

(O-89-106)

ORDINANCE NUMBER O- 17195 (NEW SERIES)

ADOPTED ON DEC 12 1988

AN ORDINANCE AMENDING CHAPTER I OF THE SAN DIEGO MUNICIPAL CODE BY ADDING SECTION 11.19 RELATING TO THE ESTABLISHMENT OF CIVIL PENALTIES FOR VIOLATION OF THE CODE.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter I of the San Diego Municipal Code be and the same is hereby amended by adding Section 11.19 to read as follows:

SEC. 11.19 CIVIL PENALTIES-PROCEDURES

A. Declaration and Purpose.

The Council finds and determines that there is a need for alternative methods of enforcement of the San Diego Municipal Code. The Council further finds and declares that the imposition of civil penalties upon violators of provisions of this Code is a necessary alternative method of enforcement.

The procedures established in this section shall be in addition to any other legal remedy established by law which may be pursued to address violations of this Municipal Code.

B. Definitions.

(1) Director: Whenever used in the section, the term Director shall include the Directors of

the following Departments: Planning, Building Inspection, Engineering & Development, General Services, Animal Control, Health, and the Fire and Police Chiefs and any of their designated agents or representatives.

(2) Person: Person means any natural person, firm, association, club, organization, corporation, partnership, business, trust, company or any other entity which is recognized by law as the subject of rights or duties.

(3) Hearing Officer: Whenever used in this section, the term Hearing Officer means any person appointed by the City Manager to preside over the administrative hearings provided for by this section.

C. Procedures-Generally.

(1) Any person violating any provision of the Municipal Code may be subject to civil penalties as provided in this section.

(2) Each and every day a violation of any provision of the Municipal Code exists constitutes a separate and distinct offense.

(3) Civil penalties may be directly assessed by means of a Notice and Order issued by the Director and/or Hearing Officer and may be recovered by assessment of a lien or legal action brought by the City Attorney.

(4) Civil penalties assessed by means of a Notice and Order shall be collected in accordance with the administrative procedures specified in this section or shall be collected in the same manner as judgments in civil actions.

(5) A civil penalty for a violation of any provision of the Municipal Code shall be assessed at a daily rate determined by the Hearing Officer up to a maximum of \$2,500 per day per violation, except that the maximum civil penalty shall not exceed \$100,000 for any related series of violations.

(6) In determining the amount of the civil penalty to be imposed, the Hearing Officer may consider some or all of the following factors:

- (a) The duration of the violation.
- (b) The frequency or reoccurrence of the violation.
- (c) The seriousness of the violation.
- (d) The history of such violation.
- (e) The violator's conduct after issuance of the Notice and Order.
- (f) The good faith effort by the violator to comply.
- (g) The economic impact of the penalty on the violator.

(h) The impact of the violation upon the community.

(i) Any other factors which justice may require.

(7) Civil penalties shall begin to accrue ten (10) days from the date the Notice and Order is issued and shall cease to accrue on the date the violation is deemed corrected by the Director.

(8) If compliance is not achieved within ten (10) days from the date the Notice and Order is issued, the Director shall automatically set an administrative hearing.

D. Procedures-Notice and Order.

(1) Whenever the Director determines that a violation of one or more provisions of the Municipal Code has occurred or exists, a written Notice and Order may be issued to the violator(s) and/or any property owner(s) of record.

(2) The Notice and Order shall refer to the Municipal Code section violated and describe how the section is/or has been violated.

(3) The Notice and Order shall refer to the date(s) and location(s) of the violation(s).

(4) The Notice and Order shall describe the action required to correct the violation(s).

(5) The Notice and Order shall require the violator(s) and/or property owner(s) to immediately

correct the violations. The Notice and Order shall explain that civil penalties shall begin to immediately accrue if compliance is not achieved within ten (10) days from the date the Notice and Order is issued.

(6) The Notice and Order shall also explain the consequences should the violator(s) and/or property owner(s) fail to comply with the terms of the Notice and Order prescribed in this section.

(7) The Notice and Order shall identify all hearing rights.

(8) The Notice and Order shall be served upon the violator(s) and/or the property owner(s) or their agent(s) by any one of the following means:

- (a) Personal service;
- (b) Certified mail, postage prepaid, return receipt requested; or
- (c) Posting the Notice and Order conspicuously on or in front of the property on which the violation is located.

