

ORDINANCE NO. 97-065

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF NOV 1 8 1997

AN ORDINANCE AMENDING CHAPTER 1, SECTION 1.01.070 (d) (3), AND (d) (4) OF THE ADMINISTRATIVE PENALTIES ORDINANCE OF THE SACRAMENTO CITY CODE

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Chapter 1, Section 1.01.070 (d)(3) and (d) (4), is hereby amended as follows:

The failure of any such person to receive such administrative penalty order shall not affect the validity of any proceedings taken under this section against any other responsible party. Service by certified mail in the manner herein provided shall be effective on the date of mailing.

- (3) Amount of administrative penalty. Unless, the City Council has by resolution or by ordinance adopted a separate and distinct administrative penalty for the particular violation, the amount of the administrative penalty to be imposed shall be set by the department head or his/her designee responsible for issuing the administrative penalty order. Each day a violation continues or occurs constitutes a separate violation. Unless otherwise provided in this code, administrative penalties may be imposed in any amount not less than \$100.00 nor more than \$25,000.00 per violation. In determining the amount of the administrative penalty to be imposed, the City official shall consider factors including but not limited to the seriousness of the violation, the responsible party's efforts to correct the violation, the injury/damage, if any, suffered by any member of the public, any instances in which the responsible party has been in violation of the same or similar code provisions in the previous three years, the amount of City staff time which was expended investigating or addressing the violation, and the amount of administrative penalties which have been imposed in similar situations. The amount of the administrative penalty shall be set according to the following schedule:

- a) Level A violations are violations which present an imminent danger that death or

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serious harm to the public at large or person(s) would result therefrom. Level A violations shall be subject to an administrative penalty of \$5,000.00 to \$25,000.00;

- b) Level B violations are violations, other than level A violations, that either (1) present the threat, but not substantial probability, of serious physical harm to the public at large or person(s) would result therefrom or (2) present circumstances that are likely to cause and/or do cause serious harm to public or private property or (3) present a conscious and willful disregard of hearing examiner's orders or orders or notices of violation issued by any agency or commission authorized to impose such orders or notices. Level B violations shall be subject to an administrative penalty of \$2,500.00 to \$5,000.00;
- c) Level C violations are violations, that present circumstances that either (1) are likely to cause and/or do cause harm to public or private property or (2) show repeated and continuous noncompliance with any orders or notices of violation issued by any agency or commission authorized to impose such orders or notices. Level C violations shall be subject to an administrative penalty of \$1,000.00 to \$2,500.00;
- d) Level D violations are violations of any of the provisions of this Code whether it/they result from mistake, inadvertence, negligence or malicious intent. Level D violations shall be subject to an administrative penalty of \$100.00 to \$1000.00.

(4) Administrative hearing appeal.

- a) Request for appeal. Any responsible party against whom an administrative penalty has been imposed may appeal the imposition of the administrative penalty by filing with the office of the City Clerk a written notice of appeal within 20 calendar days of service of the administrative penalty order and payment of the appeal fee set forth in this section. The written appeal request shall contain:
 - (i) A brief statement setting forth the interest the appealing party has in the matter relating to the imposition of the penalty;
 - (ii) A brief statement, in ordinary and concise language, of the material facts which the appellant claims support his/her/its contention that no administrative penalty should be imposed or that an administrative penalty of a different amount is warranted; and
 - (iii) An address at which the appellant agrees notice of any additional

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proceeding or an order relating to the imposition of the administrative penalty may be received by first class mail.

- (b) Payment of appeal fee. Any responsible party seeking to appeal the imposition of an administrative penalty shall be required to pay to the City Clerk, at the time the appeal is requested, a non-refundable appeal fee as herein provided. The appeal fee is intended to cover the costs, expenses and City employees' time incurred by the City in processing, preparation for, and hearing of the appeal. No appeal request is valid unless accompanied by the appeal fee, unless otherwise waived pursuant to Section 2.06.490 of the City Code. In the event an appeal fee is waived and the violation results in a lien against property, the appeal fee which was waived shall be added to the amount of the lien. The appeals fees shall be paid in the following amounts:
 - (i) Level A: \$500.00.
 - (ii) Level B: \$250.00
 - (iii) Level C: \$100.00
 - (iv) Level D: \$50.00
- c) Hearing examiner. The administrative penalty appeal shall be heard by a hearing examiner appointed by the City Council to hear administrative appeals on a rotating basis. The hearing examiner shall not be a City employee.
 - (i) Factors in hearing examiner's decision. The hearing examiner may affirm the administrative penalty order imposed by the City, reduce the level of violation, reduce the penalty amount to a lower amount within the charged level of violation, or find that imposition of the penalty is not warranted or is not in the interest of justice. In the event the hearing examiner disagrees with the level of violation charged by the department head or his/her designee responsible for issuing the administrative order, he or she shall have the discretion to impose a lower, but not a higher, level of violation and a penalty amount that corresponds with that lower level of violation. In no event shall the penalty amount imposed by the hearing examiner exceed the original or initial penalty amount charged in the administrative penalty order. In making his/her decision regarding the administrative penalty, the hearing examiner shall consider evidence presented by all witnesses, the seriousness of the violation, the responsible party's efforts

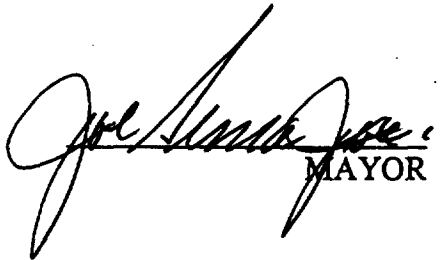
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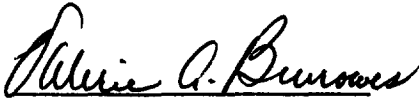
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to correct the violation, the injury or damage, if any, suffered by any member of the public, any instances in which the responsible party has been in violation of the same or similar code provisions in the previous three years, and the amount of City staff time which was expended investigating and addressing the violation.

DATE PASSED FOR PUBLICATION: 11/04/97
DATE ENACTED: 11/18/97
DATE EFFECTIVE: 12/18/97


MAYOR

ATTEST:


CITY CLERK

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