

Title 1

GENERAL PROVISIONS

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Chapter 1.01

CODE ADOPTION*

Sections:

- 1.01.010 Adoption.
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* For statutory provisions authorizing cities to adopt by reference a codification of their ordinances, see Gov. Code §§ 50022.1 – 50022.8 and 50022.10; for provisions of the city Charter authorizing codification of ordinances, see § 314.

1.01.010 Adoption.

Pursuant to the provisions of Sections 50022.1 through 50022.8 and 50022.10 of the Government Code, there is adopted the Chula Vista Municipal Code together with those secondary codes adopted by reference as authorized by the California State Legislature, save and except those portions of the secondary codes as are deleted or modified by the provisions of the Chula Vista Municipal Code. (Ord. 1625 § 1, 1975).

1.01.020 Title – Citation – Reference.

This code shall be known as the Chula Vista Municipal Code, and it shall be sufficient to refer to said code as the Chula Vista Municipal Code in any prosecution for the violation of any provision thereof or in any proceeding at law or equity. It shall be sufficient to designate any ordinance adding to, amending, correcting or repealing all or any part or portion thereof as an addition to, amendment to, correction or repeal of the Chula Vista Municipal Code. Further reference may be had to the titles, chapters, sections and subsections of the Chula Vista Municipal Code, and such references shall apply to that numbered title, chapter, section or subsection as it appears in the code. (Ord. 1625 § 2, 1975).

1.01.030 Codification authority.

This code consists of all the regulatory and penal ordinances and certain of the administrative ordinances of the city of Chula Vista, California, codified pursuant to the provisions of Sections 50022.1 through 50022.8 and 50022.10 of the Government Code. (Ord. 1625 § 3, 1975).

1.01.040 Ordinances passed prior to adoption of the code.

The last ordinance included in this code was Ordinance 1599, passed December 16, 1974. The following ordinances, passed subsequent to Ordinance 1599, but prior to adoption of this code, are hereby adopted and made a part of this code: Ordinances 1600 through 1624. (Ord. 1625 § 4, 1975).

1.01.050 Reference applies to all amendments.

Whenever a reference is made to this code as the Chula Vista Municipal Code, or to any portion thereof, or to any ordinance of the city of Chula Vista, California, the reference shall apply to all amendments, corrections and additions heretofore, now or hereafter made. (Ord. 1625 § 5, 1975).

1.01.060 Title, chapter and section headings.

Title, chapter and section headings contained herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any title, chapter or section hereof. (Ord. 1625 § 6, 1975).

1.01.070 Reference to specific ordinances.

The provisions of this code shall not in any manner affect matters of record which refer to, or are otherwise connected with, ordinances which are therein specifically designated by number or otherwise and which are included within the code, but such reference shall be construed to apply to the corresponding provisions contained within this code. (Ord. 1625 § 7, 1975).

1.01.080 Effect of code on past actions and obligations.

Neither the adoption of this code nor the repeal or amendment of any ordinance or part or portion of any ordinance of the city shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date of the ordinance codified herein; nor be construed as a waiver of any license, fee or penalty at said effective date due and unpaid under such ordinances; nor be construed as affecting any of the

provisions of such ordinances relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof; nor affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any ordinance; and all rights and obligations thereunder appertaining shall continue in full force and effect. (Ord. 1625 § 8, 1975).

1.01.090 Effective date.

This code shall become effective on the date the ordinance codified herein and adopting this code as the Chula Vista Municipal Code shall become effective. (Ord. 1625 § 9, 1975).

1.01.100 Constitutionality.

If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code. The council hereby declares that it would have passed this code, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional, and if for any reason this code should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect. (Ord. 1625 § 10, 1975).

Chapter 1.04

GENERAL PROVISIONS*

Sections:

- 1.04.010 Definitions and rules of construction.
- 1.04.020 Provisions to be considered as continuations of existing ordinances.
- 1.04.030 Repeal not to revive any ordinances – Effect on certain actions.
- 1.04.040 Severability.
- 1.04.050 Catchlines of sections not a part of the law.
- 1.04.060 Time limit for seeking review of administrative decisions.
- 1.04.070 Mandatory duties.
- 1.04.080 Required fee(s).

* For provisions of state law regarding computation of time, see Gov. Code § 6800 et seq.; for general provisions of the California Governmental Code, see Gov. Code § 1 et seq.; for general provisions of the city Charter, see §§ 100 – 106, 1500 and 1502.

1.04.010 Definitions and rules of construction.

In the construction of this code and of all ordinances of the city, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the city council or the context clearly requires otherwise:

“Abatement” means an act or combination of actions designed to correct a nuisance. Abatement includes, but is not limited to, removal, demolition or repair of structures; removal of weeds, rubbish and debris; reconstruction of structures to code; restoration of drainage ways or courses; grading or re-grading and filling of illegally graded or developed land; revegetation; vacating of illegal or nonconforming structures; removing barriers improperly blocking off public access; removal of encroaching structures onto public property; and other action which is reasonably related to the correction or mitigation of nuisances under this code or state law.

“City” or “this city” means and shall be construed as if followed by the words “of Chula Vista.”

“City manager” means an officer appointed by the city council as the city manager, and includes those officers and employees he or she designates to perform certain functions. The term “city manager” includes a director, as defined herein, except in those proceedings where an appeal to the city manager is taken from the order of a director.

“Code” or “this code” means the municipal code of the city of Chula Vista, California.

“Code enforcement officer” means a person, other than a police officer, designated by the city manager or a director to enforce violations of the municipal code. A code enforcement officer is authorized to issue notices of violation and administrative citations pursuant to Chapter 1.41 CVMC. A code enforcement officer is authorized to issue misdemeanor citations or to arrest a person without a warrant for a misdemeanor committed in his or her presence which is a violation of state law or an ordinance which the code enforcement officer has a duty to enforce. A code enforcement officer may exercise all powers of arrest pursuant to California Penal Code Section 836.5. A code enforcement officer is not a peace officer within the definition of Penal Code Sections 830 through 832.8.

Computation of Time. The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a legal holiday and then it is also excluded.

“Council” whenever used in this code means the city council of the city.

“County” or “this county” means the county of San Diego.

“Day” means the period of time between any midnight and the midnight following.

Daytime and Nighttime. “Daytime” means the period of time between sunrise and sunset. “Nighttime” means the period of time between sunset and sunrise.

“Director” means the chief of police, fire chief, city engineer, director of planning and building, director of finance, director of parks and recreation, director of public works, director of community development and the employees designated by them or assigned by job function to perform code enforcement functions and duties. It also includes the county health officer or director of public health for public health and sanitation.

Gender. The masculine gender includes the feminine and neuter.

“In the city” means and includes all territory over which the city now has, or shall hereafter acquire, jurisdiction for the exercise of its police powers or other regulatory powers.

Joint Authority. All words giving a “joint authority” to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

“Month” means a calendar month.

“Notice” means a written document which informs a person of the time, date and place for a hearing, the nature of a penalty or corrective action required of that person, and the municipal code section(s) applicable to the proceeding. Service of notice is covered in CVMC 1.40.030.

“Nuisance” is as defined under California Civil Code Section 3480, and includes a condition upon or use of real property within Chula Vista that violates the municipal code or state law. It may also include dilapidation or disrepair of structures; the maintenance of a structure in which illegal drug, gambling or prostitution activity occurs; or a structure on private property which encroaches into public property.

Number. The singular number includes the plural and the plural the singular.

“Oath” means and includes an affirmation.

Officers, Departments, Etc. Officers, departments, boards, commissions and employees referred to in this code shall mean officers, departments, boards, commissions and employees of the city, unless the context clearly indicates otherwise.

Official Time. Whenever certain hours are named in this code, they shall mean Pacific Standard Time or Daylight Saving Time, as may be in current use in the city.

Or, And. “Or” may be read “and,” and “and” may be read “or,” if the sense requires it.

“Owner,” applied to a building or land, means and includes any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole or of a part of such building or land.

“Person” means and includes any person, firm, association, organization, partnership, business trust, corporation or company.

“Personal property” means and includes every species of property, except real property, as defined in this section.

Preceding and Following. The words “preceding” and “following” mean next before and next after, respectively.

“Process” means and includes a writ or summons issued in the course of judicial proceedings of either a civil or criminal nature.

“Property” means and includes real and personal property.

“Real property” means and includes land, improvements and structures on land, tenements and hereditaments.

“Responsible party” means, individually and collectively, the owner(s) of real property upon which a violation of this code or state law exists; or

a tenant or occupant in possession, licensee or any other person who has caused, created, or continues to allow a condition to occur or exist upon real property constituting a violation of this code or state law. A “responsible party” can be a natural person or a corporation.

Shall and May. “Shall” is mandatory and “may” is permissive.

Signature or Subscription by Mark. “Signature” or “subscription” includes a mark when the signer or subscriber cannot write, such signer’s or subscriber’s name being written near the mark by a witness who writes his own name near the signer’s or subscriber’s name; but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names thereto.

