Superior Court, and requires obedience with all laws and mandates of the San Jose Fire Department during its three (3) year duration. If any violations occur during this time, the duration of the injunction will be extended for a one-year period of time per violation. The injunction required compliance with very specific conditions for the operation of the business, including making their business premises and their hazardous materials monitoring records available for inspection by the Fire Department upon request.

VI CONCLUSION

SB 814 was enacted in order to facilitate use of the Administrative Citations and Administrative Remedies processes. As part of a comprehensive civil approach, we are also utilizing Nuisance Abatement lawsuits and civil compromises of criminal actions.

While we continue to use the traditional summary and proposed nuisance abatement

procedures in extreme cases, it is not favored because this type of abatement requires an expenditure of City funds to perform the abatement work. Cities performing abatement work on substandard housing also should be aware that the State Department of Housing and Community Development contends, we believe incorrectly, that the substandard housing abatement process set forth under State Housing Law is the exclusive method that may be used to abate substandard housing conditions. For further discussion of this issue, see, Libow and Phillips, "The Abatement of Substandard Housing Conditions, The State Housing Law and Regulations: A Trap for the Unwary," League of California Cities Annual Conference (October 1994).

Other ordinances that are a part of this administrative approach include:

- Neglected Vacant House Ordinance: This ordinance defines neglected, vacant houses as public nuisances. It sets standards for maintenance of residential buildings remaining vacant for more than 30 days, and includes structural and building standards, fire safety standards, security standards, debris removal and appearance standards. Owners of houses determined to be **neglected** vacant houses must register their residences in a monitoring program; inspect or cause their residences to be inspected once every 2 weeks; and pay the applicable fee for registration in the monitoring program. Appeals regarding placement in the monitoring program or payment of fees are heard by our Appeals Hearing Board.
- Owner Relocation Obligations Ordinance: This ordinance mandates that owners of rental units provide tenants with relocation assistance in the event it becomes necessary for the City to take enforcement action to bring the unit into compliance with housing or fire codes. Emergency, temporary, and long term relocation assistance are all required. Relocation assistance includes alternative safe and legal housing at no additional rental cost to the tenant, transportation costs arising from the displacement, provision of furnishings, and reasonable security for tenants' property remaining in the unit. The ordinance also gives tenants the right to reoccupy the unit when the violations have been corrected, the right to no increases in rent for 12 months after reoccupying the unit, and a private right of action against the owner for any damages.

We also want to call your attention to AB 1837 (Figueroa), which became effective January 1, 1996 and amended Penal Code Section 594.5 to provide that nothing in the Penal Code shall invalidate a city ordinance setting forth "administrative regulations, procedures, or penalties governing the placement of graffiti or other inscribed material on public or private, real or personal property." Thus, under this new law, cities can address graffiti administratively. We currently are assessing the possibility of an ordinance pursuant to this bill.

It is too early to fully assess the success of these administrative approaches, but, at this point, all indications are that it takes less time to achieve compliance and stop the nuisance.

ATTACHMENT A
ADMINISTRATIVE CITATION ORDINANCE

Chapter 1.15
ADMINISTRATIVE CITATIONS

1.15.010 Applicability

- A. This Chapter provides for administrative citations which are in addition to all other legal remedies, criminal or civil, which may be pursued by the City to address any violation of this Code.
- B. The administrative citations process set forth in this Chapter does not apply to continuing violations of this Code that pertain to building, plumbing, electrical, or other similar structural or zoning issues.
- C. Use of this Chapter shall be at the sole discretion of the City, subject to Section 1.15.010.B.

1.15.020 Enforcement Officer -- Defined

For purposes of this Chapter, "enforcement officer" shall mean any City employee or agent of the City with the authority to enforce any provision of this code.

1.15.030 Administrative Citation

- A. Whenever an enforcement officer charged with the enforcement of any provision of this Code determines that a violation of that provision has occurred, the enforcement officer shall have the authority to issue an administrative citation to any person responsible for the violation.
- B. Each administrative citation shall contain the following information:
 - 1. The date of the violation;
 - 2. The address or a definite description of the location where the violation occurred;
 - 3. The section of this Code violated and a description of the violation;
 - 4. The amount of the fine for the code violation;
 - 5. A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;
 - 6. An order prohibiting the continuation or repeated occurrence of the code violation described in the administrative citation;
 - 7. A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request for hearing form to contest the administrative citation may be obtained; and
 - 8. The name and signature of the citing enforcement officer.

