

FILE NO. 071670

ORDINANCE NO.

[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 Sections 100.1 through 100.16, to establish a procedure for the imposition, enforcement, collection, and administrative review 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. Environmental Findings. The Planning Department has determined that the actions contemplated in this ordinance are in compliance with the California Environmental Quality Act (California Public Resources Code sections 21000 *et seq.*). This determination is on file with the Clerk of the Board of Supervisors in File No. _____ and is incorporated in this ordinance by reference.

Section 2. The San Francisco Administrative Code is hereby amended by adding Chapter 100 "Procedures Governing the Imposition of Administrative Fines," Sections 100.1 through 100.16, to read as follows:

SEC. 100.1. FINDINGS AND SCOPE OF CHAPTER.

(a) The City and County of San Francisco (the "City") has a significant interest in encouraging compliance with its laws. To that end, City Codes often include a variety of remedies, including the right of City departments to issue citations to violators and to require such persons to pay an administrative fine.

1 **(b) Moreover, the imposition of administrative fines is not intended to be punitive in nature,**
2 **but is instead intended to compensate the public for the injury and damage caused by the prohibited**
3 **conduct. The fines are intended to be reasonable and not disproportionate to the damage or injury to**
4 **the City and the public caused by the prohibited conduct.**

5 **(c) To date, the City has not enacted an ordinance establishing standard procedures for the**
6 **imposition, enforcement, collection, and administrative review of administrative citations and fines for**
7 **violation of City ordinances. Rather, the Board has enacted a variety of ordinances authorizing**
8 **administrative fines but has included separate procedures in each ordinance.**

9 **(d) The Board adopts this Chapter to provide standard procedures for the imposition,**
10 **enforcement, collection, and administrative review of administrative citations and fines. However, the**
11 **Board recognizes that these procedures may not be appropriate to use in whole or in part for all City**
12 **ordinances. Therefore, this Chapter applies only to citation procedures set forth in an ordinance that**
13 **incorporates this Chapter, subject to any exceptions provided in that ordinance.**

14 **(e) The procedures set forth in this Chapter are adopted pursuant to Government Code**
15 **Section 53069.4 which governs the imposition, enforcement, collection, and administrative review of**
16 **administrative citations and fines by local agencies, and pursuant to the City's home rule power over its**
17 **municipal affairs.**

18 **(f) The determination by the City to impose, enforce, collect and provide administrative**
19 **review of administrative fines pursuant to this Chapter is solely at the City's discretion and is only one**
20 **option available to the City to seek redress for the violation of its ordinances. By adopting this**
21 **Chapter, and subsequent legislation incorporating the procedures in this Chapter, the Board does not**
22 **intend to limit the ability of the City to use any other remedy, civil or criminal, which may be available**
23 **in a particular case. The City may use the procedures set forth in this Chapter as an alternative to, or**
24 **in conjunction with, any other available remedy.**

1 (g) In compliance with Government Code Section 53069.4(a)(2), if an ordinance pertains to
2 building, plumbing, electrical, or other similar structural or zoning issues, the ordinance shall provide
3 a reasonable period of time for a person responsible for a continuing violation of the ordinance to
4 correct or otherwise remedy the violation prior to imposition of administrative fines, unless the
5 violation creates an immediate danger to health or safety.

6
7 **SEC. 100.2. DEFINITIONS. The following definitions shall apply to this Chapter.**

8 (a) "Charging official" means a City officer or employee with authority to enforce the
9 ordinance for which citations may issue or a person designated by the charging official to act on his or
10 her behalf.

11 (b) "Citation" means an administrative citation issued pursuant to this Chapter stating that
12 the charging official has determined that there has been a violation of one or more provisions of a City
13 ordinance, which ordinance incorporates this Chapter in whole or in part.

14 (c) "Controller" means the Controller for the City and County of San Francisco or a person
15 designated by the Controller to act on his or her behalf.

