

Title 1
GENERAL PROVISIONS¹

Chapters:

- 1.05 Title – Definitions – General**
- 1.10 Appeals**
- 1.15 Judicial Review**
- 1.20 Claims Against the City**
- 1.25 Violation of Code – Enforcement**
- 1.30 Criminal Penalties – Infraction Citations**
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1. Prior legislation: Ords. 192, 695 and 706 and 1978 code Chs. 1.01, 1.04, 1.08, 1.12, 1.16, 1.20 and 1.24.

Chapter 1.05**TITLE – DEFINITIONS – GENERAL**

Sections:

- 1.05.010 Title.
- 1.05.020 Definitions.
- 1.05.030 Rules of construction.
- 1.05.040 Notice.
- 1.05.050 Fees.
- 1.05.060 Nontransferability of permits.

1.05.010 Title.

This code shall be known as the Pleasant Hill Municipal Code. Whenever a reference is made to the code, the reference includes all amendments to it. (Ord. 782 § 1, 2004; 1991 code § 1-1.1)

1.05.020 Definitions.

In this code the following definitions apply unless the context requires otherwise:

City means the City of Pleasant Hill.

Code means the Pleasant Hill Municipal Code.

Council means the Pleasant Hill city council.

County means Contra Costa County.

Day means the period of time between any midnight and the midnight following, or a calendar day. (Govt. Code § 6806.)

Daytime is the period between sunrise and sunset. (Govt. Code § 6807.)

Health officer means the health officer of Contra Costa County.

Licensed means licensed in accordance with the appropriate provision of this code, or under state law.

Month means a calendar month. (Civ. Code § 14.)

Nighttime is the period between sunset and sunrise. (Govt. Code § 6807.)

Owner means a person owning real property, and includes a part owner, joint owner, tenant in common, joint tenant, tenant, lessee, or other person having control or possession of the property, and the mortgagee under a recorded deed of trust. (The owner of record is determined by the last equalized assessment roll or the supplemental roll, whichever is more current.)

Person means an individual natural person, firm, corporation, association, organization, partnership, limited liability company, business trust, corporation or company, or the agent, officer or employee or lessee of the person, and includes a governmental entity other than the city. (Govt. Code § 17; Code of Civ. Proc. § 17.)

Personal property means every type of property except real property. (Civ. Code §§ 14, 663.)

Property means both real and personal property. (Civ. Code § 14.)

Real property means land, what is affixed to land, and what is incidental or appurtenant to land. It includes tenements and hereditaments. (Civ. Code §§ 14, 658.)

State means the State of California.

Week means seven consecutive days. (Govt. Code § 6805.)

Writing means any form of recorded message capable of comprehension by ordinary visual means, including handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile. The writing shall be made in the English language, unless expressly provided otherwise. (Govt. Code §§ 8, 6252.)

Year means a period of 365 days, or a calendar year. (Govt. Code § 6803.) (Ord. 782 § 1, 2004; 1991 code § 1-1.2)

1.05.030 Rules of construction.

In the interpretation of this code and of all ordinances, the following rules apply, unless such construction would be inconsistent with the manifest intent of the city council. The provisions of this code and all proceedings under it shall be construed with the view to effect its objects and promote justice.

A. Tenses. The present tense includes the past and future tenses. The future tense includes the present tense. (Govt. Code § 11.)

B. Gender. The masculine gender includes the feminine and neuter. The feminine includes the masculine and neuter. (Govt. Code § 12.)

C. Number. The singular includes the plural and the plural includes the singular. (Govt. Code § 13.)

D. Acts by deputy. Whenever a power is granted to or a duty is imposed upon a public officer or employee, that power or duty may be performed by another officer or employee to whom the authority has been delegated, unless this code expressly provides otherwise.

E. Construction of words and phrases. Words and phrases shall be construed according to the context and the approved usage of the language. Technical words and phrases and words and phrases which have acquired a peculiar and appropriate meaning at law, or words and phrases which are defined elsewhere in this code, shall be construed according to that peculiar and appropriate meaning or definition.

F. Continuation. The provisions of this code insofar as they are substantially the same as existing ordinances relating to the same subject matter shall be construed as restatements and continuations, and not as new enactments.

G. Headings. The title, chapter, section and subsection headings in this code are intended to indicate the contents and do not govern, limit, modify, or in any other way affect the scope, meaning or intent.

H. *Shall* is mandatory and *may* is permissive. (Govt. Code § 14.)

I. Computation of time. The time in which an act provided by law is to be done is computed by excluding the first day and including the last day, unless the last day is a holiday and then it is also excluded. (Govt. Code § 6800.)

J. *Or* may be read *and*, and *and* may be read *or* if the sense requires it.

K. Prohibited acts include causing or permitting. An act or omission which is unlawful under this code includes causing, permitting, aiding, abetting, suffering, or concealing the act or omission.