1.15.040 Amount of Fines

- A. The amounts of the fines for code violations imposed pursuant to this Chapter shall be set forth in the schedule of fines established by resolution of the City Council.
- B. The schedule of fines shall specify any increased fines for repeat violations of the same code provision by the same person within thirty-six months from the date of an administrative citation.
- C. The schedule of fines shall specify the amount of any late payment charges imposed for the payment of a fine after its due date.

1.15.050 Payment of the Fine

- A. The fine shall be paid to the City within thirty days from the date of the administrative citation.
- B. Any administrative citation fine paid pursuant to subsection A. shall be refunded in accordance with Section 1.15.100 if it is determined, after a hearing, that the person charged in the administrative citation was not responsible for the violation or that there was no violation as charged in the administrative citation.
- C. Payment of a fine under this Chapter shall not excuse or discharge any continuation or repeated occurrence of the code violation that is the subject of the administrative citation.

1.15.060 Hearing Request

- A. Any recipient of an administrative citation may contest that there was a violation of the Code or that he or she is the responsible party by completing a request for hearing form and returning it to the City within thirty days from the date of the administrative citation, together with an advance deposit of the fine or notice that a request for an advance deposit hardship waiver has been filed pursuant to Section 1.15.070.
- B. A request for hearing form may be obtained from the department specified on the administrative citation.
- C. The person requesting the hearing shall be notified of the time and place set for the hearing at least ten days prior to the date of the hearing.
- D. If the enforcement officer submits an additional written report concerning the administrative citation to the hearing officer for consideration at the hearing, then a copy of this report also shall be served on the person requesting the hearing at least five days prior to the date of the hearing.

1.15.070 Advance Deposit Hardship Waiver

- A. Any person who intends to request a hearing to contest that there was a violation of the Code or that he or she is the responsible party and who is financially unable to make the advance deposit of the fine as required in Section 1.15.060.A. may file a request for an advance deposit hardship waiver.
- B. The request shall be filed with the Department of Finance on an advance deposit hardship waiver application form, available from the Department of Finance, within ten days of the date of the administrative citation.
- C. The requirement of depositing the full amount of the fine as described in Section 1.15.06.A. shall be stayed unless or until the Director of Finance makes a determination not to issue the advance deposit hardship waiver.
- D. The Director may waive the requirement of an advance deposit set forth in Section 1.15.060.A. and issue the advance deposit hardship waiver only if the cited party submits to the Director a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the Director the person's actual financial inability to deposit with the City the full amount of the fine in advance of the hearing.
- E. If the Director determines not to issue an advance deposit hardship waiver, the person shall remit the deposit to the City within ten days of the date of that decision or thirty days from the date of the administrative citation, whichever is later.
- F. The Director shall issue a written determination listing the reasons for his or her determination to issue or not issue the advance deposit hardship waiver. The written determination of the Director shall be final.
- G. The written determination of the Director shall be served upon the person who applied for the advance deposit hardship waiver.

1.15.080 Hearing Officer

The City Manager shall designate the hearing officer for the administrative citation hearing.

1.15.090 Hearing Procedure

- A. No hearing to contest an administrative citation before a hearing officer shall be held unless the fine has been deposited in advance in accordance with Section 1.15.060 or an advance deposit

hardship waiver has been issued in accordance with Section 1.15.070.

- B. A hearing before the hearing officer shall be set for a date that is not less than fifteen days and not more than sixty days from the date that the request for hearing is filed in accordance with the provisions of this Chapter.
- C. At the hearing, the party contesting the administrative citation shall be given the opportunity to testify and to present evidence concerning the administrative citation.
- D. The failure of any recipient of an administrative citation to appear at the administrative citation hearing shall constitute a forfeiture of the fine and a failure to exhaust their administrative remedies.
- E. The administrative citation and any additional report submitted by the enforcement officer shall constitute prima facie evidence of the respective facts contained in those documents.
- F. The hearing officer may continue the hearing and request additional information from the enforcement officer or the recipient of the administrative citation prior to issuing a written decision.