“State” or “this state” shall be construed to mean the state of California.

“Tenant or occupant,” applied to a building or land, includes any person holding a written or an oral lease of, or who occupies the whole or a part of, such building or land, either alone or with others.

Tenses. The present tense includes the past and future tenses, and the future includes the present.

Week. A “week” consists of seven consecutive days.

“Writing” means and includes any form of recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, statement or record is required or authorized by this code, it shall be made in writing in the English language, unless it is expressly provided otherwise.

“Year” means a calendar year, except where otherwise provided. (Ord. 2790, 1999; Ord. 2718 § 1, 1998; prior code § 1.2).

1.04.020 Provisions to be considered as continuations of existing ordinances.

The provisions appearing in this code, so far as they are the same as those of ordinances existing at the time of the effective date of the ordinances codified in this code, shall be considered as continuations thereof and not as new enactments. (Prior code § 1.3).

1.04.030 Repeal not to revive any ordinances – Effect on certain actions.

The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect.

The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal for any offense committed under the ordinance repealed. (Prior code § 1.4).

1.04.040 Severability.

It is declared to be the intention of the city council that the sections, paragraphs, sentences, clauses and phrases of this code are severable, and if any phrase, clause, sentence, paragraph or section of this code shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this code. (Prior code § 1.5).

1.04.050 Catchlines of sections not a part of the law.

The catchlines of the several sections of this code printed in boldface type are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections; nor as any part of the section; nor unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted. (Prior code § 1.6).

1.04.060 Time limit for seeking review of administrative decisions.

Pursuant to the California Code of Civil Procedure Section 1094.6, judicial review of any administrative decision of the city may be had pursuant to Code of Civil Procedure Section 1094.5 only if a petition for writ of mandate is filed not later than the ninetieth day following the date on which the decision becomes final; except that if the action imposes an administrative fine or penalty, the petition for review must be filed within 20 days after the order is final, pursuant to Government Code Section 53069. (Ord. 2718 § 1, 1998; Ord. 1870 § 1, 1979).

1.04.070 Mandatory duties.

It is the intent of the city council of the city of Chula Vista that any ordinance establishing performance standards or establishing an obligation to act upon a city officer or employee shall not be construed as creating a mandatory duty for purposes of tort liability if the officer or employee fails to perform said act. (Ord. 2110 § 1, 1985).

1.04.080 Required fee(s).

Wherever the term “required fee(s)” is used in this code it shall mean the fee in the amount(s) established in that portion of the master fee schedule relating to that topic in the section of the municipal code relating to the same topic, as that amount may, from time to time, be amended by the city council by ordinance or resolution. (See master fee schedule index for cross reference between municipal code section imposing fee and master fee schedule section setting forth amount of fee.) (Ord. 2506 § 3, 1992).

Chapter 1.08**CITY SEAL***

Sections:

1.08.010 Official and pictorial – Authorization for commercial use required.

* For statutory provisions requiring that the city clerk be the custodian of the city seal, see Gov. Code § 40811.

**1.08.010 Official and pictorial –
Authorization for commercial use
required.**

A. The official seal of the city shall be circular, shall have a diameter of a size appropriate for use on official city documents, and having in the center a design described as a sun rising in the background over a grid pattern of city streets with a sailboat in San Diego Bay in the foreground and the following inscription surrounding the same:

CITY OF CHULA VISTA, CALIFORNIA.

B. The official logo of the city shall be of the same approximate design as the official seal of the city, as adopted by the city council from time to time, and may be used on all documents pertaining to the business of the city.

C. No person or persons shall use or allow to be used any reproduction or facsimile or any purported reproduction or facsimile of the official seal or official logo of the city, or any other official seal, logo, insignia, emblem, or symbol of any city agency, department, office, board, or commission maliciously, or for any commercial purpose unless previously authorized by the council. (Ord. 2278 § 1, 1988; Ord. 1208 § 1, 1969; prior code § 1.12).

Chapter 1.16**RIGHT OF ENTRY FOR INSPECTION***

Sections:

1.16.010 Applicability – Procedure required.

* For statutory provisions regarding inspection warrants, see Civil Procedure Code §§ 1822.50 – 1822.57.

1.16.010 Applicability – Procedure required.

Whenever necessary to make an inspection to enforce any state or municipal code provision, or whenever there is reasonable cause to believe there exists a state or municipal code violation in any building or upon any premises within the jurisdiction of the city, any authorized official of the city may, upon presentation of proper credentials, enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon him or her by ordinance; provided, that except in emergency situations or when consent of the owner and/or occupant to the inspection has been otherwise obtained, he or she shall give the owner and/or occupant, if they can be located after reasonable effort, at least 24 hours' written notice of the authorized official's intention to inspect. The notice transmitted to the owner and/or occupant shall state that the property owner and/or occupant has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of an inspection warrant by a duly authorized magistrate pursuant to Code of Civil Procedure Section 1822.50. In the event the owner and/or occupant refuses entry after such request has been made, the official is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining an inspection warrant for such entry. It is a misdemeanor to willfully refuse access after an inspection warrant has been duly issued. (California Code of Civil Procedure Section 1822.57). The above 24-hour notice requirement shall not apply to any inspection where the authorized official conducts the observations and inspection while within the public right-of-way or within the unobstructed walkway between such right-of-way and the front entry of any residence; nor shall it apply to abandoned or inoperative motor vehicles inspected on site in accordance with applicable state law. (Ord. 2718 § 1, 1998; Ord. 1550 § 1, 1974; prior code § 1.7).

Chapter 1.20**GENERAL PENALTY***

Sections:

1.20.010 Designated – Applicability.
 1.20.020 Infractions – Prosecutor's discretion/defendant's election to have infraction treated as misdemeanor.
 1.20.030 Applicability of misdemeanor provisions.
 1.20.040 Precedence over other sections.

* For statutory provisions authorizing cities to impose penalties for violations of ordinances, not exceeding \$500.00 in fines and/or six months imprisonment, see Gov. Code § 36901; for provisions of the city Charter regarding penalties for violation of ordinances, see Charter §§ 316 and 1501; for statutory authority for cities to compel prisoners to labor, see Gov. Code § 30904.

1.20.010 Designated – Applicability.

A. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of the ordinances of the city shall be guilty of a misdemeanor, unless, at the sole option of the city, the violation is cited and prosecuted as an infraction.

B. An infraction is punishable by:

1. A fine not exceeding \$100.00 for a first violation.

C. An infraction is not punishable by imprisonment. A person charged with an infraction shall not be entitled to a trial by jury. A person charged with an infraction shall not be entitled to have the public defender or other counsel appointed at public expense to represent him unless he is arrested and not released on his written promise to appear, on his own recognizance, or upon a deposit of bail.

D. A misdemeanor is punishable by:

1. Imprisonment in the county jail not exceeding six months, or by fine not exceeding \$1,000, or by both.

E. Each such person described in subsection (A) of this section shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the ordinances of the city is committed, continued or permitted by any such person, and he shall be punished accordingly.

F. Payment of a fine shall not excuse payment of any fee required by the municipal code.

G. In addition to the foregoing, any violation of the provisions of the ordinances of the city is

deemed to be a public nuisance. Such violations may be abated by civil action or pursuant to applicable administrative abatement procedures. (Ord. 2718 § 1, 1998; Ord. 2474 § 1, 1991; Ord. 2284 § 1, 1988; Ord. 2213 § 1, 1987; Ord. 2077 § 1, 1984; Ord. 1765 § 1, 1977; Ord. 1551 § 1, 1974; prior code § 1.7A).

1.20.020 Infractions – Prosecutor’s discretion/defendant’s election to have infraction treated as misdemeanor.

A. A violation of any Chula Vista Municipal Code section may, at the discretion of the prosecutor if the violation is initially charged as a misdemeanor rather than an infraction, be prosecuted as an infraction, subject to the procedures described in CVMC 1.20.010(C) and 1.20.030 when:

1. The prosecutor files a complaint charging the offense as an infraction, unless the defendant, at the time he is arraigned, after being informed of his rights, elects to have the case proceed as a misdemeanor; or

2. The court, with the consent of the defendant, determines that the offense is an infraction, in which event the case shall proceed as if the defendant had been arraigned on an infraction complaint. (Ord. 2718 § 1, 1998; Ord. 2284 § 1, 1988; Ord. 2265 § 1, 1988; Ord. 2253 § 2, 1988; Ord. 2213 § 2, 1987).

1.20.030 Applicability of misdemeanor provisions.

Except as otherwise provided by law, all provisions of law related to misdemeanors shall apply to infractions, including but not limited to powers of peace officers, jurisdiction of courts, period for commencing action and for bringing a case to trial, and burden of proof. (Ord. 2284 § 3, 1988).

1.20.040 Precedence over other sections.

CVMC 1.20.010, 1.20.020 and 1.20.030 supersede all other criminal penalty provisions of the Chula Vista Municipal Code and any other city ordinances. (Ord. 2284 § 1, 1988).

