

CHAPTER 1.08
ENFORCEMENT OF PROVISIONS OF MUNICIPAL CODE

1.08.010 Purpose.

A. It is the purpose of this Chapter to provide for the enforcement of the provisions of this Code within the City. (Ord. 91-25)

B. In addressing a particular code violation, the City may use one or more of the enforcement procedures provided herein. Nothing in this Chapter shall be deemed to prevent the City from enforcing the provisions of this Code in any manner authorized in law.

1.08.020 Enforcement Officer. The City Manager may designate one or more enforcement officers to enforce provisions of this Code in accordance with the provisions of this Chapter.

1.08.030 Violation as Public Nuisance.

A. It is unlawful for any person to create, cause, commit or maintain a public nuisance within the City.

B. A violation of any regulatory provision of this Code constitutes a public nuisance. (GC § 38771.)

1.08.035 Persons Responsible. Whenever the term “person” is used in this Code, it shall mean individuals, partnerships, corporations, limited liability companies, non-profit corporations, trustees, associations or any other legal entity. The persons responsible for violations of the Code on real property include the owners, lessees, tenants, sublessors, sublessees, occupants, operators, managers, or any other person who has custody or control over the property. (Ord. 2003-06).

1.08.040 Nature of Violations. (Ord. 2003-06).

A. Continuing Violations. Each separate day, or part thereof, during which a violation of this Code is committed, continued, maintained, permitted or allowed shall constitute a separate offense, punishable as such.

B. Responsible of New Owners. When a continuing violation of this code is created or maintained on real property, each successive owner of the real property, including responsible persons described in Section 1.08.035, who neglects to abate the continuing violation is responsible for the violation in the same manner as the former owner.

C. Aiding and Abetting a Violation. Whenever an act or omission is unlawful under this Code, it shall be unlawful for any person to aid, abet, conceal, suffer, permit, allow or maintain such violation, or become an accessory to such violation after the fact.

D. Lapse of Time. No lapse of time shall legalize a violation of this Code.

1.08.050 Enforcement Through Criminal Prosecution

A. Infraction. Any person who violates a provision of this Code, where such violation constitutes a crime, shall be guilty of an infraction, unless otherwise expressed, punishable as follows:

1. A fine not exceeding \$100 for a first violation;
2. A fine not exceeding \$200 for a second violation of the same Section of the Municipal Code within one year;
3. A fine not exceeding \$500 for each additional violation of the same Section of the Municipal Code within one year. (GC § 36900 (b).)

B. Misdemeanor. Any person convicted of violating a provision of this Code, where such violation is expressly made a misdemeanor, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not to exceed six months, or by both such fine and imprisonment. (GC § 36901)

C. Discretionary Charging of Infractions and Misdemeanors. Notwithstanding any other provision of this Code, any violation of this Code that constitutes an infraction or a misdemeanor, may be charged as a misdemeanor or an infraction, respectively, at the discretion of the City Attorney. (Ord. 2003-06)

D. Treble Costs. Upon a second or subsequent offense within two years, the City shall request as part of the criminal prosecution that the court order the convicted defendant who owns the property on which the violation is maintained to pay treble the costs incurred by the City in obtaining the abatement of the nuisance, in accordance with law. (GC § 38773.7.) (Ord. 2003-06).

1.08.060 Enforcement Through Civil Lawsuit.

A. A violation of a provision of this Code may be redressed by civil action which seeks, among other things, declaratory and injunctive relief. (CC § 3494.) A public nuisance that is not a violation of a provision of this Code may nonetheless be redressed in accordance with the provisions of this section.

B. Recovery of Costs. In seeking a civil judgment against any person who creates, causes, commits or maintains a public nuisance within the City, the City may seek an award of damages in an amount equal to the expenses incurred by the City in abating the nuisance, including court costs, related administrative costs, and reasonable attorneys' fees. If the City

elects at the initiation of the action to seek recovery of its attorneys' fees, then the other party may also recover attorneys' fees if it is the prevailing party. However, in no case shall the other party recover attorneys' fees in excess of the amount of reasonable attorneys' fees incurred by the City. (GC section 38773.5) (Ord. 2003-06.)

C. Treble Costs. Upon a second or subsequent offense within two years, the City shall request that the court order the person who creates, causes, commits or maintains a violation of this Code within the City to pay treble the costs incurred by the City in obtaining the abatement of the violation, in accordance with law. (GC § 38773.7.)

1.08.070 Administrative Nuisance Abatement and Cost Recovery. (Ord. 2003-06).

A. Conduct of Administrative Hearing. An administrative, hearing may be conducted for the purpose of abating a violation of this Code as follows:

1. The City Manager, or the City Manager's designee, shall serve as the hearing officer and shall set an administrative hearing at which the City presents its case in support of the contention that a violation of this Code does in fact, and in law exist on real property within the City limits. (Ord. 2003-06).