1.15.100 Hearing Officer's Decision

- A. After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision to uphold or cancel the administrative citation and shall list in the decision the reasons for that decision. The decision of the hearing officer shall be final.
- B. If the hearing officer determines that the administrative citation should be upheld, then the fine amount on deposit with the City shall be retained by the City.
- C. If the hearing officer determines that the administrative citation should be upheld and the fine has not been deposited pursuant to an advance deposit hardship waiver, the hearing officer shall set forth in the decision a payment schedule for the fine.
- D. If the hearing officer determines that the administrative citation should be canceled and the fine was deposited with the City, then the City shall promptly refund the amount of the deposited fine, together with interest at the average rate earned on the City's portfolio for the period of time that the fine amount was held by the City.
- E. The recipient of the administrative citation shall be served with a copy of the hearing officer's written decision.
- F. The employment, performance evaluation, compensation and benefits of the hearing officer shall not be directly or indirectly conditioned upon the amount of administrative citation fines upheld by the hearing officer.

1.15.110 Late Payment Charges

Any person who fails to pay to the City any fine imposed pursuant to the provisions of this Chapter on or before the date that fine is due also shall be liable for the payment of any applicable late payment charges set forth in the schedule of fines.

1.15.120 Recovery of Administrative Citation Fines and Costs

The City may collect any past due administrative citation fine or late payment charge by use of all available legal means. The City also may recover its collection costs pursuant to Section 1.17.060.

1.15.125 Right to Judicial Review

Any person aggrieved by an administrative decision of a Hearing Officer on an administrative citation may obtain review of the administrative decision by filing a petition for review with the Municipal Court in Santa Clara County in accordance with the timelines and provisions set forth in California Government Code Section 53069.4.

1.15.130 Notices

- A. The administrative citation and all notices required to be given by this Chapter shall be served on the responsible party in accordance with the provisions of Section 1.04.140 of this Title.
- B. Failure to receive any notice specified in this Chapter does not affect the validity of proceedings conducted hereunder.

ATTACHMENT B

SB 814

Introduced by Senators Alquist and Kopp
Chaptered 10-16-95 95-0898 February 23, 1995

The People of the State of California do enact as follows:

SECTION 1. Section 1094.6 of the Code of Civil Procedure is amended to read:

1094.6. (a) Judicial review of any decision of a local agency, other than school district, as the term local agency is defined in Section 54951 of the Government Code, or of any commission, board, officer or agent thereof, may be had pursuant to Section 1094.5 of this code only if the petition for writ of mandate pursuant to such section is filed within the time limits specified in this section.

(b) Any such petition shall be filed not later than the 90th day following the date on

which the decision becomes final. If there is no provision for reconsideration of the decision, or for a written decision or written findings supporting the decision, in any applicable provision of any statute, charter, or rule, for the purposes of this section, the decision is final on the date it is announced. If the decision is not announced at the close of the hearing, the date, time, and place of the announcement of the decision shall be announced at the hearing. If there is a provision for reconsideration, the decision is final for purposes of this section upon the expiration of the period during which such reconsideration can be sought; provided, that if reconsideration is sought pursuant to any such provision the decision is final for the purposes of this section on the date that reconsideration is rejected. If there is a provision for a written decision or written findings, the decision is final for purposes of this section upon the date it is mailed by first-class mail, postage prepaid, including a copy of the affidavit or certificate of mailing, to the party seeking the writ. Subdivision (a) of Section 1013 does not apply to extend the time, following deposit in the mail of the decision or findings, within which a petition shall be filed.

(c) The complete record of the proceedings shall be prepared by the local agency or its commission, board, officer, or agent which made the decision and shall be delivered to the petitioner within 190 days after he has filed a written request therefor. The local agency may recover from the petitioner its actual costs for transcribing or otherwise preparing the record. Such record shall include the transcript of the proceedings, all pleadings, all notices and orders, any proposed decision by a hearing officer, the final decision, all admitted exhibits, all rejected exhibits in the possession of the local agency or its commission, board, officer, or agent, all written evidence, and any other papers in the case.

(d) If the petitioner files a request for the record as specified in subdivision (c) within 10 days after the date the decision becomes final as provided in subdivision (b), the time within which a petition pursuant to Section 1094.5 may be filed shall be extended to not later than the 30th day following the date on which the record is either personally delivered or mailed to the petitioner or his attorney of record, if he has one.

(e) As used in this section, decision means a decision subject to review pursuant to Section 1094.5, suspending, demoting, or dismissing an officer or employee, revoking, denying an application for a permit, license, or other entitlement, **imposing a civil or administrative penalty, fine, charge, or cost**, or denying an application for any retirement benefit or allowance.