The failure of any person with an interest in the property to receive such notice shall not affect the validity of any proceedings taken under this section. Service by certified mail in the manner described above shall become effective on the date of mailing.

E. Hearing.

(1) If the violation is not corrected within ten (10) days from the date the Notice and Order is issued, the Director shall request the City Manager to appoint a Hearing Officer and to fix a date, time and place for the hearing. Written notice of the time and place of the hearing shall be served at least ten (10) days prior to the date of the hearing to the violator(s) and/or each party having a legal interest in the property by any of the methods listed in subsection D(8).

(2) Scope of Hearing

(a) Existence of Violation: The Hearing Officer shall consider any written or oral evidence consistent with its rules and procedures for public hearings regarding the existence of the violation. The violator(s) and/or record owner(s) or agent(s) or person(s) in possession of the property on which the violation is located or any other interested persons may present testimony or evidence concerning the existence of the violation, and the means and time frame for correcting the violation.

(b) Civil Penalties: The Hearing Officer shall identify the time frame involved in assessing the civil penalty and shall explain all factors considered in determining the amount of the civil penalty to be imposed. In determining the

amount of the civil penalty to be imposed, the Hearing Officer shall consider those factors outlined in subsection C(6). The violator(s) and/or record owner(s) or agent(s) or person(s) in possession of the property on which the violation is located or any other interested person may present testimony or evidence relating to civil penalties and those factors outlined in subsection C(6).

(3) Procedures for Conducting Hearings: The City Manager shall establish and promulgate all appropriate rules and procedures for conducting hearings and rendering decisions pursuant to this section.

(4) Failure to Attend Hearing: Failure of the violator(s) and/or any party having a legal interest in the property shall constitute a waiver of his or her rights to an administrative hearing and adjudication of the Notice and Order or any portion thereof.

F. Failure to Comply with Administrative Order.

(1) Failure to Pay Civil Penalties: Upon the failure of the violator(s) and/or property owner(s) or their agent(s) to pay the assessed civil penalties by the date specified in the Hearing Officer's decision, the unpaid amount shall constitute:

(a) a personal obligation of the violator(s) and/or property owner(s); and/or

(b) a lien upon the real property upon which the violation is located if the civil penalties have been assessed as to the property owner(s). The lien shall continue until the civil penalties are fully paid or the property is sold or transferred.

(2) Failure to Correct Violation: Upon the failure of the violator(s) and/or property owner(s) or their agents to correct the violations as specified in the Hearing Officer's decision, civil penalties may continue to accrue on a daily basis until the violation is corrected except that such amount shall not exceed \$100,000.

G. Recovery of Civil Penalties.

(1) Personal obligation: If collected as a personal obligation, the Director shall collect this obligation by the use of all appropriate legal means. If unable to collect the obligation, the Director shall refer the obligation to the City Attorney to file a court action to recover these costs.

(2) Lien: If collected as a lien, the Director shall refer the lien to the County Auditor for collection in the same manner that ordinary municipal taxes are collected. The Director shall

also cause a notice to be recorded with the County Recorder. The Director shall inform the County Auditor and County Recorder of the amount of the obligation, a description of the real property upon which the lien is to be recovered and the name of the agency to which the obligation is to be payed. The Director shall file a withdrawal of the notice with the County Recorder once the property owner or person responsible pays the civil penalties in full.

(3) Continuing Non-compliance: When a violation continues after the Hearing Officer renders a decision, the Director shall recover the civil penalties in the following manner:

(a) Review Schedule: The Director shall set up a schedule to monitor the violation and determine if the violation has been corrected.

(b) Accounting Report: The Director shall keep an itemized account of the daily rate and amount of civil penalties accruing.

(c) Subsequent Compliance: If the violation is subsequently corrected, the Director shall establish a hearing in the same manner as provided for in subsection E of this provision and provide a notice to the violator(s) and/or property owner(s).

The notice shall identify the responsible parties and state the outstanding amount of civil penalties which have accrued.

(d) Recovery of Civil Penalties: The subsequent civil penalties accrued shall be collected in the same manner provided in this section. If unable to collect any obligation, the Director shall refer the obligation to the City Attorney to recover these costs.


H. Allocation of Civil Penalties Collected.

Civil penalties collected in the manner described by this section shall be deposited in a fund established by the City Auditor to reimburse investigative costs. Civil penalties deposited in this fund shall be appropriated and allocated in a manner determined by the City Manager. The City Auditor shall establish accounting procedures to ensure proper account identification, credit and collection.