Chapter 1.24

ARREST PROCEDURE*

Sections:

- 1.24.010 Notice required – Contents – Bail.
- 1.24.020 Violation of promise to appear – Deemed misdemeanor.
- 1.24.030 Violation of promise to appear – Issuance of warrant for arrest.
- 1.24.040 Imprisonment to be in county jail.

* For statutory provisions regarding citation for misdemeanors, see Penal Code § 853.5 et seq.

1.24.010 Notice required – Contents – Bail.

A. If any person is arrested for a misdemeanor and is not immediately taken before a magistrate as is more fully set forth in the Penal Code of the state, the arresting officer shall prepare in duplicate a written notice to appear in court, containing the name and address of such person, the offense charged, and the place where and when such person shall appear in court.

B. The time specified in the notice to appear must be at least 10 days after such arrest.

C. The place specified in the notice to appear shall be as prescribed by Penal Code Section 853.6.

D. The officer shall deliver one copy of the notice to appear to the arrested person and the arrested person, in order to secure release, must give his written promise so to appear in court by signing the duplicate notice, which shall be retained by the officer. Thereupon, the arresting officer shall forthwith release the person arrested from custody.

E. The officer shall, as soon as practicable, file the duplicate notice with the magistrate as specified therein. Thereupon, the magistrate shall fix the amount of bail which in his judgment, in accordance with the provisions of Section 1275 of the Penal Code of the state, will be reasonable and sufficient for the appearance of the defendant, and shall endorse upon the notice a statement signed by him in the form set forth in Section 815A of the Penal Code of the state. The defendant may, prior to the date upon which he promised to appear in court, deposit with the magistrate the amount of bail thus set. Thereafter, at the time when the case is called for arraignment before the magistrate, if the defendant shall not appear, either in person or by counsel, the magistrate may declare the bail forfeited and may in his discretion order that no further proceedings shall be had in such case.

Upon the making of such order that no further proceedings be had, all sums deposited as bail shall forthwith be paid into the county treasury for distribution pursuant to Section 1463 of the Penal Code of the state.

F. No warrant shall issue on such charge for the arrest of a person who has given such written promise to appear in court, unless and until he has violated such promise or has failed to deposit bail; to appear for arraignment, trial or judgment; or to comply with the terms and provisions of the judgment, as required by law. (Ord. 2718 § 1, 1998; prior code § 1.8).

1.24.020 Violation of promise to appear – Deemed misdemeanor.

Any person willfully violating his written promise to appear in court given pursuant to CVMC 1.24.010 is guilty of a misdemeanor regardless of the disposition of the charge upon which he was originally arrested. (Prior code § 1.9).

1.24.030 Violation of promise to appear – Issuance of warrant for arrest.

A. Whenever any person signs a written promise to appear at the time and place specified in the written promise to appear, in accordance with CVMC 1.24.010, and has not posted bail as provided in CVMC 1.24.010, the magistrate shall issue and have delivered for execution a warrant for his arrest either within 20 days after his failure to appear as promised, or if such person promises to appear before an officer authorized to accept bail other than a magistrate and fails to do so on or before the date on which he promised to appear, then within 20 days after the delivery of such written promise to appear by the officer to a magistrate having jurisdiction over the offense.

B. In accordance with Section 853.3 of the Penal Code of the state, when such person violates his promise to appear before an officer authorized to accept bail other than a magistrate, that officer shall immediately deliver to the magistrate having jurisdiction over the offense charged the written promise to appear and the complaint, if any, filed by the arresting officer. (Prior code § 1.10).

1.24.040 Imprisonment to be in county jail.

Any person sentenced to imprisonment for the violation of any provision of this code or any ordinance of the city shall be imprisoned in the county jail. (Prior code § 1.11).

Chapter 1.30

ABATEMENT OF PUBLIC NUISANCE

Sections:

- 1.30.010 Purpose.
- 1.30.020 Definitions.
- 1.30.030 Summary abatement power.
- 1.30.040 Scope of chapter.
- 1.30.050 Nuisance declared.
- 1.30.060 Service of notice and order to abate.
- 1.30.070 Appeal procedure.
- 1.30.080 Appeal fee – Determination of amount/waiver of payment/refund.
- 1.30.090 Hearing procedure.
- 1.30.100 Determination of the hearing examiner.
- 1.30.110 Time for compliance.
- 1.30.120 Noncompliance with order to abate.
- 1.30.130 Report and notice of hearing.
- 1.30.140 Hearing on report.
- 1.30.150 Cost as special assessment and lien.
- 1.30.160 Transmittal of report to auditor – Inclusion in tax bill.
- 1.30.170 Manner of collection – Laws applicable.
- 1.30.180 Violations.

1.30.010 Purpose.

This chapter is enacted pursuant to Civil Code Section 3491 et seq. and Government Code Section 38771 et seq., and is intended to be an alternative procedure for the abatement of any public nuisance declared to be a violation of any statute, regulation or ordinance enforced by the city. It is intended to provide a uniform procedure for notification, right of appeal and assessment of costs and collection thereof for the abatement of public nuisances. This chapter may be used in conjunction with procedures established in Chapters 1.40 and 1.41 CVMC. The procedure herein is supplemental to the general penalty provision found in Chapter 1.20 CVMC, and is intended to provide due process for all those required to abate a public nuisance. (Ord. 2718 § 1, 1998; Ord. 2187 § 2, 1987; Ord. 1655 § 1, 1975).

1.30.020 Definitions.

Whenever the following words or phrases are used in this chapter, they shall have the meaning prescribed below:

The “city abatement officer” shall be the city officer responsible for enforcement of the city ordinances being violated and who initially declares

said violation to be a public nuisance. (Ord. 2187 § 2, 1987; Ord. 1655 § 1, 1975).

1.30.030 Summary abatement power.

Whenever this code or any other provision of law authorizes the city manager or any other city officer to declare a public nuisance, the nuisance may be summarily abated by any reasonable means and without notice or hearing when immediate action is necessary to preserve or protect the public health or safety because of the existence of a dangerous condition or imminent threat to life, safety on public or private property. Summary abatement actions shall not be subject to the notice and hearing requirements of this chapter, and a city code enforcement officer shall not be prohibited from summary abatement actions after initiation of proceedings pursuant to this chapter, if immediate action at any time becomes necessary to preserve or protect the public health or safety. Summary abatement is to be limited to those actions which are reasonably necessary to immediately remove the threat.

In the event a public nuisance is summarily abated, the city abatement officer may nevertheless keep an account of the cost of abatement and bill the property owner therefor. If the bill is not paid within 15 days from the date of mailing, the abatement officer may proceed to obtain a special assessment and lien against the owner's property in accordance with the procedures set forth in CVMC 1.30.130 through 1.30.170. (Ord. 2718 § 1, 1998; Ord. 2187 § 2, 1987; Ord. 1655 § 1, 1975).

1.30.040 Scope of chapter.

Whenever a public nuisance is declared, it may be abated in accordance with the procedures provided in this chapter. Nothing in this chapter shall be construed to limit the right and duty of any city officer to take immediate action to preserve or protect public health or safety. The procedures set forth in this chapter are not exclusive but are cumulative to all other civil and criminal remedies provided by law. The seeking of other remedies shall not preclude the simultaneous commencement of proceedings pursuant to this chapter. (Ord. 2187 § 2, 1987; Ord. 1655 § 1, 1975).

1.30.050 Nuisance declared.

A city code enforcement officer may declare a public nuisance for any reason specified in any city ordinance. Upon a public nuisance being declared, the city code enforcement officer shall issue a

notice and order to abate substantially in the following form:

NOTICE AND ORDER TO ABATE

NOTICE IS HEREBY GIVEN THAT _____

_____ [specify the condition constituting the nuisance] is in violation of Section ____ of the Chula Vista Municipal Code [or other applicable code or ordinance]. The violation has been declared a public nuisance by the city code enforcement officer and must be abated immediately. The public nuisance is on property located at _____ [insert address or other legal property description].

YOU ARE HEREBY ORDERED TO ABATE SAID PUBLIC NUISANCE within ____ (____) [insert a reasonable number of days (not less than ten)] consecutive calendar days from the issuance of this order. The issuance date is specified below. You may abate the nuisance by _____ [insert desired action which, if taken, will adequately remedy the situation]. If you fail to abate the public nuisance within the number of days specified, the city may order its abatement by public employees, private contractor, or other means, and the cost of said abatement may be levied and assessed against the property as a special assessment lien or billed directly to the property owner.

YOU MAY APPEAL FROM THIS ORDER OF ABATEMENT but any such appeal must be brought prior to the expiration of the number of days specified above for completion of abatement. The appeal must be in writing; specify the reasons for the appeal; contain your name, address and telephone number; be accompanied by an appeal fee of _____ dollars (\$____); and be submitted to the city manager at the following address:

City Manager
276 Fourth Avenue
Chula Vista, California 91910
Tel. No. (619) 691-5031

One who is legally indigent, as determined by guidelines prepared by the city manager and after consultation with the city attorney, may obtain a waiver of the appeal fee. Upon timely receipt of the appeal and accompanying fee, or waiver, the city manager will cause the matter to be set for hearing and notify you of the date and location of the hearing.