(f) In making a final decision as defined in subdivision (e), the local agency shall provide notice to the party that the time within which judicial review must be sought is governed by this section. As used in this subdivision, "party" means an officer or employee who has been suspended, demoted or dismissed; a person whose permit, license, or other entitlement has been revoked or suspended, or whose application for a permit, license, or other entitlement has been denied; or a person whose application for a retirement benefit or allowance has been denied.

(g) This section shall prevail over any conflicting provision in any otherwise applicable law relating to the subject matter, unless the conflicting provision is a state or federal law which provides a shorter statute of limitations, in which case the shorter statute of limitations shall apply.

SECTION. 2. Section 53069.4 is added to the Government Code, to read:

53069.4. (a) (1) The legislative body of a local agency, as the term "local agency" is defined in Section 54951, may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. The local agency shall set forth by ordinance the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties. where the violation would otherwise be an infraction, the administrative fine or penalty shall not exceed the maximum fine or penalty amounts for infractions set forth in subdivision (b) of Section 25132 and subdivision (b) of Section 36900.

(2) The administrative procedures set forth by ordinance adopted by the local agency pursuant to paragraph (1), shall provide for a reasonable period of time, as specified in the ordinance, for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties, when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to health or safety.

(b) (1) Notwithstanding the provisions of Section 1094.5 or 1094.6 of the Code of Civil Procedure, within 20 days after service of the final administrative order or decision of the local agency is made pursuant to an ordinance enacted in accordance with this section regarding the imposition, enforcement or collection of the administrative fines or penalties, a person contesting that final administrative order or decision may seek review by filing an appeal to be heard by the Municipal Court, where the same shall be heard de novo, except that the contents of the local agency's file in the case shall be received in evidence. A copy of the document or instrument of the local agency providing notice of the violation and imposition of the administrative fine or penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the local agency by the contestant.

(2) The fee for filing the notice of appeal shall be twenty-five dollars (\$25). The court shall request that the local agency's file on the case be forwarded to the court, to be received within 15 days of the request. The court shall retain the twenty-five dollar (\$25) fee regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the local agency. Any deposit of the fine or penalty shall be refunded by the local agency in accordance with the judgment of the court.

(3) The conduct of the appeal under this section is a subordinate judicial duty that may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court.

(c) If no notice of appeal of the local agency's final administrative order or decision is filed within the period set forth in this section, the order or decision shall be deemed confirmed.

(d) If the fine or penalty has not been deposited and the decision of the court is against the contestant, the local agency may proceed to collect the penalty pursuant to the procedures set forth in its ordinance.

ATTACHMENT C ADMINISTRATIVE REMEDIES ORDINANCE

Chapter 1.14 ADMINISTRATIVE REMEDIES

1.14.010 Applicability

- A. This Chapter provides for administrative remedies, which are in addition to all other legal remedies, criminal or civil, which may be pursued by the City to address any violation of this Code.
- B. Use of this Chapter shall be at the sole discretion of the City.

1.14.020 Director -- Defined

For purposes of this Chapter, "Director" means the head of any City department which is charged with responsibility for enforcement of any provision of this Code.

1.14.030 Compliance Order

- A. Whenever the Director determines that a violation of any provision of this Code within the Director's responsibility is occurring or exists, the Director may issue a written compliance order to any person responsible for the violation.
- B. A compliance order issued pursuant to this Chapter shall contain the following information:

1. The date and location of the violation;
2. The section of this Code violated and a description of the violation;
3. The actions required to correct the violation;
4. The time period after which administrative penalties will begin to accrue if compliance with the order has not been achieved;
5. Either a copy of this Chapter or an explanation of the consequences of noncompliance with this Chapter and a description of the hearing procedure and appeal process.

1.14.040 Method of Service

- A. All notices required by this Chapter shall be served as provided in Section 1.04.140 of this Title.
- B. Where real property is involved, written notice shall be mailed to the property owner at the address as shown on the last equalized County assessment roll.
- C. Where personal service or service by mail upon the property owner is unsuccessful, a copy of the order shall be conspicuously posted at the property which is the subject of the order.
- D. The failure of any person to receive any notice required under this Chapter shall not affect the validity of any proceedings taken under this Chapter.