L. Severability. The titles, chapters, sections, subsections, paragraphs, sentences, clauses and phrases of this code are severable. If any is declared unconstitutional, invalid or unenforceable by a court, that determination shall not affect the remaining provisions. (Ord. 782 § 1, 2004; 1991 code § 1-1.3)

1.05.040 Notice.

A. Time and manner of giving notice when not specified. Whenever this code requires the giving of notice, and the time and manner of giving the notice is not otherwise specified, the notice shall be in writing and shall be given at least 10 days before an act must be done or a right exercised. The notice shall be served either personally or by first class mail in a sealed envelope with postage prepaid, addressed to the person at his or her last known mailing address.

B. Service by mail – Time extension. Service by mail is complete at the time the notice is deposited in the United States mail, but the time within which an act must be done or a right exercised is extended by five calendar days for mailing within the state and 10 calendar days for mailing elsewhere in the United States. (Code of Civ. Proc. § 1013.) (Amended during 2005 recodification; Ord. 782 § 1, 2004; 1991 code § 1-1.4)

1.05.050 Fees.

Where an ordinance, rule or regulation requires a person to file an application or request a permit, the city council may by resolution fix the fee to be charged for the filing and processing of the application and the request for a permit, including an appeal from the decision of a subordinate body. (Ord. 782 § 1, 2004; 1991 code § 1-1.5)

1.05.060 Nontransferability of permits.

No city permit, license, or other issuance of whatever kind is transferable by the holder to a third party, successor, heir or assign, unless such is expressly allowed in this code or is a property right which runs with the land. (Ord. 782 § 1, 2004; 1991 code § 1-1.6)

Chapter 1.10

APPEALS

Sections:

1.10.010 Appeal procedure when not specified.

1.10.010 Appeal procedure when not specified.

A. A person aggrieved by an administrative action taken by an officer or employee under this code may appeal the action to the city manager and then to the city council, unless the procedure for appeal is otherwise specifically provided.

B. The person appealing shall file a written notice of appeal with the city manager within 10 days of the action appealed from.

C. Upon receiving the notice of appeal, the city manager shall set the matter for hearing and shall give the person appealing written notice of the time and place of hearing at least 10 days before the hearing. The hearing shall be held within 45 days of the date the notice of appeal is filed. The parties may extend this time by agreement.

D. The decision of the city manager is final 10 days after the written notice of the decision is given to the appellant, unless an appeal is taken from the decision of the city manager.

E. If the appellant wishes to appeal the city manager's decision, he or she may do so by filing a written notice of appeal with the city clerk within 10 days of the city manager's written determination. The notice and hearing procedures before the city council are the same as those in subsection C of this section. The council may continue the hearing from time to time. The decision of the city council is final. (Ord. 846 § 1, 2010; Ord. 782 § 1, 2004; 1991 code § 1-2.1)

Chapter 1.15**JUDICIAL REVIEW**

Sections:

1.15.010 Time limits for judicial review.

1.15.010 Time limits for judicial review.

Judicial review of any final decision of the city may be had under California Code of Civil Procedures section 1094.5 only if the person challenging the decision either (1) files a petition for writ of mandate within 90 days following the date on which the decision becomes final; or (2) files a request for a copy of the record of proceedings with the city clerk within 10 days after the date on which the decision becomes final, and then files the writ of mandate within 30 days after the record is either delivered or mailed to the person or his or her attorney. The procedures set forth in Code of Civil Procedures sections 1094.5 and 1094.6 apply.

In making a final decision subject to review under Code of Civil Procedures section 1094.5, the city shall provide notice to the party that the time within which judicial review must be sought is governed by this section. The city may do so by including a copy of this section with the written notice of the final decision.

A final decision by the city to issue, revoke, suspend or deny a permit or other entitlement for expressive conduct protected by the First Amendment to the United States Constitution is entitled to priority and subject to expedited hearing and review procedures and must be filed and served within 21 calendar days from the date of the decision. (Code of Civ. Proc. § 1094.8.) (Ord. 782 § 1, 2004; 1991 code § 1-3.1)

Chapter 1.20

CLAIMS AGAINST THE CITY

Sections:

- 1.20.010 Purpose and authority.
- 1.20.020 Claims procedures.

1.20.010 Purpose and authority.

Pursuant to the authority contained in California Government Code section 935, this chapter applies to claims against the city for money or damages that are not governed by state or local laws. (Ord. 782 § 1, 2004; 1991 code § 1-4.1)

1.20.020 Claims procedures.

A. All claims against the city for money or damages not otherwise governed by the Government Tort Claims Act (Govt. Code § 900 et seq.) or another state law shall be presented within the time limitations and in the manner prescribed by Government Code sections 910 through 915.4, as those provisions now exist or may hereafter be amended.

B. All claims shall be made in writing and verified by the claimant or by his or her guardian, conservator, executor or administrator. No claim may be filed on behalf of a class of persons unless verified by every member of that class as required by this chapter. In addition, the claim shall contain the information required by Government Code section 910 and shall be presented to the city clerk or city attorney's office on the city's claim form.

C. In accordance with Government Code sections 935(b) and 945.6, all claims shall be presented as provided in this chapter and shall be acted upon by the city prior to the filing of any action on such claims. No action may be maintained by a person who has not complied with the requirements of this chapter.