Section 2. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: John W. Witt, City Attorney

By


Diane Contreras
Deputy City Attorney

DC:lfs
10/06/88
Or.Dept:T&LU
O-89-106
Form=o.none

DEC 12 1988

Passed and adopted by the Council of The City of San Diego on
by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Abbe Wolfsheimer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ron Roberts	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gloria McColl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Wes Pratt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Struiksma	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J. Bruce Henderson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judy McCarty	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Filner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Maureen O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(Seal)

By *Rhonda R. Barnes*, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

NOV 29 1988

DEC 12 1988

....., and on

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(Seal)

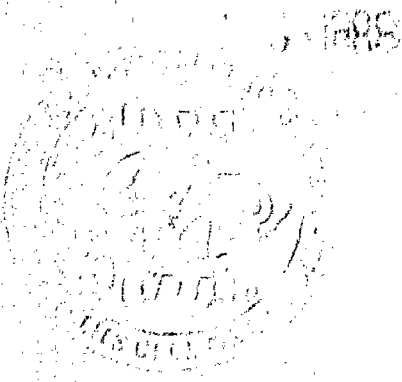
By *Rhonda R. Barnes*, Deputy.

Office of the City Clerk, San Diego, California

Ordinance Number 047195 Adopted

DEC 12 1988

RECEIVED
88 SEP -7 PM 4: 22
CITY CLERKS OFFICE
SAN DIEGO, CA



CERTIFICATE OF PUBLICATION

RECEIVED
89 JAN -5 AM 11:04
CITY CLERK'S OFFICE
SAN DIEGO, CA

CITY OF SAN DIEGO
202 C ST., 2ND FLOOR
SAN DIEGO, CA 92101
ATTN: RHONDA R. BARNES

IN THE MATTER OF _____ NO.
AN ORDINANCE AMENDING CHAPTER I OF THE SAN DIEGO MUNICIPAL
CODE BY ADDING SECTION 11.19 RELATING TO THE ESTABLISHMENT OF
CIVIL PENALTIES FOR VIOLATION OF THE MUNICIPAL CODE.

ORDINANCE NUMBER 0-17195 (NEW SERIES)
AN ORDINANCE AMENDING CHAPTER I OF THE SAN DIEGO MUNICIPAL CODE BY ADDING SECTION 11.19 RELATING TO THE ESTABLISHMENT OF CIVIL PENALTIES FOR VIOLATION OF THE MUNICIPAL CODE.
This ordinance amends Chapter I by allowing the imposition of civil penalties as an alternative method of enforcing the San Diego Municipal Code. The amendment allows for the imposition of civil penalties if a violation is not corrected within ten (10) days from the date a Notice and Order is issued to the violator. The section sets forth a procedure for providing notice to a determine and existence of the violation and the amount of civil penalties to be assessed. It also outlines the methods by which civil penalties may be recovered and describes the consequences for failure to correct the violation and failure to correct the violation and failure to pay civil penalties. Finally, the ordinance establishes a means to appropriate and allocate the civil penalties collected.
A complete copy of the Ordinance is available for inspection in the Office of the City Clerk of the City of San Diego, 2nd Floor, City Administration Building, 202 "C" Street, San Diego, CA 92101.
INTRODUCED ON NOV 29 1988
Passed and Adopted by the Council of The City of San Diego on DEC 12 1988
AUTHENTICATED BY: MAUREEN O'CONNOR
Mayor of The City of San Diego, CA
CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, CA
By RHONDA R. BARNES, Deputy.
Pub. December 28 127101

THOMAS D. KELLEHER

I, _____, am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the San Diego Daily Transcript, a newspaper of general circulation, printed and published daily, except Saturdays and Sundays, in the City of San Diego, County of San Diego, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Diego, State of California, under the date of January 23, 1909, Decree No. 14894; and the

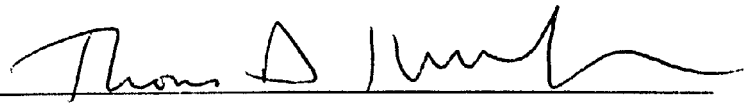
ORDINANCE NUMBER 0-17195 (NEW SERIES)

is a true and correct copy of which the annexed is a printed copy and was published in said newspaper on the following date(s), to wit:

DEC. 26

I certify under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California this 26 day of DEC., 19 88.


(Signature)

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