1.14.050 Hearing

- A. If the Director determines that all violations have been corrected within the time specified in the compliance order, no further action shall be taken.
- B. If full compliance is not achieved within the time specified in the compliance order, the Director shall advise the secretary to the Appeals Board to set a hearing before the Board.
- C. The secretary to the Appeals Hearing Board shall cause a written notice of hearing to be served on the violator and, where real property is involved, a notice of hearing shall be served on the property owner at the address as it appears on the last equalized County assessment roll available on the date the notice is prepared.

1.14.060 Notice of Hearing

- A. Every notice of hearing on a compliance order shall contain the date, time and place at which the hearing shall be conducted by the Appeals Hearing Board.
- B. Each hearing shall be set for a date not less than fifteen days nor more than sixty days from the date of the notice of hearing unless the Director determines that the matter is urgent or that good cause exists for an extension of time.
- C. This hearing serves to provide the full opportunity of a person subject to a compliance order to object to the determination that a violation has occurred and/or that the violation has continued to exist. The failure of any person subject to a compliance order, pursuant to this Chapter, to appear at the hearing shall constitute a failure to exhaust administrative remedies.

1.14.070 Hearing -- Findings and order.

- A. At the place and time set forth in the notice of hearing, the Appeals Hearing Board shall conduct a hearing on the compliance order issued pursuant to Section 1.14.030.

- B. The Board shall consider any written or oral evidence consistent with its rules and procedures regarding the violation and compliance by the violator or by the real property owner.
- C. Within a reasonable time following the conclusion of the hearing, the Board shall make findings and issue its determination regarding:
 - 1. The existence of the violation;
 - 2. The failure of the violator or owner to take required corrective action within the required time period.
- D. The Board shall issue written findings on each violation. The findings shall be supported by evidence received at the hearing.
- E. If the Board finds by a preponderance of the evidence that a violation has occurred and that the violation was not corrected within the time period specified in the compliance order, the Board shall issue an administrative order.
- F. If the Board finds that no violation has occurred or that the violation was corrected within the time period specified in the compliance order, the Board shall issue a finding of those facts.

1.14.080 Administrative Order

If the Appeals Hearing Board determines that a violation occurred which was not corrected within the time period specified in the compliance order, the Board shall issue an administrative order described in Section 1.14.070 which imposes any or all of the following:

- A. An order to correct, including a schedule for correction where appropriate;
- B. Administrative penalties as provided in Section 1.14.090;
- C. Administrative costs as provided in Section 1.14.100.

1.14.090 Administrative penalties

- A. The Appeals Hearing Board may impose administrative penalties for the violation of any provision of this Code in an amount not to exceed a maximum of Two Thousand Five Hundred Dollars per day for each ongoing violation, except that the total administrative penalty shall not exceed One Hundred Thousand Dollars exclusive of administrative costs, interest and restitution for compliance reinspections, for any related series of violations.
- B. In determining the amount of the administrative penalty, the Board may take any or all of the following factors into consideration:
 - 1. The duration of the violation;
 - 2. The frequency, recurrence and number of violations, related or unrelated, by the same violator;
 - 3. The seriousness of the violation;
 - 4. The good faith efforts of the violator to come into compliance;
 - 5. The economic impact of the penalty on the violator;

6. The impact of the violation on the community;
 7. Such other factors as justice may require.
- C. Administrative penalties imposed by the Board shall accrue from the date specified in the compliance order and shall cease to accrue on the date the violation is corrected as determined by the Director or the Board.
- D. The Board, in its discretion, may suspend the imposition of applicable penalties for any period of time during which:
1. The violator has filed for necessary permits; and
 2. Such permits are required to achieve compliance; and
 3. Such permit applications are actively pending before the City, State or other appropriate governmental agency.
- E. Administrative penalties assessed by the Board shall be due by the date specified in the administrative order.
- F. Administrative penalties assessed by the Board are a debt owed to the City and, in addition to all other means of enforcement, if the violation is located on real property, may be enforced by means of a lien against the real property on which the violation occurred.
- G. If the violation is not corrected as specified in the Board's order to correct, administrative penalties shall continue to accrue on a daily basis until the violation is corrected, subject to the maximum amount set forth in Section 1.14.090.A. above.
- H. If the violator gives written notice to the Director that the violation has been corrected and if the Director finds that compliance has been achieved, the Director shall deem the date the written notice was postmarked or personally delivered to the Director or the date of the final inspection, whichever first occurred, to be the date the violation was corrected. If no written notice is provided to the Director, the violation will be deemed corrected on the date of the final inspection.