D. Any action brought against the city upon a claim or demand shall conform to the requirements of Government Code sections 940 through 949. Any action brought against an employee of the city shall conform to the requirements of Government Code sections 950 through 951. (Ord. 782 § 1, 2004; 1991 code § 1-4.2)

Chapter 1.25**VIOLATION OF CODE – ENFORCEMENT**

Sections:

- 1.25.010 Code enforcement – General.
- 1.25.020 Civil injunction.
- 1.25.030 Public nuisance abatement.
- 1.25.040 Violation of permit.
- 1.25.050 County health services.
- 1.25.060 Civil penalties for parking violations.

1.25.010 Code enforcement – General.

It is unlawful for a person to violate a provision, or to fail to comply with a requirement, of this code. The city may enforce the provisions of this code by any one or more of the following methods, at the city's discretion:

- A. Criminal penalties, under PHMC Chapter 1.30.
- B. Civil injunction, under PHMC § 1.25.020.
- C. Regarding land use and development, by the granting or denial of permits, the forfeiture and revocation of permits, or the recording of a notice of violation. (See PHMC Chapter 18.135.)
- D. Administrative citations and penalties, under PHMC Chapter 1.35.
- E. Compliance orders, under PHMC Chapter 1.40, regarding continuing violations pertaining to a building, plumbing, electrical, or other structural or zoning issue.
- F. Public nuisance abatement, under PHMC § 1.25.030 and PHMC Chapter 7.05.
- G. Building abatement, under PHMC Chapter 7.10 or any of the uniform building codes adopted by the city under PHMC Title 14, Buildings and Construction.
- H. Any other lawful remedy. (Ord. 782 § 1, 2004; 1991 code § 1-5.1)

1.25.020 Civil injunction.

A violation of this code may be enforced by any civil remedy, including a civil injunction. The city attorney is authorized to initiate any appropriate civil action. (Ord. 782 § 1, 2004; 1991 code § 1-5.2)

1.25.030 Public nuisance abatement.

A condition caused or permitted to exist in violation of this code is a public nuisance. Each day the violation occurs is a new violation.

The condition may be abated in accordance with the procedures in PHMC Chapter 7.05 or other specific abatement procedures in this code, or in accordance with the procedures set forth in the uniform codes adopted under PHMC Title 14, Buildings and Construction, or by any other lawful remedy. (Ord. 782 § 1, 2004; 1991 code § 1-5.3)

1.25.040 Violation of permit.

A person who is issued or granted a permit (including a land use entitlement or variance) by the city shall comply with each provision and condition of the permit. A person who violates or fails to comply with a provision or condition of the permit is in violation of this chapter. The city may enforce the permit by any lawful means, including instituting proceedings for revocation. (See also PHMC § 18.135.040.) (Ord. 782 § 1, 2004; 1991 code § 1-5.4)

1.25.050 County health services.

A. Health officer. The county health officer is designated as the city's health officer. (See also PHMC § 1.05.020.)

B. Health laws. Under the authority of California Health and Safety Code section 101375, the city council gives its consent for the county health officer to enforce and observe in the city: (1) orders, quarantine regulations, and rules prescribed by the state department and other rules and regulations issued under the California Health and Safety Code; and (2) statutes relating to public health.

C. Adoption of county ordinances by reference. Elsewhere in this code, the city has adopted certain county health ordinances by reference and authorized county enforcement officials to operate in the city. (See PHMC Chapter 9.05, Animals; PHMC Chapter 9.10, County Health Ordinances; and PHMC § 7.05.150, Assistance from other agencies.) (Ord. 782 § 1, 2004; 1991 code § 1-5.5)

1.25.060 Civil penalties for parking violations.

The following violations of the law are subject to a civil penalty, the amount of which is established by city council resolution: any violation of a regulation governing the standing or parking of a vehicle under the California Penal Code, federal law, or city ordinance, as provided in California Vehicle Code section 40200 and following. (Ord. 782 § 1, 2004; 1991 code § 1-5.6)

Chapter 1.30**CRIMINAL PENALTIES – INFRACTION CITATIONS**

Sections:

- 1.30.010 Criminal penalties.
- 1.30.020 Prosecutorial discretion.
- 1.30.030 Citation procedure.

1.30.010 Criminal penalties.

A. Misdemeanor. A person who violates a provision of this code, or who fails to comply with a requirement of this code, is guilty of a misdemeanor, unless the violation is specifically identified in this code as an infraction or unless the violation is charged as an infraction by the city attorney under PHMC § 1.30.020.

A misdemeanor is punishable by a fine not exceeding \$1,000, or imprisonment not exceeding six months, or both. (Govt. Code §§ 36900, 36901.)

B. Infraction. A person who violates a provision of this code, or who fails to comply with a requirement of this code, is guilty of an infraction if the violation is specifically identified in this code as an infraction, or if it is charged as an infraction by the city attorney under PHMC § 1.30.020.

An infraction is punishable by:

1. A fine not exceeding \$100.00 for a first violation;
2. A fine not exceeding \$200.00 for a second violation of the same code provision within a 12-month period;
3. A fine not exceeding \$500.00 for each additional violation of the same code provision within a 12-month period. (Govt. Code § 36900.)

