

#51
2/20/07

(O-2007-89)
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ORDINANCE NUMBER O- 19579 (NEW SERIES)

ADOPTED ON FEB 26 2007

AN ORDINANCE AMENDING CHAPTER I, ARTICLE 2, DIVISIONS 4, 6, 7, 8 AND 9 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 12.0412; 12.0501; AND 12.0603; BY AMENDING SECTION 12.0604 AND AMENDING AND RENUMBERING PART OF SECTION 12.0604 TO SECTION 12.0606 AND SECTION 12.0607; BY AMENDING SECTION 12.0605; BY RETITLING AND AMENDING SECTION 12.0606 AND RENUMBERING SECTION 12.0606 TO SECTION 12.0608; BY ADDING SECTIONS 12.0609, 12.0610, 12.0611, 12.0612, 12.0613, AND 12.0614; BY AMENDING SECTION 12.0702; BY AMENDING SECTION 12.0806; BY AMENDING SECTIONS 12.0902, 12.0903, 12.0904, 12.0907, AND 12.0908; ALL PERTAINING TO ENFORCEMENT AUTHORITY, PROCEDURES, AND REMEDIES TO ADMINISTRATIVELY ENFORCE THE SAN DIEGO MUNICIPAL CODE.

WHEREAS in the early part of the 1990's, various administrative remedies were enacted per Ordinance 17407 N. S. to allow City code enforcement inspectors the ability to more effectively enforce the Municipal Code while providing citizens with adequate due process; and

WHEREAS, since their enactment, these administrative remedies have proven to be very effective in obtaining compliance with the Municipal Code and have provided City inspectors with flexibility in enforcing the Code; and

WHEREAS, over sixteen years have passed since the enactment of these administrative remedies, and in accordance with Council Policy 900-10, these remedies were reviewed by staff to evaluate their effectiveness;

WHEREAS, staff recommended increased penalty amounts and broader use of administrative citations; the creation of an administrative abatement penalty; clarifying language

regarding what costs can be recovered in administrative hearings; and amendments to provide consistency throughout the administrative enforcement procedures.

WHEREAS, the Housing and Land Use Committee, on September 27, 2006 approved the recommendations of City staff to amend various sections in Chapter One of the Municipal Code which would improve the effectiveness of administrative remedies to address code violations; increase their deterrent effect; provide consistency; and allow City staff broader use and flexibility in using them; and NOW, THEREFORE,

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

Section 1. That Chapter 1, Article 2, Division 4 of the San Diego Municipal Code is hereby amended by amending section 12.0412, to read as follows:

§12.0412 Judicial Review

Once an *Administrative Enforcement Order* becomes final as provided in this Division, the time in which judicial review of the order must be sought shall be governed by California Code of Civil Procedure section 1094.6. Should any court of competent jurisdiction determine that the City must provide an appeal to any final *Administrative Enforcement Order* in a manner other than set forth in California Code of Civil Procedure section 1094.6, then it is the intent of the City Council that the administrative penalty process remain as provided herein and to provide that any appeal which is timely requested follow the procedures set forth in Government Code section 53069.4.

Section 2. That Chapter 1, Article 2, Division 5 of the San Diego Municipal Code is hereby amended by amending section 12.0501, to read as follows:

§12.0501 Appeals Procedures

- (a) A person served with one of the following documents, orders or notices may file an appeal within ten (10) calendar days from the service of the following notices:

- (1) Any Administrative Abatement Notice and Order issued for those public nuisances listed under Time Frame One and Time Frame Two of Division 6, Article 2 of the Municipal Code.
 - (2) [NO CHANGE IN TEXT]
 - (3) [NO CHANGE IN TEXT]
 - (4) A Notice of Boarded and Vacant Structure Penalty issued pursuant to Division 3, Article 4, Chapter 5 of the Municipal Code.
- (b) [NO CHANGE IN TEXT]
 - (c) [NO CHANGE IN TEXT]
 - (d) [NO CHANGE IN TEXT]

Section 3. That Chapter 1, Article 2, Division 6 of the San Diego Municipal Code is hereby amended by amending sections 12.0603 to read as follows:

§12.0603 General Procedures

- (a) Abatement Notice
 - (1) [NO CHANGE IN TEXT]
 - (2) [NO CHANGE IN TEXT]
 - (3) [NO CHANGE IN TEXT]
 - (4) [NO CHANGE IN TEXT]
 - (5) The Abatement Notice shall state whether as part of the abatement action, an Abatement Penalty is being assessed against the Responsible Person pursuant to this Division.
 - (6) The Abatement Notice shall identify all applicable hearing and appeal rights.
- (b) [NO CHANGE IN TEXT]
- (c) [NO CHANGE IN TEXT]