If you have any questions regarding this matter, you may direct them to the city officer issuing this notice at the address or telephone number listed below.

ISSUANCE DATE: _____

(Name, title, address and telephone number of the city abatement officer issuing this notice)

(Ord. 2718 § 1, 1998; Ord. 2187 § 2, 1987; Ord. 1655 § 1, 1975).

1.30.060 Service of notice and order to abate.

The notice and order to abate shall be served in the following manner:

A. By personal service; or

B. By certified mail, addressed to the owner, or his or her agent, at the address shown on the last equalized assessment roll or as otherwise known, and addressed to anyone known to the city abatement officer to be in possession of the property at the street address of the property being possessed. Service shall be deemed to have been completed upon the deposit of said notice and order, postage pre-paid, in the United States mail; and

C. By posting such notice and order to abate conspicuously in front of the property on which, or in front of which, the nuisance exists, or if the property has no frontage upon any street, highway, or road, then upon the portion of the property nearest to a street, highway, or road, or most likely to give actual notice to the owner and any person known by the city abatement officer to be in possession of the property. (Ord. 2718 § 1, 1998; Ord. 2187 § 2, 1987; Ord. 1655 § 1, 1975).

1.30.070 Appeal procedure.

Any owner or other person in possession of the property may appeal any notice and order to abate issued pursuant to this chapter to the city manager or designee within 10 days, as allowed in the notice and order to abate. The appeal shall be submitted in

writing; specify the grounds upon which the appeal is taken; contain the name, address, and telephone number of the appellant; be accompanied by the payment of an appeal fee as set forth in the master fee schedule and be filed with the city manager. Timely appeal shall stay any further abatement action until the hearing is concluded. The city manager or designee shall set the matter for hearing before a hearing examiner and notify the parties in writing of the date and location of the hearing at least 10 days prior to said date. (Ord. 2718 § 1, 1998; Ord. 2187 § 2, 1987; Ord. 1655 § 1, 1975).

1.30.080 Appeal fee – Determination of amount/waiver of payment/refund.

At the time of filing an appeal, the appellant shall pay the required fee(s) as set forth in the city's master fee schedule.

If the appellant claims an economic hardship in paying the appeal fee, he or she may submit an application for waiver of the appeal fee on forms provided by the city manager for that purpose. The forms shall be substantially similar to those required of litigants initiating court proceedings in forma pauperis pursuant to Section 68511.3 of the Government Code. The forms shall be executed under penalty of perjury and contain a declaration as to the truthfulness and correctness of the information contained therein. Upon submittal of the completed forms, the appeal fee shall be waived, if justification is demonstrated.

Failure to submit the waiver forms or pay the appeal fee in a timely manner shall cause the appeal request to be automatically denied. Enforcement of the order to abate may then proceed as if no appeal request had been submitted.

If the appeal fee is paid and the hearing examiner finds there is no public nuisance, the appeal fee shall be refunded to the appellant without the payment of any interest which could have accrued. (Ord. 2718 § 1, 1998; Ord. 2506 § 1, 1992; Ord. 2187 § 2, 1987; Ord. 1655 § 1, 1975).

1.30.090 Hearing procedure.

Hearings before a hearing examiner appointed from a list of qualified persons approved in writing by the city manager shall be conducted in accordance with the following procedures:

A. Oral evidence shall be taken only on oath or affirmation. The hearing examiner is authorized to issue subpoenas, administer oaths, and conduct the hearing.

B. Each party shall have these rights: to be represented by legal counsel; to call and examine wit-

nesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues, even though the matter was not covered in the direct examination; to impeach any witness regardless of which party first called the witness; to testify in his or her own behalf. He or she may be called and examined as if under cross-examination.

C. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions and irrelevant and unduly repetitious evidence shall be excluded.

D. The hearing shall be conducted in the English language. The proponent of any testimony to be offered by a witness who does not proficiently speak the English language shall provide an interpreter approved by the hearing examiner conducting the proceeding as proficient in the English language and the language in which the witness will testify. The cost of the interpreter shall be paid by the party providing the interpreter.

E. The hearing may be continued from time to time upon request of a party to the hearing and upon a showing of good cause therefor.

F. The administrative procedures of Chapter 1.40 CVMC may be utilized to supplement the above. (Ord. 2718 § 1, 1998; Ord. 2187 § 2, 1987; Ord. 1655 § 1, 1975).

1.30.100 Determination of the hearing examiner.

The city hearing examiner shall allow or overrule any or all objections, and reverse, modify or affirm the determinations of the city code enforcement officer, and may direct the city code enforcement officer to proceed and perform the work of abatement if not performed by the owner or the person in possession of the property within the prescribed time. The decision of the hearing examiner shall be in writing, contain findings of fact and conclusions of law, and be filed with the city clerk within five working days of the conclusion of the hearing. A copy of the decision shall be sent to each party appearing at the hearing, and if no

appearance was made by the appellant, to him or her by mail at the address specified in the appeal. The decision of the hearing examiner shall be final when filed with the city clerk and constitutes the exhaustion of administrative remedy. (Ord. 2718 § 1, 1998; Ord. 2187 § 2, 1987).

1.30.110 Time for compliance.

If the hearing examiner decides that the order to abate should be enforced, the owner, his or her agent or person in possession of the property shall comply with the order within such period of time as may be therein prescribed, and in the absence of any prescribed time, within three days from the date of final determination. (Ord. 2718 § 1, 1998; Ord. 2187 § 2, 1987).

1.30.120 Noncompliance with order to abate.

Upon the failure, neglect or refusal to properly comply with the order to abate within the prescribed time period, the city abatement officer may cause to be done whatever work is necessary to abate the public nuisance. An account of the cost of abatement shall be kept for each separate assessor's parcel involved in the abatement.

When the city has completed the work of abatement or has paid for such work, the owner of the property shall pay the costs of abatement (see CVMC 1.41.140). To this amount shall be added the appeal fee, if it was previously waived. The combined amounts shall be included in a bill and sent by mail to the owner or his or her agent for payment, if not paid prior thereto. The bill shall apprise the owner that failure to pay the bill within 15 days from the date of mailing may result in a lien or assessment being placed upon the property. (Ord. 2718 § 1, 1998; Ord. 2506 § 1, 1992; Ord. 2187 § 2, 1987).

1.30.130 Report and notice of hearing.

If the bill is not paid within 15 days from the date of mailing, the city code enforcement officer shall render an itemized report in writing to the city manager for hearing and confirmation. To the report shall be attached the names and addresses of all persons having any record interest in the property. At least 10 days prior to said hearing, the city manager or designee shall give notice, by certified mail, of said hearing to the record owner of each assessor's parcel involved in the abatement, the holder of any mortgage or deed of trust of record, and any other person known to have a legal interest in the property. Said notice shall describe the property by street number, legal description and tax

assessor's parcel number sufficient to enable identification of the property and contain a statement of the amount of the proposed assessment. (Ord. 2718 § 1, 1998; Ord. 2187 § 2, 1987).

1.30.140 Hearing on report.

At the time fixed for receiving and considering the report, the city manager shall hear the report or cause it to be heard by a hearing examiner for the purpose of considering any objections of any of the owners liable to be assessed for the work of abatement, or any other persons who may have a legal interest in the property. The city manager or hearing examiner shall add to the proposed assessment an amount equal to the cost of conducting the assessment confirmation hearing. The city manager, or designee, may also make such other modifications in the report as are deemed necessary, after which the report shall be confirmed and be final and conclusive. (Ord. 2718 § 1, 1998; Ord. 2187 § 2, 1987).

1.30.150 Cost as special assessment and lien.

A certified copy of the assessment shall be recorded by the city clerk in the office of the county recorder. The amounts and the costs of abatement mentioned in the report as confirmed shall constitute a special assessment against such property, and are a lien on the property for the amount of the respective assessment.

In addition to its rights to impose said special assessment, the city shall retain the alternative right to recover its costs by way of civil action against the owner and person in possession or control jointly and severally. (Ord. 2718 § 1, 1998; Ord. 2187 § 2, 1987).

1.30.160 Transmittal of report to auditor – Inclusion in tax bill.

A copy of the report as confirmed shall be turned over to the county auditor on or before the tenth day of August following such confirmation, and the auditor shall enter the amounts of the respective assessments against the respective parcels of land as they appear on the current assessment roll. The tax collector shall include the amount of the assessment on bills for taxes levied against the respective parcels of land. (Ord. 2187 § 2, 1987).

1.30.170 Manner of collection – Laws applicable.

A. Thereafter, the amounts of the assessment shall be collected at the same time and in the same

manner as city taxes are collected, and are subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary city taxes. All laws applicable to the levy, collection and enforcement of city taxes are applicable to such assessments.

