

CHAPTER 14 ADMINISTRATIVE ENFORCEMENT

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14.010 Purpose of Chapter. The purpose of this Chapter 14 is to provide an administrative enforcement mechanism that is in addition to all other legal remedies, criminal or civil, that may be pursued by the District to address any violation of its Ordinances, including all existing Ordinances and any future Ordinances adopted after the effective date of this Ordinance. Use of this Chapter is at the sole discretion of the District.

(Adopted by Ord. 146, June 14, 2017)

14.020 Definitions. For the purpose of this Chapter:

(A) “Enforcement Officer” shall mean any District officer, employee or agent, or any other representative of the District with the authority to enforce any duly adopted Ordinance of the District.

(B) “Hearing Officer” shall mean a person designated by the District Manager who has no connection to the enforcement of the Violation, and is not a subordinate of the Enforcement Officer.

(C) “Person Responsible” shall mean a Person(s), as that term is defined in Chapter 1 of this code, determined by the Enforcement Officer to have violated or is maintaining a violation of any District.

(D) “Violation” shall mean the act or instance of violating any provision of the District’s Ordinance, including all existing Ordinances and any future Ordinance adopted after the effective date of this Ordinance. Each and every day during any portion of which a violation of any provision of any District Ordinance is committed, continued or permitted to continue shall constitute a separate violation. When the act or instance of violation occurs at multiple properties or businesses, each act or instance of violation at a separate property or business shall also constitute a separate violation.

(Adopted by Ord. 146, June 14, 2017)

14.030 Administrative Citation.

(A) Whenever an Enforcement Officer determines that a Violation has occurred or is being maintained, the Enforcement Officer shall have the authority to issue administrative citations to any Person Responsible.

(B) If the Violation does not create an immediate danger to health or safety, the Enforcement Officer must first give the Person Responsible a reasonable period of time to correct or otherwise remedy the Violation prior to the issuance of an administrative citation, as further provided in Section 14.060(B).

(C) If a citation is to be issued, 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 Ordinance section violated and a description of the Violation;
- (4) The amount of the fine for the Violation;
- (5) If applicable, the action requested to correct or otherwise remedy the Violation and the reasonable time allowed for such correction or abatement, as provided in Section 14.060;
- (6) 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;
- (7) A description of the administrative citation review process, including the time within which the administrative citation may be appealed and the place from which a request for hearing form to appeal the administrative citation may be obtained; and
- (8) The name and signature of the citing Enforcement Officer.

(D) The administrative citation shall be served in accordance with Section 14.102.

(Adopted by Ord. 146, June, 14, 2017)

14.040 Amount of Fines, Penalties, and Late Charges. The fines, penalties, and late charges imposed under this Chapter shall be set by a Resolution of the District Board of Directors.

(Adopted by Ord. 146, June, 14, 2017)

14.050 Payment and Collection of Fines and Costs.

(A) The Person Responsible shall pay the administrative citation fine to the District within thirty (30) calendar days from the date of service of the administrative citation.

(B) Payment of a fine under this Ordinance shall not excuse or discharge any continuation or repeated occurrence of the Violation(s) that is/are the subject of the administrative citation.

(C) Any administrative fine imposed under this Chapter is a debt owed to the District. The amount of any unpaid fine may be collected in any manner provided by law for the collection of debts, including but not limited to means available for the collection of judgments, liens, special assessments and actions for recovery of money.

(D) The District may also recover its collection costs, including but not limited to, administrative costs and attorneys' fees generated from its attempt to collect any past due administrative fine or late payment charge. Such collection costs shall be in addition to any penalties or late charges imposed pursuant to an Ordinance or resolution of the District.

(Adopted by Ord. 146, June 14, 2017)

14.060 Time Allowed for Correction.

(A) Where applicable, the Person Responsible shall have a reasonable time to correct or otherwise remedy the Violation. The reasonable time shall be based upon the circumstances of the particular Violation, taking into consideration the means required to abate the Violation, the period of time that the Violation has existed, and the potential threat to public health and safety created by the Violation.

(B) If the Violation does not create an immediate danger to health or safety, the Person Responsible shall be allowed not less than two (2) nor more than seven (7) working days in which to correct or otherwise remedy the Violation. Prior to the issuance of an administrative citation, the Enforcement Officer shall issue a "Notice of Violation and Order to Correct" to the Person Responsible, in accordance with Section 14.120. The "Notice of Violation and Order to Correct" 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 Ordinance section violated and a description of the Violation;
- (4) The means of correcting or remedying the Violation;
- (5) The reasonable time allowed for correcting or remedying the Violation;
- (6) A warning that failure to correct or remedy the Violation within the time allowed will result in the issuance of an administrative citation, including the amount of the potential fine assessed; and
- (7) The name and signature of the Enforcement Officer.

(C) The determination of timely compliance shall be made by the Enforcement Officer, Hearing Officer, or other authorized District official.

(Adopted by Ord. 146, June 14, 2017)

14.070 Appeal of Citation.

(A) The Person Responsible may appeal the administrative citation by completing a request for hearing form and returning it to the District within fifteen (15) calendar days from the date of the administrative citation, together with an appeal fee. A request for hearing form may be obtained from the location specified on the administrative citation.

(B) The amount of the appeal fee depends upon the amount of the administrative fine assessed. If the amount of the administrative fine is less than five hundred dollars (\$500), then the appeal fee shall be one hundred dollars (\$100). If the amount of the administrative fine is greater than or equal to five hundred dollars (\$500), then the appeal fee shall be five hundred dollars (\$500). The appeal fee shall constitute a credit towards the total amount due, as determined by the Hearing Officer.