16 (d) "Fine" means the dollar amount of the administrative fine that the person cited is
17 required to pay for violation of an ordinance as set forth by the charging official in the citation.

18 (e) "Person" means a natural person, firm, association, organization, partnership, business
19 trust, company, corporation, limited liability company, joint venture, or club, or its manager, lessee,
20 agent, servant, officer or employee.

21 (f) "Serve" or "service" means either personal delivery or deposit in the United States Mail,
22 first class, in a sealed envelope postage prepaid. Service shall include a declaration under penalty of
23 perjury setting forth the date of personal delivery or, for service by mail, the date of deposit in the mail.

1 Service by personal delivery shall be deemed complete on the date of the delivery. Service by mail
2 shall be deemed complete on the date of deposit in the mail.

3 (g) "Violation" means a violation of an ordinance for which the charging official has
4 authority to issue a citation.

5
6 **SEC. 100.3. ISSUANCE AND SERVICE OF CITATIONS.**

7 (a) (1) Whenever a charging official determines that a violation of an ordinance for
8 which that official has enforcement authority has occurred, the charging official may issue and serve a
9 citation on any person responsible for the violation.

10 (2) Where there is a nexus between the violation and real property located in the City as set
11 forth in Section 100.4, the charging official may also provide notice of the citation to the owner of the
12 real property as provided in Section 100.4. The City may not impose a lien on the property under
13 Section 100.7(b) unless the charging official provides this notice.

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

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

16 (2) Identification of the provision or provisions of the ordinance violated. The charging
17 official may issue a single citation for multiple violations of an ordinance or for violation of multiple
18 provisions of an ordinance;

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

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

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

1 (6) The right to seek administrative review of the citation by filing an appeal with the
2 Controller within 30 days of the date that the citation is served and notice that the failure to appeal will
3 make the issuance of the citation a final action by the City for which there is no further administrative
4 review and no judicial review; and

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

6 (c) When serving a citation, the charging official shall also serve a form for appealing the
7 citation pursuant to the procedure as set forth in Section 100.9. The form shall be prescribed by the
8 Controller and shall include a description of the procedure for seeking administrative review of the
9 citation, including the deadline for filing the appeal and the requirement in Section 100.9 that the
10 person appealing either deposit the amount of the fine set forth in the citation or file an application for
11 an advance deposit hardship waiver. The appeal form shall require the appellant to provide a mailing
12 address, a street address, a telephone number, and any other contact information that the Controller
13 determines appropriate. The failure by the charging official to serve the appeal form with the citation
14 shall not invalidate the citation or require any change in the procedures provided in this Chapter.

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16 **SEC. 100.4. NOTICE TO OWNER OF REAL PROPERTY.**

17 (a) Where there is a nexus between the violation and real property located in the City, the
18 charging official may provide notice of the citation to the owner of the real property as set forth in this
19 Subsection and that unpaid fines for the citations may become a lien on the property. If the charging
20 official gives this notice, the official shall do so within three City business days of service of the notice
21 on the person cited.

22 (1) Post one copy of the citation in a conspicuous place upon the building or real property.

23 (2) Serve one copy of the citation on each of the following:
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25

1 (A) The person, if any, in real or apparent charge or control of the premises or property
2 involved;

3 (B) The owner of record.

4 (b) When serving a copy of the citation as provided in Subsection (a)(2), the charging
5 official shall include written notice of the following:

6 (1) That the owner of the property has the right to seek administrative review of the citation
7 by filing an appeal with the Controller within 30 days of the date of service of the notice to the property
8 owner.

9 (2) That the failure by all persons authorized to appeal the citation under this Chapter to
10 file such an appeal will make the issuance of the citation a final action by the City as to all such
11 persons, for which there is no further administrative review and no judicial review.

12 (c) For purposes of this Chapter, there is a nexus between a violation and real property
13 where an activity or condition on the real property has caused, contributed to, or been a substantial
14 factor in causing, the violation.