Section 4. That Chapter 1, Article 2, Division 6 of the San Diego Municipal Code is hereby amended by amending section 12.0604 and amending and renumbering part of section 12.0604 to section 12.0606 and section 12.0607 to read as follows:

§12.0604 Time Frame for Compliance: Time Frame One

- (a) [NO CHANGE IN TEXT]
- (b) [NO CHANGE IN TEXT]
 - (1) [NO CHANGE IN TEXT]
 - (2) [NO CHANGE IN TEXT]
 - (3) [NO CHANGE IN TEXT]
 - (4) [NO CHANGE IN TEXT]
 - (5) the condition causing the public nuisance is a lead hazard as defined in Division 10, Article 4, Chapter 5 of this Code; or
 - (6) the condition causing the public nuisance has been determined by a Director to be so serious or harmful that immediate abatement is required.

Section 5. That Chapter 1, Article 2, Division 6 of the San Diego Municipal Code is hereby amended by amending section 12.0605 to read as follows:

§12.0605 Time Frame for Compliance: Time Frame Two

Time Frame Two shall apply to all other public nuisances not listed under Time Frame One. Time Frame Two shall require the Responsible Person to abate the public nuisance within a minimum of fourteen (14) calendar days from the date of service of the Abatement Notice. The Director may establish a longer time frame as is reasonable or necessary to complete the abatement.

Section 6. That Chapter 1, Article 2, Division 6 of the San Diego Municipal Code is hereby amended by retitling and amending section 12.0606 and renumbering section 12.0606 to section 12.0608 to read as follows:

§12.0606 Right to Appeal Under Time Frame One or Time Frame Two

- (a) The Responsible Person may appeal the Abatement Notice within ten (10) calendar days from the date of service of the Abatement Notice by filing a written request to appeal to a Director. If the Abatement Notice includes the assessment of an Abatement Penalty, the fine shall automatically be stayed and be part of the appeal.
- (b) Upon receiving a written request to appeal an Abatement Notice, a Director shall follow the procedures set forth in Division 5, Article 2 of Chapter 1 and request the City Manager to schedule a hearing to hear any objections why abatement should not be ordered and effected. If the Abatement Notice includes the assessment of an Abatement Penalty, the Enforcement Hearing Officer shall also consider evidence that is relevant to the following issues:
 - (1) whether the Responsible Person caused or maintained a public nuisance on the dates specified in the Notice and Order; and (2) whether the amount of penalties assessed by the Director was reasonable.
- (c) Abatement shall not proceed until the Enforcement Hearing Officer issues an order, unless the Director concludes that an imminent threat to the public's health and safety exists.
- (d) If the Enforcement Hearing Officer issues an order confirming the existence of a public nuisance, the City may immediately abate the public nuisance pursuant to the procedures of this Division. The Hearing Officer's decision is

the final administrative decision and shall become effective upon the date of the order.

Section 7. That Chapter 1, Article 2, Division 6 of the San Diego Municipal Code is hereby amended by amending section 12.0604 and amending and renumbering part of section 12.0604 to section 12.0606 and section 12.0607 to read as follows:

§12. 0607 Abatement Under Time Frame One and Time Frame Two

The City may abate the condition causing the public nuisance in the following circumstances:

- (a) the Responsible Person fails to abate the public nuisance as required by the Abatement Notice and an appeal has not been timely filed; or
- (b) an *Administrative Enforcement Order* has been issued confirming the existence of a public nuisance after an appeal by the Responsible Person.

Section 8. That Chapter 1, Article 2, Division 6 of the San Diego Municipal Code is hereby amended by retitling and amending section 12.0606 and renumbering section 12.0606 to section 12.0608 to read as follows:

§12.0608 Abatement of a Public Nuisance by the City

- (a) Once a Director follows the procedures set forth in this Division, the public nuisance may be abated by City personnel or by a private contractor.
- (b) City personnel or a private contractor can enter upon private property in a reasonable manner to abate the public nuisance as specified in the Abatement Notice or Abatement Order.
- (c) If the Responsible Person abates the public nuisance before the City performs the actual abatement pursuant to an Abatement Notice or Abatement Order, the Director may still assess all costs incurred by the City at that point against

the Responsible Person pursuant to the provisions set forth in Division 3, Article 3 of Chapter 1 of this Code.