1.14.100 Administrative Costs

- A. The Appeals Hearing Board shall assess administrative costs against the violator when it finds that a violation has occurred and that compliance has not been achieved within the time specified in the compliance order.
- B. The administrative costs may include any and all costs incurred by the City in connection with the matter before the Appeals Hearing Board including, but not limited to, costs of investigation, staffing costs incurred in preparation for the hearing and for the hearing itself, and costs for all reinspections necessary to enforce the compliance order.

1.14.110 Failure To Comply With Administrative Compliance Order

Failure to pay the assessed administrative penalties and administrative costs specified in the administrative order of the Appeals Hearing Board may be enforced as:

1. A personal obligation of the violator; and/or
2. If the violation is in connection with real property, a lien upon the real property. The lien shall remain in effect until all of the administrative penalties, interest and administrative

costs are paid in full.

1.14.120 Right of Judicial Review

Any person aggrieved by an administrative order of the Appeals Hearing Board may obtain review of the administrative order in the Superior Court by filing with the court a petition for writ of mandate pursuant to Section 1.16.010 of this Code.

1.14.130 Recovery of Administrative Civil Penalties

The City may collect the assessed administrative penalties and administrative costs by use of all available legal means, including recordation of a lien pursuant to Section 1.14.160.

1.14.140 Report of Compliance after Administrative Order

If the Director determines that compliance has been achieved after a compliance order has been sustained by the Appeals Hearing Board, the Director shall file a report indicating that compliance has been achieved.

1.14.150 Compliance Dispute

- A. If the Director does not file a report pursuant to Section 1.14.140 above, a violator who believes that compliance has been achieved may request a compliance hearing before the Appeals Hearing Board by filing a request for a hearing with the secretary to the Board.
- B. The hearing shall be noticed and conducted in the same manner as a hearing on a compliance order provided in Sections 1.14.060 through 1.14.070 of this Chapter.
- C. The Board shall determine if compliance has been achieved and, if so, when it was achieved.

1.14.160 Lien Procedure

- A. Whenever the amount of any administrative penalty and/or administrative cost imposed by the Appeals Hearing Board pursuant to this Chapter in connection with real property has not been satisfied in full within ninety days and/or has not been successfully challenged by a timely writ of mandate, this obligation may constitute a lien against the real property on which the violation occurred.
- B. The lien provided herein shall have no force and effect until recorded with the County Recorder. Once recorded, the administrative order shall have the force and effect and priority of a judgment lien governed by the provisions of Sections 697.340 of the Code of Civil Procedure and may be extended as provided in Sections 683.110 to 683.220, inclusive, of the Code of Civil Procedure.
- C. Interest shall accrue on the principal amount of the judgment remaining unsatisfied pursuant to law.
- D. Prior to recording any such lien, the Director of Finance shall prepare and file with the City Clerk a report stating the amounts due and owing.
- E. The City Clerk shall fix a time, date and place for hearing such report and any protests or objections thereto by City Council.
- F. The Director of Finance shall cause written notice to be served on the property owner not less

than ten days prior to the time set for the hearing. Such notice shall be served as provided in Section 1.04.140 of this Title.

1.14.170 Public Hearing and Protests

- A. Any person whose real property is subject to a lien pursuant to Section 1.14.160 may file a written protest with the City Clerk and/or may protest orally at the City Council meeting.
- B. Each written protest or objection must contain a description of the property in which the protesting party is interested and the grounds of such protest or objection.
- C. The City Council, after the hearing, shall adopt a resolution confirming, discharging or modifying the amount of the lien.

1.14.180 Recording of Lien

Thirty days following the adoption of a resolution by the City Council imposing a lien the City Clerk shall file the same as a judgment lien in the Office of the County Recorder of Santa Clara County, California. The lien may carry such additional administrative charges as set forth by resolution of the City Council.

1.14.190 Satisfaction of Lien

Once payment in full is received by the City for outstanding penalties and costs, the Director of Finance shall either record a notice of satisfaction or provide the property owner or financial institution with a notice of satisfaction so they may record this notice with the Office of the County Recorder. Such notice of satisfaction shall cancel the City's lien.