(Adopted by Ord. 146, June 14, 2017)

14.080 Hearing Officer. The District Manager shall designate a Hearing Officer to conduct the administrative citation hearing. A Hearing Officer may be an employee of the District or non-employee qualified to hear such matters and selected in a manner that avoids the potential for bias. A Hearing Officer's continued employment, performance evaluation, compensation and benefits shall not, directly or indirectly, be linked to the number or amount of fines upheld by the Hearing Officer.

(Adopted by Ord. 146, June 14, 2017)

14.090 Hearing Procedure.

(A) No hearing to appeal an administrative citation before a Hearing Officer shall be held unless the appropriate appeal fee has been deposited in advance in accordance with Section 14.070.

(B) A hearing shall be set for a date that is not less than fifteen (15) calendar days and not more than sixty (60) calendar days from the date that the request for hearing is filed with the District.

(C) A Person Responsible who has complied with subsection (1) shall be notified of the time and location for the hearing at least ten (10) calendar days prior to the date of the hearing, in accordance with Section 14.120. The location of the hearing will be at the District's office, located at 100 East Sunnyoaks Avenue, Campbell, California 95008.

(D) If the Enforcement Officer submits an additional written report concerning the administrative citation to the Hearing Officer for consideration at the hearing, then a copy of this report shall also be served on the Person Responsible who has complied with subsection (A) at least five (5) calendar days prior to the date of the hearing, in accordance with section 14.120.

(E) At the hearing, the Person Responsible who has appealed the administrative citation in compliance with Section 14.070 shall be given the opportunity to testify and to present evidence concerning the administrative citation.

(F) The failure of any Person Responsible who has filed an appeal in accordance with Section 14.070 to appear at the administrative citation hearing shall constitute a forfeiture of the fine and a failure to exhaust their administrative remedies.

(G) 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.

(H) Evidence offered during a hearing must be credible and relevant in the estimation of the Hearing Officer, but formal rules governing the presentation and consideration of evidence shall not apply.

(I) The Hearing Officer shall conduct the hearing, order the presentation of evidence, and make any rulings necessary to address procedural issues presented during the course of the hearing.

(J) After receiving all of the evidence presented, the Hearing Officer may then deliberate and consider what action, if any, should be taken. In determining the amount of the administrative fine, the Hearing Officer may take into consideration all relevant circumstances, including but not limited to, the extent of harm caused by the Violation, the economic benefit derived through any noncompliance, the nature and persistence of the Violation, the length of time over which the Violation occurs and corrective action, if any, attempted or taken by the Person Responsible. The

Hearing Officer may also continue the hearing and request additional information from the Enforcement Officer or the Person Responsible prior to issuing a written decision as set forth in Section 14.100.

(Adopted by Ord. 146, June 14, 2017)

14.100 Decision of Hearing Officer.

(A) Within ten (10) calendar days following conclusion of the hearing, the Hearing Officer shall issue a written decision to uphold, modify or overturn the administrative citation and shall list in the decision the reasons for that decision. The decision of the Hearing Officer shall be final.

(B) If the Hearing Officer determines that the administrative citation should be upheld, then the District shall retain the appeal fee deposited, and order payment of the remainder of the administrative fine due within thirty (30) calendar days. The amount of any unpaid fine will be collected in accordance with Section 14.050(C).

(C) If the Hearing Officer determines that the administrative citation should be modified or overturned, then the District shall promptly refund any amount of the deposited fine not upheld.

(D) The Person Responsible shall be served with a copy of the Hearing Officer's written decision in accordance with Section 14.120.

(Adopted by Ord. 146, June 14, 2017)

14.110 Right to Judicial Review.

(A) Any person aggrieved by a decision of the Hearing Officer may obtain judicial review of the decision by filing an appeal with the superior court in Santa Clara County in accordance with the time lines and provisions set forth in Government Code section 53069.4(b)(1).

(B) Where the Violation charged in the administrative citation is designated as a public nuisance, the prevailing party shall be entitled to recover reasonable attorneys' fees, court costs, and other expenses generated from the prevailing party's defense or prosecution of the appeal. In no action or proceeding shall an award of attorneys' fees to a prevailing party pursuant to this Section exceed the amount of reasonable attorneys' fees incurred by the District in its defense of the appeal.

(C) Where the Violation charged in the administrative citation is not designated as a public nuisance, the District shall be entitled to recover reasonable attorneys' fees, court costs, and other expenses generated from its defense of the appeal, if the District is the prevailing party.

(Adopted by Ord. 146, June 14, 2017)

14.120 Notices.

(A) The administrative citation and all notices required to be given by this Chapter may be served on the Person Responsible via certified mail, postage prepaid; first class mail; or by personal delivery. If an administrative citation or notice sent by certified mail is returned unclaimed, service by first-class mail shall nevertheless be effective if that mail is not returned.

(B) The mail shall be addressed to such person to be notified at his or her last known business or residence address as the same appears in the public records or other records pertaining to the matter to which such notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in the post office.

(C) Failure to receive any notice specified in this Chapter does not affect the validity of proceedings conducted hereunder.

(Adopted by Ord. 146, June 14, 2017)

14.130 Remedies Cumulative. The remedies provided for in this Chapter shall be cumulative and not exclusive, and shall be in addition to any and all other remedies available to the District.

(Adopted by Ord. 146, June 14, 2017)

14.140 Severability. The provisions of this Chapter are severable and if any provision, clause, sentence, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, words or parts thereof of this Chapter or their applicability to other persons or circumstances.

(Adopted by Ord. 146, June 14, 2017)