

[Administrative fines for violation of City ordinances.]

Ordinance amending the San Francisco Administrative Code by adding Chapter 100, entitled "Procedures Governing the Imposition of Administrative Fines" and encompassing Section 100.1 through 100.10, to establish a procedure for the assessment, review and appeal of administrative fines imposed for violation of City ordinances.

Note: Additions are single-underline italics Times New Roman;
deletions are ~~strikethrough italics Times New Roman~~.
Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The San Francisco Administrative Code is hereby amended by adding Sections 100.1 through 100.10, to read as follows:

SEC. 100.1. FINDINGS AND SCOPE OF CHAPTER.

(a) This Chapter sets forth a procedure for the imposition, enforcement, collection, and administrative review of administrative citations and civil fines by City and County of San Francisco (the "City") for violation of a City ordinance, consistent with the provisions of California Government Code Section 53069.4. This Chapter only applies to ordinances that have adopted the procedures set forth in this Chapter.

(b) The issuance of a civil administrative citation under this Chapter is solely at the City's discretion and is only one option the City has to address violations of this Code. By adopting this Chapter, the City does not intend to limit its discretion, or the discretion of its officers and employees, to use any other remedy, civil or criminal, which may be available in a particular case. The procedure set forth in this Chapter may be used as an alternative to, or in conjunction with, any other available civil and/or criminal remedies.

1 (c) This Chapter is not intended to apply to violations of ordinances that pertain to building,
2 plumbing, electrical, or other similar structural or zoning issues.

3 **SEC. 100.2. DEFINITIONS.** The following definitions shall apply to this Chapter.

4 (a) "Charging official" means a City officer or employee with authority to enforce the
5 ordinance for which citations may issue.

6 (b) "Citation" means a civil citation issued pursuant to this Chapter stating that there has
7 been a violation of one or more provisions of a City ordinance, which ordinance provides that this
8 Chapter applies in whole or in part.

9 (c) "Person" means a natural person, firm, association, organization, partnership, business
10 trust, company, corporation, limited liability company, joint venture, club, or its manager, lessee,
11 agent, servant, office or employee.

12 (d) "Serve" or "Service" means either personal delivery or deposit in the United States Mail,
13 first class, in a sealed envelope postage prepaid, addressed to the person who the charging official
14 determines has committed a violation at such person's last-known business or residence address as the
15 same appears in the public records or other records pertaining to the matter to which such notice is
16 directed. Service by mail shall be deemed to have been completed at the time of deposit in the post
17 office.

18 (e) "Violation" means a violation of an ordinance for which the charging official has
19 authority to issue a citation.

20 **SEC. 100.3. ISSUANCE AND SERVICE OF CITATIONS.**

21 (a) Whenever a charging official determines that a violation of an ordinance for which that
22 official has enforcement authority has occurred, the charging official may issue and serve a citation on
23 any person responsible for the violation.

24 (b) The citation shall contain the following information:

25 (1) The name of the person to whom the citation is issued;

1 (2) Identification of the provision or provisions of the ordinance violated;

2 (3) A description of the condition or circumstances constituting the violation, including the
3 address or location and date of the violation;

4 (4) The amount of the fine imposed for each violation;

5 (5) The date by which the fine must be paid, the procedure for making payment (including to
6 whom payment must be made and acceptable forms of payment), and the consequences of the failure to
7 pay;

8 (6) The deadline and procedure for seeking administrative review of the citation; and

9 (7) The date the citation is issued and the name and signature of the charging official.

10 **SEC. 100.4. AMOUNT OF FINE.**

11 (a) Unless the ordinance imposing the administrative penalty otherwise provides, the
12 following provisions apply:

13 (1) The amount of the fine for violation of an ordinance that also makes violation an
14 infraction shall be (1) \$100 for a first violation of the ordinance; (2) \$200 for a second violation of the
15 same ordinance within one year of the first violation; and (3) \$500 for each additional violation of the
16 same ordinance within one year of a second or subsequent violation.

17 (2) The amount of the fine for violation of an ordinance that also makes violation a
18 misdemeanor, or that does not provide a criminal penalty, shall be \$1000 for each offense.