An offense, which would otherwise be an infraction, is a misdemeanor if a person has been convicted of two or more violations of the same code provision within a 12-month period. For the purpose of this subsection, a bail forfeiture is considered a conviction of the offense charged.

An infraction is not punishable by imprisonment. A person charged with an infraction is not entitled to a jury trial or to a public defense unless arrested and not released.

Every day a violation of this code continues constitutes a separate offense. (Ord. 782 § 1, 2004; 1991 code § 1-6.1)

1.30.020 Prosecutorial discretion.

Whenever the code declares a certain violation to be punishable as a misdemeanor, the city attorney or prosecuting attorney, in his or her sole discretion, has the authority to declare and prosecute the violation as an infraction. (Ord. 782 § 1, 2004; 1991 code § 1-6.2)

1.30.030 Citation procedure.

A. If a person is arrested for a violation of this code and is not immediately taken before a magistrate, the citation procedures in Penal Code section 853.6 shall apply.

B. It is unlawful, and a misdemeanor, for a person who is criminally cited for an infraction or a misdemeanor under this code to refuse to sign a written promise to appear.

C. The procedures in Penal Code sections 853.5 through 853.8 apply. (Ord. 782 § 1, 2004; 1991 code § 1-6.3)

Chapter 1.35**ADMINISTRATIVE CITATIONS**

Sections:

- 1.35.010 Applicability.
- 1.35.020 Definitions.
- 1.35.030 Continuing violations of building and zoning issues.
- 1.35.040 Administrative citation.
- 1.35.050 Amount of fine.
- 1.35.060 Payment of the fine.
- 1.35.070 Hearing request.
- 1.35.080 Advance deposit hardship waiver.
- 1.35.090 Hearing officer.
- 1.35.100 Hearing procedure.
- 1.35.110 Hearing officer's decision.
- 1.35.120 Late payment charges.
- 1.35.130 Recovery of administrative citation fines and costs.
- 1.35.140 Right to judicial review.
- 1.35.150 Notices.

1.35.010 Applicability.

This chapter provides for administrative citations, which are in addition to all other legal remedies, criminal or civil, which the city may pursue to address a violation of this code. Use of this chapter is at the sole discretion of the city. This chapter is authorized under Government Code sections 36901 and 53069.4.

The procedures in this chapter shall not be used to enforce a continuing violation regarding building, plumbing, electrical, or other similar structural or zoning issues, without first allowing the person in violation a reasonable time to correct the violation, consistent with the procedures set forth in PHMC Chapter 1.40. (Ord. 782 § 2, 2004; 1991 code § 1-7.1)

1.35.020 Definitions.

For the purposes of this chapter:

Enforcement officer means the city code investigator or other city employee with the authority to enforce a provision of this code.

Hearing officer means the hearing officer appointed under PHMC § 1.35.090.

Master fee schedule or schedule means the master fee schedule, adopted by resolution of the city council, containing various fees in the city. (Ord. 782 § 2, 2004; 1991 code § 1-7.2)

1.35.030 Continuing violations of building and zoning issues.

If a violation is a continuing one and pertains to a building, plumbing, electrical, or other structural or zoning issue that does not create an immediate danger to health or safety, the city shall provide a reasonable period of time for the responsible person to correct or otherwise remedy the violation before the imposition of an administrative citation or penalty. Under these circumstances, the procedures in PHMC Chapter 1.40 apply. (Ord. 782 § 2, 2004; 1991 code § 1-7.3)

1.35.040 Administrative citation.

A. Authority. Whenever an enforcement officer determines that a violation of this code has occurred, the enforcement officer has the authority to issue an administrative citation to the person responsible for the violation.

B. Contents of citation. Each administrative citation shall contain the following information:

1. The date of the violation.
2. The address or a definite description of the location where the violation occurred.
3. The section of this code violated and a description of the violation.
4. The amount of the fine for the code violation.
5. A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid.
6. An order prohibiting the continuation or repeated occurrence of the code violation described in the administrative citation.
7. A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request for hearing form to contest the administrative citation may be obtained.
8. The name and signature of the citing enforcement officer.

In the case of a continuing violation involving building, plumbing, electrical, or other similar structural or zoning issues identified under PHMC § 1.35.030, the administrative citation shall also have attached a copy of the prior notice that was sent to the responsible party.

C. Delivery of citation. The administrative citation shall either be delivered personally or sent by first class mail to the person responsible for the violation.

D. Dismissal of citation. At any time before the hearing, if the enforcement officer determines that there was no violation as charged in the administrative citation or that the citation should be dismissed in the interest of justice, the enforcement officer shall dismiss the administrative citation, cancel the hearing, and refund any administrative citation fine. The enforcement officer shall make a written notation in the file explaining why the citation was dismissed. (Ord. 782 § 2, 2004; 1991 code § 1-7.4)

1.35.050 Amount of fine.

A. Maximum amount of fine. The maximum amount of the fine imposed for each code violation under this chapter is as follows:

1. One hundred dollars per day for a first violation;
2. Two hundred dollars per day for a second violation of the same ordinance within one year; and
3. Five hundred dollars per day for each additional violation of the same ordinance within one year.