- (d) When abatement is completed, a report describing the work performed and an itemized account of the total abatement costs shall be prepared by the Director. The report shall contain the names and addresses of the Responsible Persons of each parcel, the tax assessor's parcel number and a legal description of the property.
- (e) The Director shall request the City Manager to schedule a confirmation of costs hearing pursuant to Section 13.0302 of this Chapter, unless waived in writing by all Responsible Persons.
- (f) All administrative and actual costs incurred by the City in abating the public nuisance may be assessed and recovered against the Responsible Person pursuant to the provisions set forth in Division 3, Article 3 of Chapter 1. Costs shall include, but are not limited to: staff time to investigate and document violations; laboratory, photographic, and other expenses incurred to document or establish the existence of a violation; and scheduling and processing of the administrative hearing and all related actions. Any determination that documented costs are not reasonable must be supported by written findings.

Section 9. That Chapter 1, Article 2, Division 6 of the San Diego Municipal Code is hereby amended by adding sections 12.0609, 12.0610, 12.0611, 12.0612, 12.0613, AND 12.0614 to read as follows:

§12. 0609 Abatement Penalty

- (a) In addition to recovering the costs of abatement, the Director may also assess an Abatement Penalty against the Responsible

Person for creating or maintaining a public nuisance. The penalty shall be assessed pursuant to the administrative procedures provided in this section.

- (b) Each and every day the public nuisance exists constitutes a separate and distinct violation.
- (c) An Abatement Penalty may be assessed irrespective of whether the Responsible Person abates the public nuisance within the Time Frame specified in the Notice and Order of Abatement.
- (d) An Abatement Penalty may be assessed by means of a Notice and Order of Abatement issued by the Director or affirmed by an Enforcement Hearing Officer. Abatement penalties may be recovered by assessment of a Code Enforcement Lien pursuant to Division 2 of Article 3 of Chapter I or by a subsequent legal action brought by the City Attorney.
- (e) Abatement penalties for causing or maintaining a public nuisance shall be assessed at a daily rate determined by the Director or Enforcement Hearing Officer pursuant to the criteria listed in section 12.0705 of this Division. The maximum rate shall be \$2,500 per violation. The maximum amount of civil penalties shall not exceed \$200,000 per parcel or structure for any related series of violations.

§12.0610 Determination of Abatement Penalties

- (a) In determining the initial date when abatement penalties shall accrue, the Director may consider the date when the Department first discovered the public nuisance.
- (b) The assessment of abatement penalties shall end when all action required by the Notice and Order of Abatement has been completed.
- (c) In determining the amount of the abatement penalty to be assessed on a daily rate, the Director may consider some or all of the following factors:
 - (1) The duration of the public nuisance.
 - (2) The frequency or recurrence of the public nuisance at the property.
 - (3) The nature and seriousness of the public nuisance.
 - (4) Crime statistics related to the public nuisance.
 - (5) The amount of times the City may have abated the property in the past.
 - (6) The estimated cost of abatement.
 - (7) The good faith effort by the Responsible Person to abate the public nuisance.
 - (8) The economic impact of the penalty on the Responsible Person.
 - (9) The impact of the public nuisance upon the community.
 - (10) Any other factors that justice may require.
- (d) The City Manager has the authority to establish a penalty schedule for a Director to use as a guideline in determining the amount of abatement penalties in appropriate cases. The

Manager shall also establish procedures for the use of this penalty schedule.

§12.0611 Appeal of Abatement Penalty

An appeal of an Abatement Penalty shall follow the procedures set forth in Division 5, Article 2 of Chapter 1.

§12.0612 Administrative Costs

A Director or Enforcement Hearing Officer is authorized to assess all reasonable costs. Costs may include, but are not limited to: staff time to investigate and document violations; laboratory, photographic, and other expenses incurred to document or establish the existence of a violation; and scheduling and processing of the administrative hearing and all actions. Any determination that documented costs are not reasonable must be supported by written findings.

§12.0613 Abatement Hearing

The procedures for the abatement hearing are the same as the hearing procedures set forth in Division 4 of Article 2 of Chapter 1.

§12.0614 Allocation of Abatement Penalty

Abatement penalties collected pursuant to this Division shall be deposited in the civil penalties fund established pursuant to Section 13.0402 of this Code.

Section 10. That Chapter 1, Article 2, Division 7 of the San Diego Municipal Code is hereby amended by amending section 12.0702 to read as follows:

§12.0702 Authority

- (a) Whenever a Director determines that an imminent life safety hazard exists that requires immediate correction or elimination, the Director may exercise the following powers without prior notice to the Responsible Person:

- (1) Order the immediate vacation of any tenants and prohibit occupancy until all repairs are completed; or
 - (2) Post the premises as unsafe, substandard or dangerous; or
 - (3) Board, fence or secure the building or site; or
 - (4) Raze and grade that portion of the building or site to prevent further collapse and remove any hazard to the general public; or
 - (5) Make any minimal emergency repairs as necessary to eliminate any imminent life safety hazard; or
 - (6) Take any other action as appropriate under the circumstances.
- (b) A Director is also authorized to exercise any summary abatement powers listed in this section to remove items placed or stored on City property, sidewalks or public rights-of way.