B. As an alternative, the city manager or hearing examiner may impose an abatement lien upon the property in accordance with CVMC 1.41.160. (Ord. 2718 § 1, 1998; Ord. 2187 § 2, 1987).

1.30.180 Violations.

It is unlawful for any person to interfere with the performance of the duties herein specified for the city code enforcement officer or any authorized officer or employee thereof, or to refuse to allow any such officer or employee or approved private contractor to enter upon any premises for the purpose of abating the public nuisance or to interfere in any manner whatever with said officers or employees in the work of abatement.

Paying a fine or serving a jail sentence shall not relieve any person from responsibility for correcting any condition which violates any provision of a code being enforced pursuant to this chapter. (Ord. 2718 § 1, 1998; Ord. 2187 § 2, 1987).

Chapter 1.34

CLAIMS REQUIREMENTS AND PROCEDURES

Sections:

- 1.34.010 Purpose and intent of claims regulations.
- 1.34.020 Claims requirement.
- 1.34.030 Claims procedures.
- 1.34.040 Time for presentation of claims.
- 1.34.050 Delegation.
- 1.34.060 Late claims.

1.34.010 Purpose and intent of claims regulations.

The purpose of this chapter is to require the filing of claims for matters which are specifically excluded under Government Code Section 905 and which are not governed by any other statutes or regulations expressly related thereto. Additionally, this chapter sets forth claims presentation, consideration and payment provisions applicable to, and to be incorporated by reference in, all written agreements entered into by the city. (See Government Code Sections 935 and 938). (Ord. 2772 § 1, 1999; Ord. 2293 § 1, 1989).

1.34.020 Claims requirement.

No suit shall be brought against the city unless a claim has been presented in writing and filed with the city of Chula Vista and acted upon by the city. (Ord. 2772 § 1, 1999; Ord. 2293 § 1, 1989).

1.34.030 Claims procedures.

Each claim filed pursuant to this chapter shall follow the requirements prescribed by Title 1, Division 3.6 of the California Government Code (commencing with Section 900, excluding Section 905). (Ord. 2772 § 1, 1999; Ord. 2293 § 1, 1989).

1.34.040 Time for presentation of claims.

A. A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented, in the manner provided in Article 2 (commencing with Section 915) of the California Government Code, not later than six months after the accrual of the cause of action.

B. Claims by the state or a state department or agency or by another local public entity for equitable indemnity or partial equitable indemnity shall be presented, in the manner provided in Article 2 (commencing with Section 915) of the California

Government Code, not later than six months from the date the claimant is served with the complaint giving rise to the claimant's claim for equitable indemnity or partial equitable indemnity.

C. A claim by a public employee for fees, salaries, wages, mileage or other expenses and allowances shall be presented, pursuant to Government Code Section 930.4, within six months of the accrual of the cause of action; or if a grievance procedure applicable to the claimant provides for submission of grievances regarding the payment of fees, salaries, wages, mileage or other expenses, such claim shall be presented, pursuant to Government Code Section 935, within the time specified in said grievance procedure.

D. A claim relating to any other cause of action shall be presented, in the manner provided in Article 2 (commencing with Section 915) of the California Government Code, not later than one year after the accrual of the cause of action. (Ord. 2772 § 1, 1999; Ord. 2293 § 1, 1989).

1.34.050 Delegation.

The functions of the city council required to be performed in considering and rejecting, approving, compromising or settling claims provided for by this chapter are hereby delegated to and shall be performed by the risk manager. The director of finance may cause a warrant to be issued upon the city treasury in the amount for which any such claim has been allowed, compromised or settled by the risk manager, provided such amount does not exceed \$50,000. (Ord. 2772 § 1, 1999; Ord. 2293 § 1, 1989).

1.34.060 Late claims.

If claims required by this chapter to be submitted within a period of less than one year are not submitted within the stated time (see CVMC 1.34.040(A), (B) and (C)), an application may be made to the city to present such claim within one year of the accrual of the cause of action and in accordance with the requirements of Government Code Sections 930.4 and 935(e). (Ord. 2772 § 1, 1999; Ord. 2293 § 1, 1989).

Chapter 1.40**ADMINISTRATIVE PROCEDURE
AND PROCESS**

Sections:

- 1.40.010 Purpose and intent.
- 1.40.020 Administrative process.
- 1.40.030 Service of notices.
- 1.40.035 Proof of service of notices.
- 1.40.040 Reserved.
- 1.40.050 Administrative hearing procedure.
- 1.40.060 Immediate action excusing prior notice for purposes of abating dangerous conditions or imminent threat to life or safety.
- 1.40.070 Consolidation of proceedings.

1.40.010 Purpose and intent.

It is the purpose and intent of the city council to establish rules and procedures for the conduct of administrative hearings required by statute, this municipal code, or administrative regulation in order to insure administrative due process is accorded to affected parties. The requirements and procedures of this chapter shall be applicable to administrative procedures and hearings regarding the denial, suspension or revocation of a permit, license or entitlement, and may be used to supplement or substitute for any administrative hearing or administrative procedure prescribed elsewhere in this municipal code. The procedures under this chapter may also be used in those situations where the municipal code authorizes a hearing as a precondition to the abatement of a nuisance, the imposition of an administrative fine or penalty, or as an administrative appeals procedure. (Ord. 2718 § 3, 1998).

1.40.020 Administrative process.

A. Subject to the provisions of CVMC 1.40.060, the city manager or designee shall serve notice pursuant to CVMC 1.40.030 upon a party whose permit, license or entitlement has been denied, or is to be suspended or revoked, or against whom administrative enforcement action is proposed, that they shall be allowed 10 calendar days (30 days for out-of-state residents per Code of Civil Procedures Section 415.40) to request an administrative hearing to appeal or contest that proposed action before it will become final. The request for hearing must be made no later than 10 calendar days from the date of notification of the proposed action. The proposed action by the city

manager shall become final and conclusive if not appealed or contested. Except as provided in CVMC 1.40.060, the proposed action shall be stayed if properly appealed, and be made final following the issuance of a decision by a hearing officer pursuant to subsection (H) of this section.

B. Upon the filing of a request for a hearing or an appeal and payment of the required fee, the city manager shall appoint a hearing examiner who shall be neutral and unbiased as to the specific factual matter in contention and experienced in the general subject matter. The hearing examiner may be appointed either from within the city staff or outside sources. The city manager may provide compensation to outside sourced hearing examiners.

C. The fee to request a hearing or an appeal of an administrative citation or civil penalty shall be equal to the amount of the fine identified on the administrative citation or the amount of the civil penalty, but not more than \$1,000. If the hearing officer determines that the issuance of the administrative citation or assessment of the civil penalty was not appropriate based on the evidence provided, then the appeal fee will be refunded to the party that requested the appeal. If the appeal is denied, the fee shall be applied as payment of, or toward, the administrative citation or civil penalty. The fee to request a hearing or an appeal of all other types of administrative orders, unless specified otherwise in the municipal code, shall be in the form of a deposit, the amount to be determined by the city manager based on the anticipated staff cost to conduct the hearing. If the cost of the hearing or appeal exceeds the deposited amount, the requesting party shall be responsible for payment of the additional costs incurred. If the hearing officer determines that the administrative order is not supported by the evidence, the entire deposited amount will be returned to the party that requested the appeal.

D. The hearing examiner shall notify the appellant of the time and place for the hearing in accordance with CVMC 1.40.030, allowing a minimum of 10 calendar days from the date the notice is mailed before the hearing is to be held.

E. The hearing examiner shall conduct the administrative hearing in accordance with CVMC 1.40.050 and issue a written decision promptly to all parties upon the conclusion of the hearing, unless the appeal or request for hearing is withdrawn by the requesting party. The hearing examiner may impose conditions and deadlines for corrective action and reduce, waive or conditionally suspend any fines or penalties proposed when the hearing

examiner concludes, based upon the evidence, that such action is equitable and more likely to bring about compliance with the proposed order.

F. The hearing examiner's decision shall be based upon findings supported by evidence. The standard of proof required to render the decision shall be that of a preponderance of the evidence. A preponderance of the evidence is established when the weight of the evidence supporting the existence of a fact in contention has the more convincing force, when balanced against that evidence refuting the existence or applicability of the same fact in contention.

G. The hearing may not be used as a substitute for discovery pursuant to the Code of Civil Procedure, and any inquiry or discovery in violation of this subsection is not competent or admissible against the party against whom it is to be used upon appropriate motion or objection of that party.

H. A final decision shall be issued by the hearing examiner. The date of mailing of the final decision by the hearing examiner to the party by first class mail, with certificate of service attached, shall constitute the date of the exhaustion of administrative remedy. A party shall be advised by the hearing examiner that it has 90 days, pursuant to the California Code of Civil Procedure Section 1094.6, from that date in which to file for a writ of mandamus or other applicable judicial review, except that if the determination is made as to a decision imposing an administrative penalty, fine or charge under CVMC 1.41.100, the time to appeal to the municipal court is limited to 20 days pursuant to California Government Code Section 53069.4. Failure to file for judicial review within the applicable time limit makes the final decision nonappealable and confirmed. Until a timely request for judicial review is filed, enforcement of the final decision may proceed in due course.