B. Additional amounts. Administrative costs, interest, late payment charges, costs of compliance reinspections, and collection costs are in addition to the fine. These include:

1. Administrative costs. Based on time spent by code enforcement staff, supervisors and city attorney's office, at the full cost hourly rate of each employee, including salary, benefits and overhead.
2. Late payment charges (finance charge). Due at the rate of 1% per month.
3. Compliance reinspections. Based on staff time at the full cost hourly rate.
4. Collection costs. Actual collection costs.

C. Discretion of enforcement officer or hearing officer – Factors in establishing fine. In determining the amount of the fine and additional amounts, the enforcement officer or hearing officer has the discretion to set the fine lower than the maximum amount, or to reduce the additional costs, based on any or all of the following factors:

1. The duration of the violation;

2. The frequency, recurrence and number of violations, related or unrelated, by the same violator;
3. The seriousness of the violation;
4. The good faith efforts of the violator to come into compliance;
5. The economic impact of the fine on the violator;
6. The impact of the violation on the community; and
7. Such other factors as justice requires. (Ord. 782 § 2, 2004; 1991 code § 1-7.5)

1.35.060 Payment of the fine.

A. Due date. The fine shall be paid to the city within 30 days from the date of the administrative citation. The city may suspend the imposition of fines for any period of time during which the violator has filed for necessary permits, and such permits are required to achieve compliance, and the permit applications are actively pending before the appropriate governmental agency.

B. Refund. The city shall refund a fine paid if the hearing officer determines, after a hearing held under PHMC § 1.35.100, that the person charged in the citation was not responsible for the violation or that there was no violation as charged.

C. Further violations not excused. Payment of a fine under this section shall not excuse or discharge any continuation or repeated occurrence of the code violation. (Ord. 782 § 2, 2004; 1991 code § 1-7.6)

1.35.070 Hearing request.

A person who receives an administrative citation may contest the citation on the basis that there was no violation of the code or that he or she is not the responsible party. To contest the citation, the person shall submit a request for hearing form to the city within 10 days from the date of the administrative citation. The request form may be obtained from the public works and community development department. The completed request must be submitted together with either an advance deposit of the fine or notice that a request for an advance deposit hardship waiver has been filed under PHMC § 1.35.080. (Ord. 782 § 2, 2004; 1991 code § 1-7.7)

1.35.080 Advance deposit hardship waiver.

A. Request for waiver. A person who intends to contest an administrative citation under PHMC § 1.35.070 and who is financially unable to make the required advance deposit of the fine may file a request for an advance deposit hardship waiver under this section.

B. Filing. An advance deposit hardship waiver shall be filed with the finance department on a form provided by that department. The application submitted shall include an affidavit, together with any supporting documents or materials, demonstrating the person's actual financial inability to deposit with the city the full amount of the fine. The waiver form shall be filed within 10 calendar days of the date of the administrative citation.

C. Deposit requirement stayed. The requirement of depositing the fine shall be stayed unless or until the finance director makes a determination not to issue the advance deposit hardship waiver.

D. Standard for waiver. The finance director may waive the requirement of an advance deposit under PHMC § 1.35.070 and issue the waiver only if the evidence submitted demonstrates to the satisfaction of the director the person's actual financial inability to deposit with the city the full amount of the fine in advance of the hearing.

E. Written determination. The director shall issue a written determination listing the reasons for his or her determination to issue or not issue the advance deposit hardship waiver. The written determination of the director is final. The written determination shall be served upon the person who applied for the waiver.

F. Deposit required if waiver denied. If the director determines not to issue a waiver, the person cited shall deposit the fine with the city within 10 days of the date of that decision or 30 days from the date of the citation, whichever is later. (Ord. 782 § 2, 2004; 1991 code § 1-7.8)

1.35.090 Hearing officer.

The city manager shall designate the hearing officer for the administrative citation hearing. The designated hearing officer shall be an impartial person, such as (1) a city employee from a department which has no involvement in code enforcement, or (2) someone selected randomly from a panel of hearing officers assembled by the city attorney's office, or (3) someone hired from an organization which provides hearing officers, in which case the cost will be shared equally by the city and the person cited.

The employment, performance evaluation, compensation and benefits of the hearing officer shall not be directly or indirectly conditioned upon or affected by the amount of administrative citation fines upheld by the hearing officer. (Ord. 782 § 2, 2004; 1991 code § 1-7.9)

1.35.100 Hearing procedure.

A. Notice of hearing. A hearing before the hearing officer shall be set for a date that is not less than 15 days nor more than 45 days from the date that the request for hearing is filed. The person requesting the hearing shall be notified of the time and place set for the hearing as soon as it is set, and at least 10 days before the hearing. If the enforcement officer submits a written report concerning the citation to the hearing officer for consideration at the hearing, then a copy of the report shall be served on the person requesting the hearing at least five days before the hearing.

No hearing shall be held unless the fine has been deposited in advance under PHMC § 1.35.070 or an advance deposit hardship waiver has been issued under PHMC § 1.35.080.

B. Failure to appear. The failure of the person requesting the hearing to appear at the hearing shall constitute a forfeiture of the fine and a failure to exhaust his or her administrative remedies.