15 (d) The City may not impose a lien on the property under Section 100.7(b) unless the
16 charging official provides notice to the property owner as set forth in this Section.

17
18 **SEC. 100.5. DETERMINATION OF THE AMOUNT OF THE ADMINISTRATIVE**
19 **FINE WHEN THE CITATION IS ISSUED.**

20 (a) Unless the ordinance under which the citation is issued otherwise provides, the amount
21 of the fine set by the charging official shall be governed by this Section:

22 (1) The amount of the fine for violation of an ordinance that also makes violation an
23 infraction shall be (1) up to \$100 for a first violation of the ordinance; (2) up to \$200 for a second
24 violation of the same ordinance within one year of the date of the first violation; and (3) up to \$500 for
25

1 each additional violation of the same ordinance within one year of the date of a second or subsequent
2 violation.

3 (2) The amount of the fine for violation of an ordinance that also makes violation a
4 misdemeanor shall be up to \$1000.

5 (3) The amount of the fine for violation of an ordinance that does not provide for a criminal
6 penalty shall be up to \$1000.

7 (4) In determining the amount of the fine, the charging official may take any or all of the
8 following factors into consideration:

9 (A) The duration of the violation;

10 (B) The frequency, recurrence and number of violations by the same violator;

11 (C) The seriousness of the violation;

12 (D) The good faith efforts of the violator to correct the violation;

13 (E) The economic impact of the fine on the violator;

14 (F) The injury or damage, if any, suffered by any member of the public;

15 (G) The impact of the violation on the community;

16 (H) The amount of City staff time, which was, expended investigating or addressing the
17 violation;

18 (I) The amount of fines imposed by the charging official in similar situations;

19 (J) Such other factors as justice may require.

20
21 **SEC. 100.6. WHEN FINES DUE; PAYMENT OF FINE; LATE PAYMENT FEE;**
22 **NOTICES BY CHARGING OFFICIAL.**

23 (a) The citation shall set forth the date by which the fine is required to be paid, which date
24 shall allow at least 30 days for payment from the date that the citation is served. The fine shall be due
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1 and payable on or before the date set forth in the citation, unless the person cited has filed a timely
2 appeal in compliance with the requirements of Section 100.9.

3 (b) The due date for fines set forth in citations for which an appeal has been filed under
4 Section 100.9 are due and payable on the date required under Sections 100.9(c)(2) and (d) and
5 100.14(b).

6 (c) Fines that remain unpaid 30 days after the due date shall be subject to a late payment
7 penalty of 10% plus interest at the rate of 1% per month on the outstanding balance, which shall be
8 added to the penalty amount from the date that payment is due.

9 (d) All fines and late payment fees shall be payable to the City and deposited in the City's
10 general fund, unless the payment is made pursuant to an ordinance that provides otherwise.

11 (e) If the fine is unpaid by the date that it is due under this Chapter, the charging official
12 shall serve notice within 30 days of the delinquency that fines not paid by the due date are subject to a
13 late payment penalty as provided in Subsection (c). Where there is a nexus between the violation and
14 real property against which the City may impose a lien for non-payment of the citation as provided in
15 Section 100.7(b), the charging official may serve notice to the owner of such property that the person
16 cited has not timely paid the citation and that the charging official may initiate proceedings to make the
17 amount due and all additional authorized costs and charges, including attorneys fees, a lien on the
18 property. If the charging official does not provide the notice set forth in this Subsection, the City may
19 not impose a lien on the property under Section 100.7(b).

20
21 **SEC. 100.7. REMEDIES AVAILABLE TO CITY FOR NON-PAYMENT OF FINES;**
22 **LIENS.**

23 (a) The amount of any fine not paid within the time required under this Chapter, including
24 the amount of any applicable late payment charges, constitutes a debt to the City. The City may file a
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1 civil action or pursue any other legal remedy to collect such money. In any civil action to obtain
2 payment of the fine, and any late payment penalties, the City shall be entitled to obtain a judgment for
3 the amount of the unpaid fines and penalty payments and, in addition, for the costs and attorneys' fees
4 incurred by the City in bringing any civil action to enforce the provisions of this Section.