2. No less than 30 days prior to the hearing, notice of the hearing shall be:

a. Served on the owner of record of the parcel of land on which the nuisance is maintained, based on the last equalized assessment roll or the supplemental roll, whichever is more current, in the same manner as a summons is served in a civil action; (Ord. 2003-06).

b. Served by mail on any mortgagee or beneficiary of a deed of trust recorded against the property where the nuisance is occurring, and on any lessee or occupant of the real property; and (Ord. 2003-06).

c. Posted on the affected premises. If the owner of record, after diligent search, cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten days and publication thereof in a newspaper of general circulation. (Ord. 2003-06).

3. Proof of service and posting of the notice shall be made by declaration, under penalty of perjury, and shall be retained as part of the code enforcement file. (GC § 38773.1(b))

4. The responding parties shall be given a reasonable opportunity to present a response to the City's presentation.

5. If the hearing officer determines, based upon competent, sworn evidence that a violation of this Code does in fact and in law exist and that the responding party or parties have created, caused, committed or maintained the violation within the City, the hearing officer shall issue an administrative order of abatement which:

- a. Describes the violation;
- b. Sets forth the time and manner in which the public nuisance is to be abated;
- c. Directs the responsible party or parties to abate the violation; and
- d. Includes a statement that if the violation is not timely abated by the responsible party or parties, the City will cause the abatement to be accomplished at the expense of the responsible party or parties.

6. The City may record an administrative order of abatement with the County Recorder.

B. Abatement by the City.

1. If the responsible party or parties fail to comply fully with the administrative order of abatement, the City may abate the violation in accordance with law.

2. In abating the violation, the City Manager is authorized to utilize City forces or private contract.

3. To abate the violation, the City forces are authorized to go upon the affected premises in accordance with law.

4. The City Manager shall ensure that there is kept an account of the cost incurred by the City in abating the violation on each premises and shall cause to be prepared an itemized report, in writing, showing the cost of abatement. The cost of abatement may include related administrative costs. (Ord. 2003-06).

C. Hearing to Assess Costs.

1. If the City is required to incur costs in abating the violation, the City Manager, or the City Manager's designee, shall serve as the hearing officer and shall set an administrative hearing:

- a. To establish the costs incurred by the City in abating the violation; and

D. Summary Abatement. (Ord. 2003-06).

1. If a Code Enforcement Officer determines that a public nuisance, as defined by this Chapter, exists and poses an immediate risk to the health, safety or welfare of the public or persons in the vicinity, the City may cause the abatement of the nuisance without the prior notice described in Paragraph A. (Ord. 2003-06).

2. Within 24 hours after the determination is made by the City to summarily abate the nuisance, notice of the determination shall be posted on the property. Within 5 working days after the determination is made by the City to summarily abate the nuisance, notice of the determination shall be served on the owner of record of the parcel of land on which the nuisance is maintained, based on the last equalized assessment roll or the supplemental roll, whichever is more current, in the same manner as a summons is served in a civil action, and served by mail on any mortgagee or beneficiary of a trust recorded against the property where the nuisance is occurring, and on any lessee or occupant of the real property. All such notices need not be given prior to the actual abatement, but the posting of the notice on the property shall not occur later than the beginning of the abatement by the City.

3. If the owner of record, after diligent search, cannot be found, the notice may be served by publication thereof in a newspaper of general circulation.

4. Proof of service and posting of the property shall be made by declaration, under penalty of perjury, and retained as part of the code enforcement file.

5. A hearing to assess costs shall be held pursuant to Paragraph "C."

1.08.080 Administrative Citations. (Ord. 2003-06)

A. Administrative Fines. Every violation of a provision of this Code, the penalty for which is defined as an "infraction" or "misdemeanor," shall be subject to an administrative fine. The provisions of this Section are in addition to all other legal remedies, criminal or civil, which may be pursued by the City and nothing shall prevent the City from initiating a civil, criminal or other legal or equitable proceedings as an alternative to the proceedings set forth in this section, or abating a nuisance and recovering the costs of abatement.

B. Issuance of Administrative Citations. Whenever a Code Enforcement Officer finds that a provision of this Code has been violated, the Code Enforcement Officer may issue an Administrative Citation to the person responsible for the violation. The Administrative Citation shall state the fine imposed by the City as a result of the violation. If 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, the Citation shall provide for a reasonable period of time to correct the violation prior to the imposition of an administrative fine. Said reasonable period of

time shall be at least five days, but not more than forty-five days, unless the Code Enforcement Officer finds that a greater length of time for compliance is necessary. The Code Enforcement Officer may also provide for the same reasonable period of time to correct other types of violations.