Section 11. That Chapter 1, Article 2, Division 8 of the San Diego Municipal Code is hereby amended by amending section 12.0806 to read as follows:

§12.0806 Administrative Costs

A Director or Enforcement Hearing Officer is authorized to assess all reasonable costs. Costs may include, but are not limited to: staff time to investigate and document violations; laboratory, photographic, and other expenses incurred to document or establish the existence of a violation; and scheduling and processing of the administrative hearing and all actions. Any determination that documented costs are not reasonable must be supported by written findings.

Section 12. That Chapter 1, Article 2, Division 9 of the San Diego Municipal Code is hereby amended by amending sections 12.0902, 12.0903, 12.0904, 12.0907, and 12.0908; to read as follows:

§12.0902 Declaration of Purpose

The Council finds that there is a need for an alternative method of enforcement for violations of the Municipal Code and applicable state codes which do not create an immediate danger to health and safety. The Council further finds that an alternative method of enforcement for these violations is an administrative citation program. The procedures established in this Division shall be in addition to criminal, civil or any other legal remedy established by law which may be pursued to address violations of the Municipal Code or applicable state codes.

§12.0903 Authority

- (a) Any person violating any provisions of the Municipal Code or applicable state codes which do not create an imminent danger to health and safety may be issued an administrative citation by an Enforcement Official as provided in this Division.
- (b) Each and every day a violation of the Municipal Code or applicable state code exists constitutes a separate and distinct offense.
- (c) [NO CHANGE IN TEXT]
- (d) [NO CHANGE IN TEXT]

§12.0904 Procedures

- (a) Upon discovering any violation of the Municipal Code or applicable state codes, which do not create an imminent danger to health and safety, an Enforcement Official may issue an administrative citation to a Responsible Person in the manner prescribed in this Division. The administrative citation shall be issued on a form approved by the City Manager.
- (b) through (g) [NO CHANGE IN TEXT]

§12.0907 Administrative Enforcement Order

- (a) [NO CHANGE IN TEXT]
- (b) As part of the Administrative Enforcement Order, the Enforcement Hearing Officer may reduce, waive or conditionally reduce the penalties assessed by the citation.
- (c) The Enforcement Hearing Officer may also impose conditions and deadlines to correct the violations or require payment of any outstanding penalties.
- (d) The Enforcement Hearing Officer shall assess reasonable administrative costs. Costs include, but are not limited to: staff time to investigate and document violations; laboratory, photographic, and other expenses incurred to document or establish the existence of a violation; and scheduling and processing of the administrative hearing and all related actions. Any determination that documented costs are not reasonable must be supported by written findings.

§12.0908 Penalties Assessed

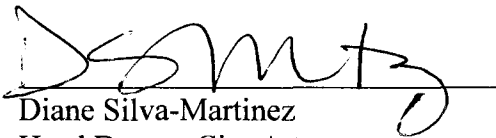
- (a) [NO CHANGE IN TEXT]
- (b) If the Responsible Person fails to correct the violation, subsequent administrative citations may be issued for the same violations.
- (c) An Administrative Citation may be issued for each violation observed on a property. The penalty assessed for each violation may be issued in any of the following amounts: \$100; \$250; \$500; \$750; or \$1,000.
- (d) In determining the amount of penalty to assess for a particular violation, the Director may consider:
 - (1) the nature of the violation,
 - (2) the level of seriousness of the violation,

- (3) the duration of the violation,
 - (4) efforts by the violator to correct the violation,
 - (5) the impact of the violation on the community,
 - (6) any instances in which the Responsible Person has been in violation of same or similar laws at the same or other locations in the City of San Diego,
 - (7) the good faith effort by the Responsible Person to comply,
 - (8) the economic impact of the penalty on the Responsible Person,
 - (9) whether the violation is easy to correct,
 - (10) any other factors that justice may require.
- (e) Payment of the penalty shall not excuse the failure to correct the violations nor shall it bar further enforcement action by the City.
- (f) All penalties assessed shall be payable to the City Treasurer.

Section 13. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 14. That this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Diane Silva-Martinez
Head Deputy City Attorney

DSM:mac:lmd
9/05/2006
3/8/07 COR.COPY
Or.Dept:CA
O-2007-89

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of February 20, 2007.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 2-26-07
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

0-13579