19 **SEC. 100.5. PAYMENT OF FINES.**

20 (a) The citation shall set forth the date by which payment must be made, which shall allow
21 at least 30 days for payment, from the date that the citation is served. All fines shall be payable to the
22 City and deposited in the City's general fund, unless the payment is made pursuant to an ordinance that
23 provides otherwise.

1 **(b) Any fine paid to the City shall be refunded in accordance with Section 100.8 if it is**
2 **determined, after a hearing, that the person charged in the citation was not responsible for the**
3 **violation or that there was no violation as charged.**

4 **(c) The failure of any person to pay a fine within the time specified in the citation shall**
5 **result in the assessment of an additional late payment fee, which shall be 10% of the total amount of the**
6 **fine assessed for each month the penalty and any already accrued late payment penalty remains**
7 **unpaid.**

8 **(d) The failure of any person to pay a fine assessed within the time specified in the citation,**
9 **or any applicable late payment charge, constitutes a debt to the City. The City may file a civil action,**
10 **create and impose liens as set forth below, or pursue any other legal remedy to collect such money.**

11 **(e) The City may create and impose liens against any property owned or operated by a**
12 **person who fails to pay a fine assessed by citation. The procedures provided in San Francisco**
13 **Administrative Code Sections 10.230 – 10.237, or any successor provisions, shall govern the imposition**
14 **and collection of such liens.**

15 **(f) Payment of a fine shall not excuse the failure to correct the violation, nor shall it bar**
16 **any further enforcement action by the City.**

17 **SEC. 100.6. ADVANCE DEPOSIT HARDSHIP WAIVER.**

18 **(a) Any person who intends to file an appeal of a citation and who is financially unable to**
19 **make the advance deposit of the fine as required in Section 100.5(a) may file a request for an advance**
20 **deposit hardship waiver.**

21 **(b) The request shall be filed with the Controller on an application form provided by that**
22 **office within 15 days from the date that the citation was served.**

23 **(c) The requirement of depositing the full amount of the fine as described in Section 100.5**
24 **shall be stayed unless or until the Controller makes a determination not to issue the advance deposit**
25 **hardship waiver.**

1 (d) The Controller may waive the requirement of an advance deposit set forth in Section
2 100.5(a) and issue the advance deposit hardship waiver only if the cited party submits to the Controller
3 a sworn affidavit, together with any supporting documents or materials, demonstrating to the
4 Controller's satisfaction the person's actual financial inability to deposit with the City the full amount
5 of the fine in advance of the hearing.

6 (e) If the Controller determines not to issue an advance deposit hardship waiver, the person
7 shall pay the fine within 10 days of the date that the decision is served on the applicant or 30 days from
8 the date of the citation, whichever is later.

9 (f) The Controller shall issue a written determination listing the reasons for the
10 determination to issue or not issue the waiver. The Controller's written determination shall be final.

11 (g) The written determination shall be served upon the applicant for the waiver.

12 **SEC. 100.7. RIGHT TO APPEAL; HEARING PROCEDURE ON APPEAL.**

13 (a) A recipient of a citation may file an appeal with the Controller on the grounds that there
14 was no violation of the ordinance for which the citation was issued or that the person cited did not
15 commit the violation. The appeal must be filed within 30 days from the date that the citation is served
16 on the recipient. The Controller shall provide a form for requesting an appeal. The charging official
17 shall serve a copy of the appeal form on the person cited when the citation is served, although the
18 failure to include the form shall not invalidate the citation or require any change in the procedures
19 provided in this Chapter. The appellant shall include a mailing address, a street address, a telephone
20 number, and any other contact information that the Controller determines appropriate, so that the City
21 may transmit information to the appellant. The appellant shall either (1) pay an advance deposit of the
22 amount of the fine required under the citation served on the appellant or (2) provide notice that
23 appellant has filed a request for an advance deposit hardship waiver.

