

**Article 2: Code Enforcement
Judicial and Administrative Remedies**

Division 8: Administrative Civil Penalties

(“Administrative Civil Penalties” added 8–10–1993 by O–17956 N.S.)

§12.0801 Administrative Civil Penalties

Division 8 of Article 2 of Chapter 1 governs the administrative assessment of civil penalties for violations of the Municipal Code and applicable state codes.

(Renumbered from Sec. 13.0330, retitled to “Administrative Civil Penalties” and amended 8–10–1993 by O–17956 N.S.)

§12.0802 Declaration of Purpose

The Council finds that there is a need for alternative methods of enforcement of the San Diego Municipal Code and applicable state codes. The Council further finds that the assessment of civil penalties through an administrative hearing procedure for code violations is a necessary alternative method of code enforcement.

The administrative assessment of civil penalties established in Division 8 of this Article is in addition to any other administrative or judicial remedy established by law which may be pursued to address violations of the Municipal Code or applicable state codes.

(Renumbered from Sec. 13.0331, retitled to “Declaration of Purpose” and amended 8–10–1993 by O–17956 N.S.)

§12.0803 Authority

- (a) Any person violating any provision of the Municipal Code or applicable state code may be subject to the assessment of civil penalties pursuant to the administrative procedures provided in Sections 12.0804 through 12.0810 of this Division.
- (b) Each and every day a violation of any provision of the Municipal Code or applicable state code exists constitutes a separate and distinct violation.
- (c) Civil penalties may be directly assessed by means of a Notice and Order issued by the Director or affirmed by a City Manager’s Enforcement Hearing Officer. Civil penalties may be recovered by assessment of a Code Enforcement Lien pursuant to Division 2 of Article 3 of Chapter 1 or subsequent legal action brought by the City Attorney.

- (d) Civil penalties for violations of any provision of the Municipal Code or applicable state codes shall be assessed at a daily rate determined by the Director or Enforcement Hearing Officer pursuant to the criteria listed in Section 12.0805 of this Division. The maximum rate shall be \$10,000 per violation. The maximum amount of civil penalties shall not exceed \$400,000 per parcel or structure for any related series of violations.

(Amended 5-20-2003 by O-19177 N.S.)

(Amended 2-3-2017 by O-20788 N.S.; effective 3-5-2017.)

§12.0804 Procedures—Notice and Order

- (a) Whenever a Director determines that a violation of one or more provisions of the Municipal Code or applicable state code has occurred or continues to exist, a written civil penalties Notice and Order may be issued to the Responsible Person.
- (b) The Notice and Order shall refer to all code sections violated and describe how each section is or has been violated.
- (c) The Notice and Order shall refer to the dates and locations of the violations.
- (d) The Notice and Order shall describe all remedial action required to permanently correct outstanding violations and establish time frames for completion.
- (e) The Notice and Order shall establish a daily amount of civil penalties. The Director shall determine the daily amount of civil penalties pursuant to the criteria in Section 12.0805 of this Division.
- (f) The Notice and Order shall identify a date when the civil penalties began to accrue and a date when the assessment of civil penalties ended, unless the violation is continuous. In the case of a continuous violation, there shall be an ongoing assessment of penalties at the daily rate established in the Notice and Order until the violations are corrected.
- (g) If a Director determines that the violations are continuing, the Notice and Order shall demand that the Responsible Person cease and desist from further action causing the violations and commence and complete all action to correct the outstanding violations under the guidance of the appropriate City Departments.
- (h) The Notice and Order shall enumerate any other consequences should the Responsible Person fail to comply with the terms and deadlines as prescribed in the Notice and Order.

- (i) The Notice and Order shall identify appropriate hearing procedures as required by Sections 12.0401 through 12.0413 of this Chapter.
- (j) The Notice and Order shall be served upon the Responsible Person by any one of the methods of service listed in Section 11.0301 of this Chapter.
- (k) The Notice and Order shall identify the factors used by a Director in determining the duration and the daily amount of civil penalties.
- (l) More than one Notice and Order may be issued against the same Responsible Person if it encompasses either different dates or different violations.
(“Procedures—Notice and Order” renumbered from Sec. 13.0334 and amended 8-10-1993 by O-17956 N.S.)