I. The city will use its best effort to tape record the hearing, but is not legally obligated to do so. Any recording will be retained for not to exceed two years. The private party may also record the proceedings. A party may request a transcript of the proceedings, if prepared, or be provided a copy of any recording, if made, upon payment of the costs of preparation or duplication. (Ord. 2718 § 3, 1998).

1.40.030 Service of notices.

A. Except as provided in subsection (D) of this section, whenever a notice is required to be given under the municipal code for the enforcement of a proposed order or for hearing or appeals purposes,

the notice shall be served by any of the following methods, unless different provisions are otherwise specifically stated to apply:

1. Personal service upon the responsible party; or

2. Certified mail, postage prepaid, return receipt requested. Simultaneously, a duplicate notice may be sent by regular mail, postage prepaid. If a notice that is sent by certified mail is returned unsigned, service shall be deemed effective pursuant to service of the duplicate notice by regular mail; provided, that the duplicate notice sent by regular mail is not returned as undeliverable. Notice shall be mailed to the last address shown on the county tax assessor's records if the notice concerns real property, and to the last known address of any other party to the proceeding shown in official records of the city of Chula Vista;

3. Posting the notice conspicuously on or in front of the property.

B. Posting a notice or duplicate service by regular mail in the manner described above shall be deemed effective on the third day after mailing or posting; service by certified mail shall be effective as of the date of signed receipt.

C. The service of an initial notice of violation may also be sent by regular mail. Service of a notice of violation by regular mail is effective on the third day after mailing.

D. Service of notice through which a lien will be placed upon real property will be in accordance with Code of Civil Procedure Sections 415.10, 415.20, 415.30, or Section 415.40 if the responsible party resides out of state.

E. The failure of any party or person with an interest in the property or the proceeding to receive any notice which has been duly sent or posted in accordance with this section shall not affect the validity of any proceedings taken under this code. (Ord. 2718 § 3, 1998).

1.40.035 Proof of service of notices.

Proof of service of any notice required by this code may be made by certificate or affidavit of an officer or employee of this city or by affidavit of any person over the age of 18 years. The proof of service shall show that service was done in conformity with this code and any other provisions of law applicable to the subject matter concerned. (Ord. 2718 § 3, 1998).

1.40.040 Reserved.

1.40.050 Administrative hearing procedure.

The hearing before a hearing examiner shall be conducted in accordance with the following procedures:

A. A hearing examiner is authorized to issue subpoenas, administer oaths or affirmations, and conduct the hearing. Subpoenas shall be signed by the city clerk. Oral evidence shall be taken only on oath or affirmation.

B. Each party shall have the following rights: to be represented by legal counsel; to call and examine witnesses; to introduce evidence; to cross-examine opposing witnesses on any matter relevant to the issues, even though the matter was not covered in the direct examination; to impeach any witness regardless of which party first called the witness; to testify in his or her own behalf. A party may be called as a witness by the other party and be examined as if under cross-examination.

C. Appeals of quantities of work performed in connection with a violation of land grading permits as estimated by the director shall include a report by a licensed civil engineer qualified to perform land surveys or a licensed land surveyor. The report shall be prepared at the sole cost of the appellant. Such reports shall include sufficient survey work to determine the actual amount of land grading work done without a permit.

D. The hearing need not and should not be conducted according to the technical rules of procedure and the California Evidence Code relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient by itself to support a finding unless it would also be admissible over objection in civil actions. Irrelevant and unduly repetitious evidence shall be excluded.

E. The proponent of any testimony to be offered by a witness who does not proficiently speak the English language shall provide an interpreter. The interpreter shall be approved by the hearing examiner conducting the proceeding as proficient in the English language and the language in which the witness will testify. The cost of the interpreter is to be paid by the party providing the interpreter.

F. The proponent for the director may introduce into evidence and rely upon an administrative record which clearly demonstrates: (1) the condition(s), act(s) or omission(s) upon which the proposed action is based; (2) the regulatory authority for the proposed action; (3) technical or factual data supporting the proposed action; and (4) any other information or data relevant to the proposed action. An administrative record certified by the director which meets the above criteria shall constitute prima facie evidence in support of the proposed action. The burden of going forward may then shift to the opposing party, who may then cross-examine on the basis of the administrative record and call witnesses appropriate to aid in its examination of the administrative record. The opposing party may call additional witnesses and introduce additional evidence appropriate for opposition, defense, excusal or mitigation of the proposed action.

G. The hearing may, at the discretion of the hearing examiner, be continued from time to time upon request of a party to the hearing and upon a showing of good cause therefor. (Ord. 2718 § 3, 1998).

1.40.060 Immediate action excusing prior notice for purposes of abating dangerous conditions or imminent threat to life or safety.

The provisions for prior notice and hearing may be dispensed with when, in the opinion of the director with the concurrence of the city manager, immediate action is necessary to summarily abate a dangerous condition on public or private property or an imminent threat to life or safety on public or private property. The director shall take only such action as is reasonably necessary to summarily abate the danger, and shall thereafter expeditiously comply with CVMC 1.40.020 through 1.40.050 regarding notice and hearing, if requested, to the responsible party(ies) regarding the action taken by the director to summarily abate the condition. The purpose of the hearing will be to afford the responsible party(ies) the opportunity to contest their responsibility for the costs or scope of abatement. If further corrective action is necessary, the director will comply with this chapter and such other sections of the code as may be applicable regarding further corrective action. (Ord. 2718 § 3, 1998).

1.40.070 Consolidation of proceedings.

A director or the hearing examiner may consolidate one or more administrative processes and

orders proposed under this chapter and Chapters 1.30 or 1.41 CVMC, or both, into a single hearing, if consolidation would be more efficient and cost-effective. (Ord. 2718 § 3, 1998).

Chapter 1.41

ADMINISTRATIVE COMPLIANCE AND ENFORCEMENT PROCEDURES

Sections:

- 1.41.010 Purpose and intent.
- 1.41.020 Overview of process.
- 1.41.030 Notice of violation.
- 1.41.040 Recordation of notice of violation.
- 1.41.050 Nonissuance of permits.
- 1.41.060 Reinspection fees.
- 1.41.070 Cease and desist orders.
- 1.41.080 Reserved.
- 1.41.090 Reserved.
- 1.41.100 Administrative citations.
- 1.41.110 Civil penalties.
- 1.41.120 Abatement action.
- 1.41.130 Reserved.
- 1.41.140 Cost recovery.
- 1.41.150 Confirmation of costs.
- 1.41.160 Enforcement.
- 1.41.170 Satisfaction of lien or obligation.
- 1.41.180 Abatement fund.

1.41.010 Purpose and intent.

A. It is the purpose and intent of the city council to establish administrative procedures for obtaining prompt compliance in the correction of both major and minor violations of the Chula Vista Municipal Code and state law. Conditions in violation of the municipal code or state law which affect conditions upon or uses of real property within the city of Chula Vista are hereby designated nuisances. The procedures authorized or identified by this chapter are the following: notices of violation; administrative citations; administrative fines and penalties; cease and desist orders; abatement of nuisances; recordation of notices of violation; authorization to charge reinspection fees; cost recovery for costs of enforcement; confirmation of costs; and recordation of liens and assessments for cost recovery.

B. The procedures established in and through this chapter may cross reference, consolidate or incorporate by reference, as applicable, enforcement methods established elsewhere in this code, in order to create a uniform process for prompt code compliance, administrative due process and effective enforcement.

C. The city manager, any cognizant director and the city attorney are each authorized to utilize and initiate the procedures established in this chapter and Chapters 1.30 and 1.40 CVMC.

D. The procedures in CVMC Title 1 may be used as a supplement to criminal or judicial enforcement action, or both, or in lieu thereof. Selection of one method shall not preclude the use of any other method or combination of methods when appropriate.

E. The terms “abatement,” “city manager,” “code enforcement officer,” “director,” “nuisance,” and “responsible party” are as defined in CVMC 1.04.010. (Ord. 2718 § 3, 1998).

1.41.020 Overview of process.

A. Violations of the municipal code affecting uses of or conditions upon real property may be corrected through the issuance of a notice of violation pursuant to CVMC 1.41.030 to the responsible party requiring certain actions to be taken to bring the property or structure into compliance. The responsible party will be allowed a reasonable period of time in which to correct the violation, normally not less than 10 calendar days. Failure to comply within the time prescribed can then result in the issuance of an administrative citation in accordance with CVMC 1.41.100 or any other method or combination of methods deemed appropriate.