C. At the hearing. The administrative citation and any additional report submitted by the enforcement officer shall constitute prima facie evidence of the respective facts contained in those documents. At the hearing, the party contesting the citation shall be given the opportunity to testify and to present evidence concerning the citation.

D. Continuances. The hearing officer may continue the hearing and may request additional information from the enforcement officer or the person receiving the citation before issuing the decision. (Ord. 846 § 2, 2010; Ord. 782 § 2, 2004; 1991 code § 1-7.10)

1.35.110 Hearing officer's decision.

A. Decision. After considering the testimony and evidence presented at the hearing, the hearing officer shall issue a written decision to uphold, dismiss or modify the administrative citation. The hearing officer shall state the reasons for the decision and shall send a copy of the decision to the person requesting the hearing and to the enforcement officer. The decision of the hearing officer is final, and may not be appealed.

B. Status of fine. If the citation is upheld, then the fine amount on deposit with the city shall be retained by the city. If the fine has not been deposited because there was an advance deposit hardship waiver, the hearing officer shall set forth in the decision a payment schedule for the fine.

If the citation is dismissed, the city shall promptly refund the amount of any fine deposited, together with interest at the average rate earned on the city's investment portfolio for the period of time that the fine was held by the city. (Ord. 782 § 2, 2004; 1991 code § 1-7.11)

1.35.120 Late payment charges.

A person who fails to pay to the city the fine imposed under this chapter on or before the date that fine is due is also liable for the payment of the applicable late payment charges set forth in PHMC § 1.35.050.B. (Ord. 782 § 2, 2004; 1991 code § 1-7.12)

1.35.130 Recovery of administrative citation fines and costs.

A. Costs of securing payment. A person who fails to pay any fine or other charge owed to the city under this chapter is liable in any action brought by the city for all costs incurred in securing payment of the delinquent amount, including but not limited to administrative costs and attorney's fees. Such collection costs are in addition to any fines, interest, and late charges.

B. Other costs. In addition to the administrative citation fine, the city may collect its administrative costs, interest, late payment charges, costs of compliance reinspections, and collection costs.

C. Collection. The city may collect any past due administrative citation fine and other costs and charges by any available legal means. (Ord. 782 § 2, 2004; 1991 code § 1-7.13)

1.35.140 Right to judicial review.

A person aggrieved by the hearing officer's decision on an administrative citation may obtain review of the decision by filing a petition for review with the superior court in Contra Costa County within 20 days after service of the final decision in accordance with the timelines and provisions set forth in California Government Code section 53069.4. (Ord. 782 § 2, 2004; 1991 code § 1-7.14)

1.35.150 Notices.

A. Method of service. The administrative citation and all notices required to be given by this chapter shall be served on the responsible party either by personal service, by first class mail, or by certified mail, return receipt requested.

B. Real property. When real property is involved in the violation, the original notice, the administrative citation and all notices required to be given by this chapter shall be served on the responsible party and, if different, to the property owner at the address as shown on the last equalized county assessment roll. If personal service or service by mail on the property owner is unsuccessful, a copy of each notice and the citation shall be conspicuously posted at the property which is the subject of the violation. The city may, in its discretion, also serve notice on a tenant, a mortgagor or any other person having an interest in the property.

C. Failure to receive notice. The failure of a person to receive a required notice shall not affect the validity of any proceedings taken under this chapter. (Ord. 782 § 2, 2004; 1991 code § 1-7.15)

Chapter 1.40**COMPLIANCE ORDERS**

Sections:

- 1.40.010 Applicability.
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1.40.010 Applicability.

A. This chapter applies to the enforcement of a continuing violation of the municipal code which pertains to a building, plumbing, electrical, or other structural or zoning issue that does not create an immediate danger to health or safety. It is intended to provide the person responsible a reasonable period of time to correct or otherwise remedy the violation.

B. This chapter provides for administrative remedies, which are in addition to all other legal remedies, criminal or civil, which may be pursued by the city to address a violation of this code. Use of this chapter is at the sole discretion of the city. (Ord. 782 § 3, 2004; 1991 code § 1-8.1)

1.40.020 Definitions.

For purposes of this section:

Administrative order means an order issued under PHMC § 1.40.080 for failure to comply with an administrative citation.

Compliance order means an order issued under PHMC § 1.40.030 for a violation of the code.

Director means the head of any city department which is charged with responsibility for enforcement of a provision of this code, or the enforcement officer as defined in PHMC § 1.35.020.

Hearing officer means the hearing officer appointed under PHMC § 1.40.050. (Ord. 782 § 3, 2004; 1991 code § 1-8.2)

1.40.030 Compliance order.

A. Authority to issue compliance order. Whenever the director determines that a violation of a provision of this code within the director's responsibility is occurring or exists, the director may issue a written compliance order to the person responsible for the violation.

B. Contents of compliance order. A compliance order issued under this chapter shall contain the following information:

1. The date and location of the violation.
2. The section of the code violated and a description of the violation.

3. The actions required to correct the violation.
4. The time period after which administrative penalties will begin to accrue if compliance with the order has not been achieved.
5. Either a copy of this chapter or an explanation of the consequences of noncompliance with this chapter and a description of the hearing procedure and appeal process.