C. Contents of an Administrative Citation. Each Administrative Citation issued to a person shall contain the following:

1. The date of the violation.
2. The address or a legal description of the location where the violation occurred.
3. The section of the Code violated and a description of the violation.
4. A description of the action required to correct the violation, if applicable.
5. The number of days allowed to correct the violation prior to the imposition of the fine, if applicable.
6. The amount of the fine assessed for the violation.
7. A description of the fine payment process, including a description of the due date and the place where the fine shall be paid.
8. An order prohibiting the continuation or repeated occurrence of the violation described in the Administrative Citation.
9. A description of the Administrative Citation review process, including the time within which the Administrative Citation may be contested and where a request for hearing may be obtained.
10. The name and signature of the Code Enforcement Officer.

D. Service of the Administrative Citation. Service shall be made by:

1. Personal service by any of the methods for service of a summons in a civil action pursuant to California Code of Civil Procedure Section 415.10; or
2. First class mail. Service shall be complete at the time the citation is deposited into the United States mail; or

3. If personal service or service by first class mail is not possible, service shall be provided by publishing a notice in a newspaper of general circulation and posting an 8-1/2" x 11" enlargement of the Administrative Citation in a conspicuous location on the property.

E. Amount of Fines. The amount of fines imposed pursuant to this Section shall be established by resolution of the City Council. If the violation would otherwise constitute an infraction, the fine shall not exceed the maximum amount of the fine established for an infraction in Section 1.08.050 A of this Code. If the violation would otherwise constitute a misdemeanor, the fine shall not exceed the maximum amount of the fine established for a misdemeanor in Section 1.08.050 B of this Code.

F. Time to Pay. All fines shall be paid to the City within thirty (30) calendar days from the effective date of the Administrative Citation. The effective date of an Administrative Citation shall be the date the citation is issued, unless the Code Enforcement Officer granted an opportunity for the person cited to correct the violation. Where a correction period has been granted, the effective date of the Administrative Citation shall be on the final date of the correction period, if the person has not corrected the violation. An Administrative Citation fine shall be refunded if it is determined, after hearing, that the person charged was not the person responsible for the violation, or there was no violation as charged in the Administrative Citation.

G. Methods of Collection. The City may use all available legal means to collect any past due fines imposed by Administrative Citations including, but not limited to, contracting with collection agencies, filing liens and seeking judgments in court.

H. Request for Hearing.

1. Any person issued an Administrative Citation may contest the issuance of the Citation by filing a written request for hearing no later than fifteen (15) calendar days from the effective date of the Citation. The written request shall include a detailed written explanation of the reasons for contesting the Administrative Citation

2. The person to whom an Administrative Citation is issued shall deposit the amount of the fine with the City Clerk at the time of the request for hearing, or request an advance deposit hardship waiver pursuant to Paragraph I of this Section.

3. The person requesting the hearing shall be notified of the time and place set for the hearing at least ten (10) calendar days prior to the date of the hearing. The hearing shall be set for a date that is not less than fifteen (15) calendar days from the date that a completed request for administrative hearing is filed in accordance with the above provisions.

I. Advance Deposit Hardship Waivers.

1. Any person who requests an administrative hearing and is financially unable to make the advance deposit of the fine, may file a request for an advance deposit hardship waiver by completing a form approved by the City Manager and submitting the form to the City Clerk within three (3) days after filing the request for a hearing.

2. The City Manager, or the City Manager's designee, may waive the requirement of an advance deposit only if the applicant submits the required advance deposit hardship waiver form and includes supporting documents demonstrating to the satisfaction of the City Manager that it would be a significant financial burden on the recipient of the Administrative Citation to deposit the fine prior to the hearing. The City Clerk shall serve written notice of the City Manager's determination on the recipient of the Administrative Citation by first class mail, return receipt requested. Service shall be deemed complete at the time the notice is deposited into the mail and addressed to the person at the address indicated on the hearing request form. Personal service may also be used.

3. If an advance deposit hardship waiver is not granted, the recipient of the Administrative Citation shall deposit the fine with the City Clerk within five (5) days of service of the decision, or at least twenty-four (24) hours before the hearing, whichever is sooner.

J. Appointment of Hearing Officer. The City Manager shall designate a fair and impartial Hearing Officer for the Administrative Citation hearings.

K. Hearing Procedure.

1. All hearings shall be held before the Hearing Officer.

2. Failure of the party contesting the Administrative Citation to appear at the hearing shall constitute forfeiture of the fine and a failure to exhaust administrative remedies.

3. The Administrative Citation and any additional report submitted by the Code Enforcement Officer shall constitute prima facie evidence of the violation. The Code Enforcement Officer may present additional evidence at the hearing.

4. At the hearing, the person contesting the validity of an Administrative Citation shall be given the opportunity to testify and present evidence concerning the Administrative Citation. Both parties may cross-examine the witnesses.