5 (b) Where there is a nexus between the violation and real property located in the City as
6 defined in Section 100.4(c), the charging official may initiate proceedings to make the payment amount
7 due and all additional authorized costs and charges, including attorneys' fees, a lien on the property.
8 Such liens shall be imposed in accordance with San Francisco Administrative Code Sections 10.230 –
9 10.237, or any successor provisions. Before initiating lien proceedings, the charging official shall send
10 a request for payment under San Francisco Administrative Code Section 10.230A.

11 12 **SEC. 100.8. RIGHT TO APPEAL.**

13 Any person who has been served with a citation, including property owners who receive notice
14 of the citation under Section 100.4, may seek administrative review of the citation by filing an appeal
15 with the Controller as provided in Section 100.9. The grounds for any such appeal shall be that there
16 was no violation of the ordinance for which the citation was issued or that the person cited did not
17 commit the violation.

18 19 **SEC. 100.9. APPEAL PROCEDURE; APPOINTMENT OF HEARING OFFICER.**

20 (a) Any person who seeks the administrative review of a citation may file an appeal no later
21 than 30 days from the date of service of the citation. An appeal shall be deemed filed on the date that
22 the Controller receives it. At the time that the appeal is filed, the appellant must either deposit with the
23 Controller the full amount of the fine required under the citation or must file an application for an

1 advance deposit hardship waiver, as set forth in Section 100.13. The Controller shall promptly send
2 notice to the charging official of an appeal filed in compliance with this Subsection.

3 (b) The Controller shall take the following actions within 10 days of receiving an appeal
4 filed with the deposit required in Subsection (a): (1) appoint a hearing officer, (2) set a date for the
5 hearing, which date shall be no less than 10 and no more than 60 days from the date that the appeal
6 was filed, and (3) send written notice of the hearing date to the appellant and the charging official.

7 (c) The Controller shall, within 10 days of receiving an appeal filed with an application for
8 an advance deposit hardship waiver, determine whether to grant or deny the waiver, as set forth in
9 Section 100.13.

10 (1) If the Controller grants the waiver, the Controller shall promptly (1) appoint a hearing
11 officer, (2) set a date for the hearing, which date shall be no less than 10 and no more than 60 days
12 from the date that the appeal was filed, and (3) send written notice of the hearing date to the appellant
13 and the charging official.

14 (2) If the Controller denies the waiver, the Controller shall serve the determination on the
15 applicant and the charging official and shall require the applicant to make the required deposit within
16 10 days from service of the notice. If the person fails to comply with the requirement within 10 days,
17 the Controller shall consider the appeal withdrawn and shall serve written notice to the person who
18 filed the appeal and to the charging official that the appeal has been withdrawn. Upon receiving notice
19 of the withdrawn appeal, the charging official shall serve written notice on the person cited that the
20 fine set forth in the citation is due and payable on or before the tenth day after service of the notice.

21 (d) Upon receiving an appeal that is filed without either the required deposit or an
22 application for an advance deposit hardship waiver, the Controller shall provide written notice to the
23 person who filed the appeal that such person must either make the deposit or file the waiver
24 application. The Controller shall provide the person 10 days from service of the notice to comply. If
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1 the person fails to comply with the requirement within 10 days, the Controller shall consider the appeal
2 withdrawn and shall serve written notice on the person who filed the appeal and the charging official
3 that the appeal has been withdrawn. Upon receiving notice of the withdrawn appeal, the charging
4 official shall serve written notice that the fine set forth in the citation is due and payable on or before
5 the tenth day after service of the notice.