C. Dismissal of order. If the director determines that all violations have been corrected within the time specified in the compliance order, that there was no violation as charged in the compliance order, or that the wrong person was identified as the responsible person, the director shall notify the original recipient in writing. (Ord. 782 § 3, 2004; 1991 code § 1-8.3)

1.40.040 Method of providing notice.

A. Notices generally. A notice required by this chapter shall be provided either by personal delivery to the person to be notified or by deposit in the United States mail, in a sealed envelope postage prepaid, addressed to the person to be notified at the person's last known business or residence address as it appears in the public records or other records pertaining to the matter.

B. Real property. Where real property is involved, written notice shall also be provided to the property owner at the address as shown on the last equalized county assessment roll available on the date the notice is prepared.

C. Posting. Where personal service or service by mail upon the property owner is unsuccessful after one week, a copy of the order shall be conspicuously posted at the property which is the subject of the order.

D. Failure to receive. The failure of a person to receive a notice required under this chapter shall not affect the validity of any proceedings taken under this chapter. (Ord. 782 § 3, 2004; 1991 code § 1-8.4)

1.40.050 Hearing – Notice – Purpose.

A. Hearing set. If full compliance is not achieved within the time specified in the compliance order, the director shall set a hearing before the hearing officer.

B. Notice of hearing. The director shall cause a written notice of hearing to be served on the violator, sent to the issuing code enforcement officer, and, where real property is involved, provided to the property owner. The notice of hearing on a compliance order shall contain the date, time and place of the hearing.

C. Purpose of hearing – Failure to appear. The purpose of the hearing is to provide an opportunity for the person subject to a compliance order to object to the determination that a violation has occurred, that he or she is responsible, and/or that the violation has continued to exist. The failure of a person subject to a compliance order to appear at the hearing constitutes a failure to exhaust administrative remedies. (Ord. 782 § 3, 2004; 1991 code § 1-8.5)

1.40.060 Hearing officer.

The city manager shall designate the hearing officer for the administrative remedies hearing. The designated hearing officer shall be an impartial person, such as (1) a city employee from a department which has no involvement in code enforcement, or (2) someone selected randomly from a panel assembled by the city attorney's office, or (3) someone hired from an organization which provides hearing officers, in which case the cost will be shared equally by the city and the person cited.

The employment, performance evaluation, compensation and benefits of the hearing officer shall not be directly or indirectly conditioned upon or affected by the amount of administrative citation fines upheld by the hearing officer. (Ord. 782 § 3, 2004; 1991 code § 1-8.6)

1.40.070 Conduct of hearing – Decision.

A. Conduct of hearing. At the time and place set forth in the notice, the hearing officer shall conduct a hearing on the compliance order issued under PHMC § 1.40.030. The hearing officer shall consider any written or oral evidence regarding the violation and compliance. The hearing officer may continue the hearing from time to time.

B. Written determination. Within 10 working days following the conclusion of the hearing, the hearing officer shall make written findings and issue its determination regarding: (1) the existence of the violation; and (2) the failure of the violator or owner to take required corrective action within the required time period. The findings shall be supported by evidence received at the hearing.

C. Administrative order. If the hearing officer finds that a violation has occurred and that the violation was not corrected within the time period specified in the compliance order, the hearing officer shall issue an administrative order. (See PHMC § 1.40.080.)

D. No violation. If the hearing officer finds that no violation has occurred, that the violation was corrected within the time period specified in the compliance order, or that the wrong person was identified as responsible, the hearing officer shall issue a written finding of those facts. (Ord. 782 § 3, 2004; 1991 code § 1-8.7)

1.40.080 Administrative order – Agreement to correct violations.

A. Administrative order. If the hearing officer determines that a violation occurred which was not corrected within the time period specified in the compliance order, the hearing officer shall issue an administrative order consistent with PHMC § 1.40.070 imposing any or all of the following:

1. An order to correct, including a schedule for correction where appropriate.
2. Administrative penalties as provided in PHMC § 1.40.090.A.
3. Administrative costs as provided in PHMC § 1.40.090.B.

B. Agreement to correct violations. As an alternative to the administrative order, if the person in violation agrees, the city and the person in violation may enter into a written agreement specifying the nature of the violation, the required measures for correction, the schedule for correction, and the amounts and payment schedule for administrative penalties and costs, if any. The agreement must be signed by the person responsible for the violation (generally, the property owner) and the city manager. (Ord. 782 § 3, 2004; 1991 code § 1-8.8)

1.40.090 Administrative penalties.

A. Maximum penalty. The hearing officer may impose administrative penalties for the violation of any provision of this code. The maximum amount of the penalty imposed for each code violation, per day, under this chapter is as follows:

1. One hundred dollars per day for a first violation;
2. Two hundred dollars per day for a second violation of the same ordinance within one year; and
3. Five hundred dollars per day for each additional violation of the same ordinance within one year.