5. The Hearing Officer may continue the hearing from time to time and provide the person with additional time to remedy the violation. In addition, the Hearing Officer may request additional information or evidence from the Code Enforcement Officer or the recipient of the Administrative Citation prior to issuing a written decision.
6. All hearings shall be recorded by a video or audio device, unless the City decides to utilize a court reporter. If a court reporter is not utilized, the City is not required to provide a transcription of the hearing, but shall make the video or audio tape available to the person cited within thirty (30) days after the hearing. The City may charge a reasonable fee for reproducing the tapes. If a court reporter is utilized, the recipient of the Administrative Citation may obtain a copy of the transcript upon payment of any applicable reasonable fees or costs. The City may destroy such tapes or transcripts after all appeals of the Administrative Citation are exhausted.
7. The hearing need not be conducted in accordance with technical rules of evidence. Any relevant evidence shall be admitted if it is the type on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might consider such admission improper in a civil action. Oral evidence shall be taken only on oath or affirmation. Irrelevant or unduly repetitious evidence shall be excluded.
8. After considering all of the testimony and evidence submitted at the hearing, the Hearing Officer shall issue a written decision to affirm or cancel the Administrative Citation. The written decision shall include the Hearing Officer's findings and information regarding the recipient's appeal rights to the Superior Court. The recipient of the Administrative Citation shall be served with a copy of the Hearing Officer's written decision by first class mail, or by personal service. The decision of the Hearing Officer shall be the City's final administrative decision.
9. If the Hearing Officer determines that the Administrative Citation should be affirmed, the fine on deposit with the City shall be retained. In addition, the Hearing Officer shall assess the cost of holding the hearing to the violator, and order the violator to pay the hearing costs to the City within thirty (30) days.
10. 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 and the cost of the hearing.
11. If the Hearing Officer determines that the evidence presented does not support the issuance of the Administrative Citation, the fine shall be deemed null and void and the City shall, within thirty (30) calendar days, refund the amount of the fine. In addition, the City shall not assess hearing costs.

L. Right to Judicial Review. A person aggrieved by the administrative decision of a Hearing Officer may file an appeal with the San Diego County Superior Court within twenty (20) days of the service of the Hearing Officer's decision, in accordance with the provisions in California Government Code Section 53069.4.

1.08.083 Civil Penalties. Civil penalties for violations of the Encinitas Municipal Code are hereby established. As an alternative to the Administrative Citation process, in any civil action filed by the City to enforce the provisions of this Code, the City may request the Court to impose civil penalties in the maximum amount that could have been imposed by the City by the Administrative Citation process in Section 1.08.080. (Ord. 2003-06).

1.08.085 Citizen Complaints.

A. To file a complaint alleging a violation of one or more of the provisions of this Code, the complaining citizen shall submit, in writing, a statement signed under penalty of perjury which sets out the location of the alleged violation, the person involved and each and every fact upon which the complaint is based.

B. Upon receipt of a properly prepared citizen's complaint, the City of Encinitas may direct an investigation into the alleged violation and take further action as appropriate. (Ord. 2003-06).

1.08.090 Code Enforcement Officer (Ord. 2003-06).

A. A Code Enforcement Officer is authorized to issue a criminal or administrative citation for a violation of portions of the Municipal Code which the Officer is authorized to enforce. (Ord. 2003-06)

B. The City Manager is authorized to appoint one or more City employees to serve as a Code Enforcement Officer, so long as the person: (Ord. 2003-06).

1. Has satisfactorily completed a course of initial instruction in criminal enforcement procedures required by the City;
2. Has satisfactorily completed an examination demonstrating competence to apply the City's code enforcement policies; and
3. Has demonstrated the ability to perform the tasks of a Code Enforcement Officer. (Ord. 2003-06)

C. The appointment of a Code Enforcement Officer shall be in writing and shall include a designation of the portions of the Municipal Code which that Code Enforcement Officer is authorized to enforce. The appointment shall include the issuance of an identifying badge. (Ord. 2003-06).

D. The City Manager shall approve a course of refresher training and periodic recertification for appointed Code Enforcement Officers. (Ord. 2003-06).

E. The City Manager shall revoke the appointment of any Code Enforcement Officer who: (Ord. 2003-06).

1. Fails to satisfactorily complete refresher training;
2. Fails to satisfactorily complete recertification; or
3. Fails to satisfactorily perform the duties assigned to the Code Enforcement Officer. (Ord. 2003-06).

F. A Code Enforcement Officer whose appointment is revoked shall not be reappointed until the person has satisfactorily completed a course of instruction required by the City. (Ord. 2003-06).

G. In their capacity as law enforcement officers for the City, members of the Sheriff's Department are authorized to enforce the provisions of this Code.