6 (e) If the person cited fails to pay the fine within the 10 days required under Subsections
7 (c)(2) or (d), the charging official shall serve notice of the late payment penalty that will become due
8 for fines that remain unpaid 30 days after the due date as provided in Section 100.6(c). Where there is
9 a nexus between the violation and real property against which the City may impose a lien for non-
10 payment of the citation as provided in Section 100.7(b), the charging official may serve a copy of this
11 notice on the owner of the property and, if such notice is given, shall also provide notice that the
12 charging official may initiate lien proceedings to make the amount due under the citation and all
13 additional authorized costs and charges, including attorneys fees, a lien on the property. If the
14 charging official does not provide the notice to the property owner required under this Subsection, the
15 City may not impose a lien on the property under Section 100.7(b).

16 (f) When more than one person files an appeal of a citation, payment by any appellant shall
17 satisfy the deposit requirement for all appellants.

18 (g) The provisions of this Section 100.9 requiring the Controller or Charging Official to act
19 by a specific date are directory. The failure of the Controller or Charging Official to take action within
20 the time specified shall not deprive that person of jurisdiction over the matter or of the right to take
21 action at a later time, unless to do so would unreasonably prejudice persons issued citations. This
22 Subsection 100.9(g) shall not apply to the requirements of this Section governing notice to the owners
23 of real property where there is a nexus between the violation and the property as defined in Section
24 100.4(c).

1 **SEC. 100.10. CHARGING OFFICIAL REQUIRED TO SUBMIT SUPPORTING**
2 **DOCUMENTS.**

3 *Upon receiving notice that the Controller has scheduled a hearing on an appeal, the charging*
4 *official shall, within three City business days, serve the appellant and the hearing officer with records,*
5 *materials, photographs, and other evidence on which the charging official intends to rely at the hearing*
6 *to support the citation. The charging official may serve this information at any earlier time; if the*
7 *Controller has not yet appointed a hearing officer, the charging official may serve the information on*
8 *the Controller, who shall provide it to the person appointed as hearing officer. If the charging official*
9 *does not serve the information required under this Section within three City business days, the hearing*
10 *officer may grant a request by the charging official to allow later service and may find good cause to*
11 *continue the hearing because of the delayed service.*

12
13 **SEC. 100.11. HEARING PROCEDURES.**

14 *(a) The hearing officer shall conduct all appeal hearings under this Chapter and shall be*
15 *responsible for deciding all matters relating to the hearing procedures not otherwise specified in this*
16 *Chapter or in regulations adopted by the Controller. The charging official shall have the burden of*
17 *proof in the hearing. The hearing officer may continue the hearing at his or her own initiative or at the*
18 *request of either party. The hearing officer may request additional information from the charging*
19 *official or the person cited.*

20 *(b) The hearing need not be conducted according to technical rules of evidence and*
21 *witnesses. Any relevant evidence is admissible if it is the sort of evidence on which responsible persons*
22 *are accustomed to rely in the conduct of serious affairs.*

23 *(c) The following provisions shall also apply to the appeal procedure:*
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1 (1) A citation that complies with the requirements of Section 100.3(b) and any additional
2 evidence submitted by the charging official pursuant to Section 100.10 shall be prima facie evidence of
3 the facts contained therein;

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

6 (3) The hearing officer may accept testimony by declaration under penalty of perjury
7 relating to the citation from any party if he or she determines it appropriate to do so under the
8 circumstances of the case.

9
10 **SEC. 100.12. REQUIREMENT TO EXHAUST ADMINISTRATIVE REMEDIES.**

11 (a) The failure of the person cited to take the actions set forth in Subsection (c) shall
12 constitute a failure to exhaust administrative remedies and shall preclude the person cited from
13 obtaining judicial review of the validity of the citation.

14 (b) Where there is a nexus between the violation for which a citation issued and real
15 property as defined in Section 100.4(c), the failure of the owner of such property to take the actions set
16 forth in Subsection (c) shall constitute a failure to exhaust administrative remedies and shall preclude
17 the property owner from obtaining judicial review of the validity of the citation.