24 (b) The Controller shall designate a hearing officer to hear and decide the appeal. The
25 hearing officer shall fix a date, time and place for the hearing on the appeal and shall send written

1 notice with this information at least 10 days before the date of the hearing by first class mail, to the
2 mailing address provided on the appeal form. The hearing shall be held no later than 60 days after
3 notice has been sent to the appellant, unless either the appellant or the charging official requests an
4 extension and the hearing officer finds good cause to grant the request.

5 (c) The failure of any person to file an appeal in accordance with this Section or to appear
6 at the hearing shall constitute a failure to exhaust administrative remedies and a forfeiture of the fine
7 paid to the City. If the fine has not been paid to the City, the City may take action to enforce payment.

8 (d) The hearing officer appointed by the Controller shall conduct all appeal hearings under
9 this Chapter and shall be responsible for deciding all matters relating to the hearing procedures not
10 otherwise specified in this Chapter. The charging official shall have the burden of proof in the hearing.
11 The hearing officer may continue the hearing and request additional information from the charging
12 official or the person cited.

13 (e) If the charging official has additional written information concerning the citation to
14 present to the hearing officer for consideration at the hearing, then the charging official shall serve a
15 copy of this information on the appellant at least five days prior to the date of the hearing. If the
16 charging officials fails to timely serve the information, the hearing officer may continue the hearing for
17 a period of time that the officer deems appropriate to enable the appellant to respond to the additional
18 information.

19 (f) The hearing officer may accept evidence on which persons would commonly rely in the
20 conduct of their serious business affairs. The following provisions shall also apply to the appeal
21 procedure:

22 (1) A citation that complies with the requirements of Section 100.3(a) and any additional
23 written information submitted by the charging official shall be prima facie evidence of the facts
24 contained in those documents;

1 (2) The appellant shall be given the opportunity to testify and present evidence concerning
2 the citation; and

3 (3) The hearing officer may accept testimony by declaration under penalty of perjury
4 relating to the citation if he or she determines it appropriate to do so under the circumstances of the
5 case.

6 **SEC. 100.8. HEARING OFFICER'S DECISION.**

7 (a) After considering all of the testimony and evidence submitted by the parties, the hearing
8 officer shall issue a written decision to uphold, modify or vacate the citation and shall set forth the
9 reasons for the decision. The decision of the hearing officer shall be final.

10 (b) If the hearing officer determines that the citation should be upheld, then the City shall
11 retain the amount of the fine paid to the City. If no payment has been paid to the City, the hearing
12 officer shall set forth in the decision a payment schedule for the fine. The person cited shall pay the
13 fine by the time or times set forth in the hearing officer's schedule and the failure to do so shall result in
14 the assessment of additional late payment fees as set forth in Section 100.5(c) and the City's right to
15 use the remedies to obtain payment set forth in Section 100.5(d) and (e).

16 (c) If the hearing officer vacates the citation, the City shall promptly refund the amount of
17 the deposited fine, together with interest at the average rate earned on the City's portfolio for the
18 period of time that the City held the fine amount.

19 (d) The hearing officer shall serve the appellant and the charging official with a copy of the
20 decision.

21 **SEC. 100.9. RIGHT TO JUDICIAL REVIEW.**

22 (a) Any person aggrieved by an administrative decision of a hearing officer on a citation
23 may obtain review of the administrative decision by filing a petition for review in accordance with the
24 timelines and provisions set forth in California Government Code Section 53069.4.

1 **(b) If a final order of a court of competent jurisdiction determines that the City has not**
2 **properly imposed a fine pursuant to a citation to which this Chapter applies, and if the person against**
3 **whom the fine has been imposed has deposited payment for the fine with the City, the City shall**
4 **promptly refund the amount of the deposited fine, together with interest at the average rate earned on**
5 **the City's portfolio for the period of time that the City held the fine amount.**

6 **SEC. 100.10. CONTROLLER MAY ADOPT REGULATIONS. The Controller may adopt**
7 **regulations governing the citation and hearing procedure set forth in this Chapter.**

8
9 APPROVED AS TO FORM:
10 DENNIS J. HERRERA, City Attorney

11 By: _____
12 PAULA JESSON
13 Deputy City Attorney