§12.0805 Determination of Civil Penalties

- (a) In determining the date when civil penalties started to accrue, a Director may consider the date when the Department first discovered the violations as evidenced by the issuance of a Notice of Violation or any other written correspondence.
- (b) The assessment of civil penalties shall end when all action required by the Notice and Order has been completed.
- (c) In determining the amount of the civil penalty to be assessed on a daily rate, a Director may consider some or all of the following factors:
 - (1) The duration of the violation.
 - (2) The frequency or recurrence of the violation.
 - (3) The nature and seriousness of the violation.
 - (4) The history of the violation.
 - (5) Whether the offense impacted environmentally sensitive lands, a *historical resource*, or a *designated historical resource* as defined in Chapter 11, Article 3, Division 1 of the Municipal Code.
 - (6) The willfulness of Responsible Person’s misconduct.
 - (7) The Responsible Person’s conduct after issuance of the Notice and Order.
 - (8) The good faith effort by the Responsible Person to comply.

- (9) The economic impact of the penalty on the Responsible Person.
 - (10) The impact of the violation upon the community.
 - (11) 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 civil penalties in appropriate cases. The Manager shall also establish procedures for the use of this penalty schedule.

(Amended 5-20-2003 by O-19177 N.S.)

(Amended 3-14-2012 by O-20143 N.S.; effective 4-13-2012.)

§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.

(“Administrative Costs” added 8-10-1993 by O-17956 N.S.)

(Amended 2-26-2007 by O-19579 N.S.; effective 3-28-2007.)

§12.0807 Failure to Comply with Director’s Notice and Order

A Director shall request the City Manager to appoint an Enforcement Hearing Officer and to establish a date, time and place for the civil penalties hearing in accordance with Division 4 of Article 2 of Chapter 1 when the Responsible Person fails to comply with the terms of the Notice and Order. Failure to comply includes failure to pay the assessed civil penalties, failure to commence and complete corrections by the established deadlines or failure to refrain from continuing violations of the Municipal Code or applicable state codes.

(“Failure to Comply with Director’s Notice and Order” added 8-10-1993 by O-17956 N.S.)

§12.0808 Civil Penalties Hearing

- (a) The procedures for the civil penalties hearing are the same as the hearing procedures set forth in Division 4 of Article 2 of Chapter 1.
- (b) The Enforcement Hearing Officer shall only consider evidence that is relevant to the following issues: (1) whether the Responsible Person has caused or maintained a violation of the Municipal Code or applicable state code that existed on the dates specified in the Notice and Order; and (2) whether the amount of civil penalties assessed by the Director pursuant to the procedures and criteria outlined in Section 12.0805 was reasonable.
(“Civil Penalties Hearing” added 8–10–1993 by O–17956 N.S.)

§12.0809 Administrative Enforcement Order

- (a) Once all evidence and testimony are completed, the Enforcement Hearing Officer shall issue an Administrative Enforcement Order which affirms or rejects the Director’s Notice and Order or which modifies the daily rate or duration of the civil penalties depending upon the review of the evidence. The Enforcement Hearing Officer may increase or decrease the total amount of civil penalties and costs that are assessed by the Director’s Notice and Order.
- (b) The Enforcement Hearing Officer may issue an Administrative Enforcement Order that requires the Responsible Person to cease from violating the Municipal Code or applicable state codes and to make necessary corrections.
- (c) As part of the Administrative Enforcement Order, the Enforcement Hearing Officer may establish specific deadlines for the payment of penalties and costs and condition the total or partial assessment of civil penalties on the Responsible Person’s ability to complete compliance by specified deadlines.
- (d) The Enforcement Hearing Officer may issue an Administrative Enforcement Order which imposes additional civil penalties that will continue to be assessed until the Responsible Person complies with the Hearing Officer’s decision and corrects the violation.
- (e) The Enforcement Hearing Officer may schedule subsequent review hearings as may be necessary or as requested by a party to the hearing to ensure compliance with the Administrative Enforcement Order.
(“Administrative Enforcement Order” added 8–10–1993 by O–17956 N.S.)

§12.0810 Failure To Comply With The Administrative Enforcement Order

- (a) Upon the failure of the Responsible Person to comply with the terms and deadlines set forth in the Administrative Enforcement Order, the Director may use all appropriate legal means to recover the civil penalties, administrative costs and obtain compliance with the Administrative Enforcement Order.
- (b) After the Enforcement Hearing Officer issues an Administrative Enforcement Order, the Director shall monitor the violations and determine compliance.
(Renumbered from Sec. 13.0336, retitled to "Failure To Comply With The Administrative Enforcement Order" and amended 8-10-1993 by O-17956 N.S.)