18 (c) This Section applies to the following:

19 (1) The failure to file an appeal within the time required by Section 100.9(a).

20 (2) The failure to file an application for a waiver of the deposit requirement within the time
21 required by Section 100.9, unless another appellant has deposited the amount of the fine.

22 (3) The failure to complete the appeal by depositing the amount of the fine within the time
23 required by Section 100.9, unless another appellant has done so.

1 **SEC. 100.13. ADVANCE DEPOSIT HARDSHIP WAIVER – UNDUE HARDSHIP.**

2 (a) Any person may seek a waiver from the deposit requirement set forth in Section
3 100.9(a).

4 (b) The person requesting a waiver shall file an application on a form prescribed by the
5 Controller, with supporting materials, no later than 30 days from the date of service of the citation.
6 The supporting materials shall include a declaration under penalty of perjury setting forth the
7 circumstances demonstrating that the deposit requirement would impose an undue hardship on the
8 applicant, as well as any documents or other information that the applicant wants the Controller to
9 consider in support of the application for a waiver.

10 (c) The Controller shall determine within 10 days of receiving the application whether to
11 grant or deny a waiver, setting forth the reason for the determination. The Controller shall serve the
12 written determination on the applicant and the charging official. The Controller's written
13 determination shall be a final administrative determination.

14
15 **SEC. 100.14. DETERMINATION OF THE HEARING OFFICER.**

16 (a) After considering all of the testimony and evidence submitted by the parties, the hearing
17 officer shall issue a written decision upholding, modifying or vacating the citation and shall set forth
18 the reasons for the determination. The determination of the hearing officer shall be a final
19 administrative determination.

20 (b) If the hearing officer upholds the citation, the City shall retain the amount of the fine
21 that the appellant deposited with the City. If no appellant has deposited the fine with the City, the
22 hearing officer shall set forth in the decision a schedule for payment of the fine. The person cited shall
23 pay the fine by the date or dates set forth in the hearing officer's schedule and the failure to do so shall
24 result in the assessment of late payment fees as set forth in Section 100.6(c).

1 (c) If the hearing officer vacates the citation, the City shall promptly refund the deposit. If
2 the hearing officer partially vacates the citation, the City shall promptly refund that amount of the
3 deposit that corresponds to the hearing officer's determination. The refund shall include interest at the
4 average rate earned on the City's portfolio for the period of time that the City held the deposit as
5 determined by the Controller.

6 (d) The hearing officer shall serve the appellant and the charging official with a copy of the
7 determination and notice of the right of the appellant to seek judicial review pursuant to California
8 Government Code Section 53069.4.

9 (e) Absent good cause, the hearing officer shall hear multiple appeals of a citation at the
10 same time.

11
12 **SEC. 100.15. RIGHT TO JUDICIAL REVIEW.**

13 (a) Any person aggrieved by the action of the hearing officer taken pursuant to this Chapter
14 may obtain review of the administrative decision by filing a petition for review in accordance with the
15 timelines and provisions set forth in California Government Code Section 53069.4.

16 (b) If a final order of a court of competent jurisdiction determines that the City has not
17 properly imposed a fine pursuant to the provisions of this Chapter, and if the fine has been deposited
18 with the City as required by Section 100.9, the City shall promptly refund the amount of the deposited
19 fine, consistent with the court's determination, together with interest at the average rate earned on the
20 City's portfolio for the period of time that the City held the fine amount as determined by the
21 Controller.

1 **SEC. 100.16. CONTROLLER MAY ADOPT REGULATIONS.** *The Controller may adopt*
2 *regulations governing the citation and hearing procedure set forth in this Chapter.*

3
4 APPROVED AS TO FORM:
5 DENNIS J. HERRERA, City Attorney

6 By: _____
7 PAULA JESSON
8 Deputy City Attorney
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