

Article 3: Police Regulated Occupations and Businesses**Division 4: Penalties and Regulatory Action**

*(“Suspension of License” retitled to “Penalties and Regulatory Action”
on 11-20-2000 by O-18885 N.S.)*

§33.0401 Regulatory and Penal Nature of Laws

- (a) Any requirement of this Article is both regulatory and penal in nature, except as to those sections or subsections specifically designated as regulatory only by use of the phrase “regulatory only.” Regulatory provisions are enforceable through the issuance, denial, suspension, placing conditions upon, or revocation of the *permit*, and through the issuance of verbal or written warnings, and notices of violation. Penal provisions are enforceable through criminal proceedings. Injunctive remedies are applicable to either.
- (b) The specific designation of a provision as regulatory only does not preclude any other section of the San Diego Municipal Code from being penal or regulatory in nature, nor does it otherwise impair the meaning or effect of Chapter I, Article 1, Division 2 of this Code.
- (c) Regulatory action may be taken based on an act, omission, or attempt to act, that contravenes the applicable provisions of this Article or of any other provision of law, without regard to whether a criminal complaint is filed or, if a criminal complaint is filed, without regard to the pendency of any proceeding, *conviction* or appeal. The regulatory and penal enforcement of any provision of this Article may proceed separately and independently of each other, and the selection of one method shall not preclude other enforcement methods or proceedings, including injunctive relief, when appropriate.

(“Suspension or Revocation of License or Permit” repealed; “Regulatory and Penal Nature of Laws” added 11-20-2000 by O-18885 N.S.)

§33.0402 Criminal Penalties

In addition to any other penalties provided by law, any *person* violating any section of this Article is guilty of a misdemeanor which, upon *conviction* is punishable by a fine not to exceed \$1,000, or by imprisonment in the County Jail for not more than six months or both. This Section does not apply to any section of this Article deemed “regulatory only.”

(“Criminal Penalties” added 11-20-2000 by O-18885 N.S.)

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§33.0403 Regulatory Penalties

- (a) In addition to any other penalties provided by law, any *permittee* who does any of the following is subject to regulatory action by the *Chief of Police* against his or her *police permit*:
- (1) Violates or allows the *violation* of any section of this Article, any law or regulation pertaining to the business, or violates any condition imposed on the *permit*;
 - (2) Engages in conduct outside of the City which, if committed in this City, would be grounds for regulatory action;
 - (3) Is convicted of any crime which would have been grounds for denying the application for the *police permit*;
 - (4) Fails to take corrective action after timely written notice of an observed *violation*;
 - (5) Negligently fails to supervise the business resulting in a pattern of *violations* described by patrons, *employees*, or both;
 - (6) Manifests an inability to properly perform the duties relating to the police-regulated activity as evidenced by the commission or omission of an act or series of acts.
- (b) Regulatory action includes the following:
- (1) Issuance of a verbal warning;
 - (2) Issuance of a written warning;
 - (3) Issuance of a notice of *violation*;
 - (4) Placing conditions upon the *permit* which are reasonably related to any *violation*. Unless otherwise stated as part of the condition, all such conditions expire when the *permit* expires, excluding any time stayed during an appeal;
 - (5) Suspension of the *police permit*;

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- (6) Revocation of the *police permit*;
 - (7) Denial of an application for a *police permit*; or
 - (8) Denial of an application for renewal of a *police permit*;
- (c) In lieu of suspension, the *permittee* and *Chief of Police* may negotiate a civil penalty according to the procedure contained in the Police Department's Vice Administration Manual relating to *permit* applications, denials, and penalties. Failure to pay the civil penalty as negotiated will result in reinstatement of the suspension.
- (d) The *Chief of Police* may take regulatory action consistent with the severity of the *violation*, or the frequency of the *violations*, regardless of whether the *permittee* has suffered administrative penalties in the past.
(*"Regulatory Penalties"* added 11-20-2000 by O-18885 N.S.)

§33.0404 Notice of Regulatory Action

- (a) Whenever regulatory action is taken against a *police permit* as described in Sections 33.0403 (b)(4) through (b)(8), the *Chief of Police* shall send a notice to the *permittee* identifying the Code section(s) violated, describing the circumstances of the *violation*, and explaining the consequences of a failure to correct the *violation*, if appropriate.
- (b) Whenever a written warning is issued, the *permittee* shall be afforded an opportunity to meet with the *Chief of Police* regarding the written warning.
(*"Notice of Regulatory Action"* added 11-20-2000 by O-18885 N.S.)

§33.0405 Evidence to be Used in Regulatory Action

- (a) Whenever regulatory action against a *permittee* is based on a *violation* of law or this Article by an *employee* that occurs on the *premises* or during the course of employment, it is sufficient to show that a *responsible person* caused or condoned the *violation*, or failed to take reasonable corrective action after timely written notice of the *violation*.

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- (b) Whenever regulatory action against a *permittee* is based upon a *violation* of law or this Article occurring on the *premises* by a patron, it is sufficient to show that a *responsible person* caused or condoned the *violation* or failed to take reasonable corrective action after timely written notice of the *violation*.
(“*Evidence to be Used in Regulatory Action*” added 11-20-2000 by O-18885 N.S.)

§33.0406 Urgency Action

The *Chief of Police* may take immediate action with respect to a *police permit*, if a subsequent hearing is provided, where there is an urgent need to take immediate action to protect the public from injury or harm, or where a *police permit* was issued based on material misrepresentations in the application and the *police permit* would not have been issued but for the material misrepresentations.
(“*Urgency Action*” added 11-20-2000 by O-18885 N.S.)