B. An administrative citation is a notice to the responsible party which mandates the corrective action and establishes a fine as a penalty for the prior noncompliance of the notice of violation. Subsequent administrative citations may be issued with increased penalty. Corrective action that may be required of a responsible party includes, but is not limited to, the removal of encroachments into public property, the mitigation or restoration of land or adjoining property for illegal grading or development, the removal or modification of blockages of drainage ways and the removal of structures to rectify any code violation or cure any hazardous condition. It includes any other process necessary for abatement. In addition, through the notice and hearing procedures of Chapters 1.30 and 1.40 CVMC, the responsible party can be made subject to an order of abatement through which the corrective work will be undertaken by the city and the cost will be imposed as a lien against the property if the responsible party fails to respond.

C. Each day a violation exists on real property is a continuing and additional violation, and all remedies, penalties and assessments are cumulative.

D. In addition to a notice of violation, a cease and desist order can be issued pursuant to CVMC 1.41.070 to one or more responsible parties or other persons who perform work in violation of a

permit or without a required permit. Violation of the cease and desist order is a separate misdemeanor. A responsible party or any person on scene actively conducting the violation under the direction of a responsible party is subject to arrest without a warrant for continuing work in violation of the cease and desist order, as well as for the actions constituting the violation of this code. A responsible party can be required to obtain necessary permits, restore or revegetate the property, or both, and correct or mitigate the consequences of the violation. Administrative citations can also be issued assessing administrative fines for both the creation of and the continuance of the violation.

E. If the responsible party fails or refuses to correct the violation, proceedings may be undertaken to abate any existing or resulting nuisance, pursuant to Chapter 1.30 CVMC. Abatement orders authorize a director to enter upon property and correct the violation or condition, or the removal of encroachment upon public property. Enforcement costs may be imposed against the responsible party and noncomplying property.

F. During the pendency of the violation and the enforcement process, a notice of violation may be recorded against the property pursuant to CVMC 1.41.040 describing the particulars of the violation to insure that the property is properly abated prior to or upon transfer. The recorded notice of violation will be released upon issuance of a notice of compliance which shall be recorded by the director in due course within 15 days after request for such release by the property owner.

G. During the inspection and enforcement process, cost recovery can be imposed for the cost of reinspection (CVMC 1.41.060) and the costs of city services to abate (Chapter 1.30 CVMC and CVMC 1.41.140). These costs may be recorded as a lien against the property following the procedures under this chapter or the waiver thereof by the responsible party.

H. Various steps or procedures under this chapter may require notice and a hearing pursuant to Chapter 1.40 CVMC. When appropriate, notice and hearing requirements for separate administrative actions may be consolidated. (Ord. 2718 § 3, 1998).

1.41.030 Notice of violation.

A. A code enforcement officer is authorized to serve a notice of violation upon a responsible party for any violation of the municipal code. The notice of violation will describe the violation, the dates and location of the violation, the applicable code section(s), the corrective action required and a date

for compliance reinspection. The responsible party will be advised that a reinspection fee (CVMC 1.41.060) will be imposed for a second and all subsequent reinspection if compliance is not voluntarily obtained, and that an administrative citation may also be issued along with civil penalties pursuant to CVMC 1.41.100 and 1.41.110 until the property is brought into compliance. The responsible party will be allowed a minimum of 10 calendar days to correct minor violations and no less than 30 calendar days for major violations. A code enforcement officer may extend the time for a reasonable period beyond those limits if circumstances dictate. The notice of violation will inform the responsible party of the potential costs and consequences that may ensue under this chapter if voluntary compliance is not obtained within the time prescribed. If the violation is corrected in accordance with the terms of the notice of violation, no costs or charges will be imposed.

B. Service of a notice of violation is effective upon delivery or mailing pursuant to this section. Failure or refusal to sign does not invalidate the notice of violation and subsequent proceedings.

C. The property will be reinspected once for compliance. If the responsible party refuses to allow inspection, after a reasonable demand, the code enforcement officer may obtain an inspection warrant pursuant to Code of Civil Procedure Section 1822.50. Failure of the responsible party to allow inspection or remedy the violation shall result in the issuance of an administrative citation, the charging of reinspection fees, and may result in a separate criminal violation for the failure to allow inspection (CCP Section 1822.57).

D. If the violation also constitutes the performance of work without a required permit or in violation of an issued permit, the code enforcement officer may issue a cease and desist order pursuant to CVMC 1.41.070 to temporarily and immediately enjoin the work and to take any other action appropriate at that time. If the violation creates a hazardous condition which affects public safety or an imminent threat to life, safety, summary abatement may be initiated pursuant to this section. (Ord. 2718 § 3, 1998).

1.41.040 Recordation of notice of violation.

A. Whenever a violation on real property remains uncorrected after a notice of violation has been issued, a copy of the notice of violation may be recorded by the director in the real property records of San Diego County if the following prerequisites are met:

1. A violation has remained uncorrected on the property for at least 30 calendar days following service of the notice of violation;

2. The owner, if not the responsible party, has been notified of the prospective recordation and been offered the opportunity to correct the violation;

3. The property owner and all of the responsible parties shall be notified that development permits shall be withheld during the time the property remains in violation pursuant to CVMC 1.41.050, except for those permits that are necessary to bring the property into compliance;

4. The responsible party and the property owner have been noticed and offered a hearing pursuant to Chapter 1.40 CVMC to contest the proposed corrective action and the proposed recordation.

B. The director is authorized to record the notice of violation pursuant to this section upon issuance of the final order.

C. Cancellation of Recordation. The director shall issue to the property owner and other responsible parties a signed notice of compliance which states on its face that it cancels the notice of violation once all violations have been corrected and any administrative penalties, costs and fines involved in the enforcement process have been paid. The notice of compliance shall be recorded by the director if the notice of violation was recorded. (Ord. 2718 § 3, 1998).

1.41.050 Nonissuance of permits.

After a notice of violation has been recorded against the property pursuant to CVMC 1.41.040, the city manager shall withhold the issuance of any permits for development as allowed by law upon that property, save for those permits necessary to correct the violation(s). A party whose permits are to be withheld shall be noticed as part of the recordation process pursuant to CVMC 1.41.040 and offered a hearing pursuant to Chapter 1.40 CVMC in which to contest this decision. (Ord. 2718 § 3, 1998).

1.41.060 Reinspection fees.

A. Reinspection fees are authorized to recover city costs when excessive time and effort becomes necessary to obtain code compliance. Reinspection fees are an appropriate method to recover costs that are disproportionately attributable to recalcitrant responsible parties.

B. After a notice of violation or an administrative citation is issued, or an order is issued by or

under the authority of a director which requires corrective action by a responsible party, that party will be notified that it will be liable for any reinspection fees necessary if the condition remains uncorrected. The first inspection following the issuance of the notice of violation, citation or order is considered part of the normal cost of enforcement and will not be charged if the condition is then promptly corrected. Otherwise, it will be included as part of the costs of enforcement.

C. Reinspection fees may be collected and enforced as part of the enforcement process or in combination with other administrative proceedings under this chapter, provided the responsible party was notified in advance of its liability for reinspection fees under subsection (B) of this section. Appeals, service of notice and hearing procedures are established in Chapter 1.40 CVMC.

D. Reinspection fees will be charged on the basis of actual staff time utilized for the inspection(s), based upon the master fee schedule on file in the office of the city clerk. (Ord. 2718 § 3, 1998).

1.41.070 Cease and desist orders.

A. A director or code enforcement officer is authorized to issue personally, or to serve in accordance with CVMC 1.40.030, a written cease and desist order upon any person violating a provision of the municipal code through which work is being performed without a permit, if required, or in violation of an issued permit. Cease and desist orders are particularly appropriate for violations of land grading, watercourse and water and sewer regulations and related work which alters the condition of real property or through which environmental degradation or pollution will continue to occur if not stopped immediately.

B. It is unlawful for any person to whom a cease and desist order has been personally issued or served to continue to perform work in violation of the terms of that order.

C. It is unlawful for any responsible party to whom a cease and desist order has been served to continue to perform work or to allow or permit another to continue to perform work in violation of the terms of that order.

D. Prosecution under subsection (B) or (C) of this section does not bar prosecution or administrative enforcement, or both, of the previous underlying violations for any or all days the violation had been in existence, or for the continuance of the underlying violation.

E. Any director or code enforcement officer in whose presence a violation of subsection (B) or (C)

of this section occurs may arrest the violator without a warrant, and a police officer may accept custody of that arrestee for criminal enforcement processing.

F. The director may initiate other administrative enforcement and compliance methods in accordance with this chapter and Chapters 1.30 and 1.40 CVMC, as appropriate. (Ord. 2718 § 3, 1998).

1.41.080 Reserved.

1.41.090 Reserved.

1.41.100 Administrative citations.

A. The council finds that there is a need for an alternative method of enforcement for minor violations of the municipal code and applicable state codes. The council further finds that an appropriate method of enforcement for minor violations is an administrative citation program. The procedure established in this section 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 code.

B. An administrative citation can be issued to a responsible party for violation of a regulatory provision of this code or state law, and the responsible party be required to pay an administrative fine. Administrative citations and penalties are particularly appropriate in cases of structural, building and zoning violations that do not create an immediate danger to health or safety if the responsible party has failed to correct the violation after the issuance of a notice of violation pursuant to CVMC 1.41.030.