B. Additional amounts. The hearing officer shall assess administrative costs against the violator when he or she finds that a violation has occurred and that compliance has not been achieved within the time specified in the compliance order. The administrative costs may include all costs incurred by the city in connection with the matter before the hearing officer including, but not limited to, costs of investigation, staffing costs incurred in preparation for the hearing and for the hearing itself, costs for all reinspections necessary to enforce the compliance order, and later-incurred collection costs. These include:

1. Administrative costs. Based on time spent by code enforcement staff, supervisors and city attorney's office, at the full cost hourly rate of each employee, including salary, benefits and overhead.
2. Late payment charges (finance charge). Due at the rate of 1% per month.
3. Compliance reinspections. Based on staff time at the full cost hourly rate.

4. Collection costs. Actual collection costs.

C. Discretion of enforcement officer or hearing officer – Factors in establishing penalty. In determining the amount of the penalty and additional amounts, the hearing officer has the discretion to set the penalty lower than the maximum amount, or to reduce the additional costs, based on any or all of the following factors:

1. The duration of the violation;
2. The frequency, recurrence and number of violations, related or unrelated, by the same violator;
3. The seriousness of the violation;
4. The good faith efforts of the violator to come into compliance;
5. The economic impact of the fine on the violator;
6. The impact of the violation on the community; and
7. Such other factors as justice requires.

D. Accrual – Due date. An administrative penalty imposed by the hearing officer shall accrue from the date specified in the compliance order and shall cease to accrue on the date the violation is corrected as determined by the director or the hearing officer. An administrative penalty assessed by the hearing officer is due by the date specified in the administrative order.

If the violation is not corrected as specified in the hearing officer’s administrative compliance order, administrative penalties shall continue to accrue on a daily basis until the violation is corrected.

E. Suspension of penalties while permits pending. The hearing officer, in the hearing officer’s discretion, may suspend the imposition of applicable penalties for any period of time during which:

1. The violator has filed for necessary permits; and
2. Such permits are required to achieve compliance; and
3. Such permit applications are actively pending before the city, state or other appropriate governmental agency.

F. Debt collection. An administrative penalty and additional costs assessed by the hearing officer is a debt owed to the city and, in addition to all other means of enforcement, if the violation is located on real property, may be enforced by means of a lien or special assessment against the real property on which the violation occurred. (See PHMC § 1.40.120.) (Ord. 782 § 3, 2004; 1991 code § 1-8.9)

1.40.100 Failure to pay.

Failure to pay the assessed administrative penalties and administrative costs specified in the administrative order of the hearing officer may be enforced as: (1) a personal obligation of the violator; and/or (2) if the violation is in connection with real property, a lien or special assessment upon the real property. The lien or special assessment shall remain in effect until all of the administrative penalties, interest and administrative costs are paid in full.

The city may collect the assessed administrative penalties and administrative costs by use of all available legal means, including recordation of a lien or special assessment pursuant to PHMC § 1.40.120. (Ord. 782 § 3, 2004; 1991 code § 1-8.10)

1.40.110 Right of judicial review.

A person aggrieved by an administrative order may obtain review of the administrative order in the superior court by filing with the court a petition for writ of mandate under Code of Civil Procedures section 1094.6. (Ord. 782 § 3, 2004; 1991 code § 1-8.11)

1.40.120 Lien procedure – Hearing – Recordation.**A. Lien or special assessment procedure.**

1. Whenever the amount of an administrative penalty and/or administrative cost imposed by the hearing officer under this chapter in connection with real property has not been satisfied in full within 90 days or has not been successfully challenged by a timely writ of mandate, this obligation may constitute a lien or special assessment against the real property on which the violation occurred.
2. Interest shall accrue on the principal amount of the judgment remaining unsatisfied pursuant to law.
3. Before recording any such lien or special assessment, the finance director shall prepare and file with the city clerk a report stating the amounts due. The city clerk shall fix a time, date and place for a city council hearing on the report and any protests or objections to it. The finance director shall provide written notice to the property owner not less than 10 days before the hearing. The notice shall be served as provided in PHMC § 1.40.040.

B. Hearing.

1. A person whose real property may be subject to a lien or special assessment may file a written protest with the city clerk and/or may protest orally at the city council meeting. Each written protest or objection must contain a description of the property in which the protesting party is interested and the grounds of the protest or objection.
2. The city council, after the hearing, shall adopt a resolution confirming, discharging or modifying the amount of the lien or special assessment. The lien or special assessment may carry additional administrative charges as set forth in the council's resolution.

C. Recordation.

1. Thirty days after the adoption of a resolution by the city council imposing a lien or special assessment, the city clerk shall file it as a judgment lien or special assessment in the office of the county recorder of Contra Costa County, California. The lien or special assessment shall have no effect until recorded with the county recorder. Once recorded, the administrative order shall have the effect and priority of a judgment lien or special assessment governed by Code of Civil Procedures section 697.340 and may be renewed as provided in Code of Civil Procedures sections 683.110 to 683.220, inclusive.
2. Once payment in full is received by the city for outstanding penalties and costs, the finance director shall either record a notice of satisfaction or provide the property owner or financial institution with a notice of satisfaction so they may record this notice with the office of the county recorder. The notice of satisfaction shall cancel the city's lien or special assessment. (Ord. 782 § 3, 2004; 1991 code § 1-8.12)