C. An administrative citation may be issued in lieu of the initiation of a criminal action for the same violation. However, in particularly egregious cases, criminal enforcement may be appropriate for continuing violations if the administrative citation is ignored by the responsible party.

D. The amount of administrative fine that may be imposed for each separate violation of the same code section is as follows:

1. One hundred dollars (\$100.00) for a first violation; \$200.00 for a second violation within the 12 calendar months of the first violation; \$500.00 for each additional violation occurring after the second violation and within 12 months of any prior violation.

2. Issuance of an administrative citation and payment of the administrative fine does not excuse compliance and corrective action regarding the violations. Although continuing violations of the

municipal code are separate offenses, the responsible party shall be allowed a reasonable time of not more than 30 days in which to correct the violation before a second or subsequent administrative citation may be issued.

3. A responsible party may request administrative review of an administrative citation pursuant to Chapter 1.40 CVMC.

E. The administrative citation shall contain the following information:

1. Date of the violation;
2. Address and location of violation;
3. Description of violation;
4. Applicable codes and statutory sections violated;
5. Corrective action required;
6. An order to bring the violation into compliance;
7. Notice of the fines to be imposed;
8. A date, not less than 20 days, by which payment of the fine must be made;
9. Location for payment;
10. Notification that payment does not excuse correction of the violation;
11. Notice of right to request review pursuant to Chapter 1.40 CVMC.

F. A party filing a timely request for review pursuant to Chapter 1.40 CVMC shall post a deposit with the director. Enforcement of the administrative fine shall be stayed pending the decision of a hearing examiner if a hearing is requested. Procedures for review shall be in accordance with Chapter 1.40 CVMC. The deposit will be returned if the appeal is granted. A final order is not subject to judicial review after 20 days have elapsed from the date of its issuance, unless the party complies with Government Code Section 53069.4. See CVMC 1.40.020(H). A final order may be enforced pursuant to CVMC 1.41.160. (Ord. 2718 § 3, 1998).

1.41.110 Civil penalties.

A. The council finds that there is a need for alternative methods of enforcement of the Chula Vista 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 this section 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 codes.

B. Civil penalties may be assessed against a responsible party for continued violations of the municipal code or applicable state codes, whether of the same section or any combination, that reflect a continuing disregard for the requirements of such laws. The director may issue a notice and order to the responsible party assessing a civil penalty pursuant to this section. The civil penalty may be enforced against the responsible party as a lien pursuant to CVMC 1.41.140.

C. Except for violations of land grading ordinances contained in Chapter 15.04 CVMC, civil penalties may be assessed at a daily rate not to exceed \$1,000 per violation per day, and not to exceed a total of \$100,000 per tax assessor's parcel number in the case of unimproved real property or \$100,000 per each structure against which violations have existed on a single tax assessor's parcel number for any related series of violations.

D. The civil penalty for violations of land grading permits or land grading work done without the issuance of a permit shall be based on an estimate by the director of grading work performed. The rate of civil penalties shall be as follows:

1. Less than 250 cubic yards, but not meeting the requirements for an exemption from grading permit under CVMC 15.04.150: \$1,000 per violation;
2. Two hundred fifty-one (251) to 500 cubic yards: \$5,000 per violation;
3. Five hundred one (501) to 1,000 cubic yards: \$10,000 per violation;
4. Over 1,001 cubic yards: \$25,000 per violation;
5. In the event any individual, firm, company, developer or property owner causes a second violation of the land grading permit ordinance, either on the same property or different property and whether or not part of the same development, the rate of civil penalties shall be doubled. For third and subsequent violations, the rate of civil penalties shall be multiplied by a factor of four.

E. Civil penalties under this section may be accrued retroactive to the date the violations were first discovered, as evidenced by the issuance of a notice of violation pursuant to CVMC 1.41.030, or any later date determined by the director. In determining the amount to be imposed on a daily rate, the director shall consider the following factors:

1. Duration of the violation;
2. Frequency or occurrence of the violation;
3. Frequency or occurrence of other violations during the period of accrual;

4. Seriousness of the violation in relation to its threat or impact upon public health, welfare or safety;

5. History of the violations;

6. Activity taken by the responsible party to obstruct or interfere with correction of the problem;

7. Good faith or bad faith efforts by the responsible party to comply;

8. The impact of the violation on the surrounding property and community;

9. The financial ability of the responsible party to have corrected the violation in a timely fashion.

F. The director shall comply with Chapter 1.40 CVMC concerning notice of the proposed civil penalties and the right to a hearing to contest or confirm. Unless contested, the notice and order shall be final and be enforced pursuant to CVMC 1.41.160. If contested, the hearing examiner shall limit the hearing to the following issues:

1. Whether the responsible party maintained a use or condition on real property that violated the municipal code or state law on the dates specified; and

2. Whether the civil penalty assessed is consistent with the criteria expressed in subsection (E) of this section. The hearing examiner may, however, exercise discretion pursuant to CVMC 1.40.020(E) and increase or decrease the penalties assessed to a level determined to be supported by the evidence meeting the criteria under subsection (E) of this section.

G. The director shall issue a final order based on the proceedings under subsection (E) of this section and establish a date for payment, following which date an enforcement lien shall be imposed upon the property. The imposition of an enforcement lien may be made a part of the proceedings and notice and order under CVMC 1.41.100 or this section. (Ord. 2718 § 3, 1998).

1.41.120 Abatement action.

Procedures for the abatement of nuisances, when required for corrective action, are contained in Chapter 1.30 CVMC. (Ord. 2718 § 3, 1998).

1.41.130 Reserved.

1.41.140 Cost recovery.

Pursuant to Government Code Section 38773, costs and penalties that may be recovered and enforced against responsible parties under this chapter include, but are not limited to, the following:

A. City's direct cost for abatement of nuisances, together with applicable overhead;

B. Costs of salary and applicable overhead of those city employees and contract personnel involved in the investigation, enforcement and remediation or abatement of a nuisance;

C. City costs for equipment use or rental;

D. Attorney's fees;

E. Court costs and witness fees;

F. Costs of geotechnical, engineering and other technical services and studies;

G. Administrative fines and civil penalties imposed pursuant to this chapter;

H. Reinspection fees pursuant to CVMC 1.41.060;

I. Costs of monitoring programs necessary for correcting, monitoring, abating or mitigating nuisances and violations;

J. Any other fee, cost, or expense reasonably and rationally related to the city's enforcement efforts to abate a nuisance or correct a violation of this code or applicable state law;

K. Treble damages recoverable pursuant to Government Code Section 38773.7. (See CVMC 1.41.160(C)). (Ord. 2718 § 3, 1998).

1.41.150 Confirmation of costs.

Following the conclusion of the city's remediation, abatement or corrective actions, the director shall notify the property owner and appropriate responsible parties of a proposed assessment of costs against each individually and as a lien or assessment against the real property that was the subject of abatement or corrective action. Notice and an opportunity to be heard and contest the basis for the assessment of costs or lien shall be provided to those parties in accordance with Chapter 1.40 CVMC. Following any hearing or waiver thereof, the city manager may then issue a final order of confirmation of costs against the respective responsible parties. (Ord. 2718 § 3, 1998).

1.41.160 Enforcement.

A. In accordance with Government Code Section 38773, the city manager or a director, or both as appropriate, may enforce the confirmation of costs as follows:

1. As a personal obligation against a responsible party; and

2. Either:

a. As a recorded lien with the priority of a judgment lien in the real property records of the county against any real property which was the subject of abatement or corrective action; or

b. As an assessment against the property which was subject to abatement or corrective action, to be collected in the same manner as municipal taxes.

B. The city manager, city attorney or director is authorized to obtain judicial enforcement for the foreclosure of the lien, where appropriate. In addition, pursuant to Government Code Section 38773.7, the city manager may seek treble damages for the abatement costs where the corrective action arose out of or constituted a second or subsequent civil or criminal judgment within a two-year period, as provided for in that section. Enactment of this subsection constitutes the enactment of an ordinance authorizing the recovery of treble damages in accordance with Government Code Section 38773.7. (Ord. 2718 § 3, 1998).

1.41.170 Satisfaction of lien or obligation.

Upon payment in full by one or more responsible parties for all costs of enforcement and the satisfactory completion of all corrective action required, the city manager or director shall promptly issue to all responsible parties a notice of compliance. The notice of compliance will be signed and identify the affected real property by address, legal description and tax assessor's parcel number, and be recorded in the real property records of the county by the director if a lien was recorded. (Ord. 2718 § 3, 1998).

1.41.180 Abatement fund.

The city manager shall budget for estimated expenses for abatement and code enforcement purposes in the annual budget process. Revenue received shall be deposited in a designated account in the general fund. All penalties and fines collected under CVMC 1.41.140 shall be deposited to the general fund. (Ord. 2718 § 3, 1998).

