



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Nadine N. Nader

**SUBJECT:** SEE BELOW

**DATE:** September 24, 2007

Approved

*Ray Winter*

Date

*9/24/07*

**SUBJECT: RESOLUTION AMENDING ADMINISTRATIVE CITATION SCHEDULE OF FINES [Public Safety, Finance and Strategic Support Committee referral 9/20/07 – Item (e)]**

On September 20, 2007 staff presented a report on a resolution amending the Administrative Citation Schedule of Fines to the Public Safety, Finance and Strategic Support Committee.

Councilmember Oliverio motioned to accept the staff report, Councilmember Williams seconded the motion. Attached you will find the report that was presented to the Public Safety, Finance and Strategic Support Committee.

*Nadine N. Nader* for  
NADINE N. NADER  
Agenda Services Manager

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# Memorandum

**TO:** PUBLIC SAFETY, FINANCE  
STRATEGIC SUPPORT COMMITTEE

**FROM:** Darryl Von Raesfeld  
Fire Chief

**SUBJECT:** RESOLUTION AMENDING  
ADMINISTRATIVE CITATION  
SCHEDULE OF FINES

**DATE:** September 11, 2007

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Approved	<i>Kay Woner</i>	Date	<i>9/11/07</i>
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Council District: Citywide

## RECOMMENDATION

Adoption of a resolution amending the Administrative Citation Schedule of Fines to:

Establish administrative fines for fire false alarms and other violations of the fire safety, fire protection, and hazardous materials storage or use provisions of the San Jose Municipal Code, with base fines ranging from \$100.00 to \$1000.00, with enhanced fines for repeat violations of the same provision, which occur within any one year period, and superseding Resolution No. 73712, as amended on 4/3/07.

## OUTCOME

Approval of the recommended action will update the Administrative Citation Schedule of Fines and include specific administrative fines related to fire and hazardous materials violations. Updating the Administrative Citation Schedule of Fines will provide greater incentive for businesses to comply with the San Jose Municipal Code and its Fire and Life Safety regulations. It is anticipated that enhanced Administrative fines will reduce the number of repeat violations and increase the Fire Departments operational efficiency. Furthermore, the Department will be complying with the Mayor's March 2006 budget message of raising fines for multiple or repeat violators of Fire and Hazardous Material safety laws. Finally, adoption of these fines will assist the Fire Department in complying with recommendations in the City Auditor's Report of November 2003, by reducing the number of times an Inspector must return to a facility.

## BACKGROUND

In November 1994, the City Council approved the Administrative Citation Ordinance (San Jose Municipal Code Section 1.15.010 *et seq.*). This Ordinance established an alternative enforcement tool that provides a non-criminal method for addressing City Code violations in a timely manner. Under SJMC Section 1.15.040 administrative citation fine amounts are to be set forth in a schedule of fines established by City Council resolution.

In September 2002, the Council adopted an Administrative Citation Schedule of Fines (Resolution No. 71216) that included a \$1,000 fine for violations of the City's Hazardous Materials Storage and Toxic Gas Ordinances (SJMC Chapters 17.68 and 17.78) and a standard fine amount of \$25 for general violations of the Municipal Code where no specific fine amount is established.

### **ANALYSIS**

The Department is experiencing an increase in the number of businesses that are non-compliant with the fire safety and hazardous material requirements of the San Jose Municipal Code. The Fire Department has tried different methods to obtain compliance with little effect, including the criminal citation process. For several years, the Department has referred chronic violators to San Jose Code Enforcement for administrative action. However, Code Enforcement officials recently informed the Department their system is being overwhelmed with the amount of referrals that the Fire Department is sending to them. A significant amount of staff time and resources are being dedicated to a small number of chronic violators with minimal success in achieving compliance.

With fine amounts set at \$25, the Fire Department does not currently have an effective tool to encourage businesses to comply in a timely manner. As a result, Fire Inspectors are returning for 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> re-inspections. It is not uncommon for inspection periods to extend beyond one year before compliance is achieved. The Fire Department's fee based system in which businesses are billed an inspector's hourly rate starting on the third and subsequent inspection is not effective for gaining compliance from habitually chronic violators.

The Fire Department is attempting to align itself with other City Departments that have established Administrative Citation programs and have subsequently increased default fine amounts to higher levels. Other Departments have indicated success in achieving compliance through Administrative Citations when the fine amounts have been increased to higher values thus encouraging compliance with applicable San Jose Municipal Code requirements.

### **COMPARABLE AGENCY SURVEY**

The Fire Department, in developing and analyzing the proposed increased fines, conducted a survey of comparable agencies with established fines including agencies in the local region (Palo Alto, Mountain View, Sunnyvale, Milpitas, Santa Clara County, and Monterey) and agencies in large Western cities (San Francisco, Sacramento, San Diego, Los Angeles County, Seattle, San Antonio, Phoenix, and Denver) for an evaluation of their current citation programs. A comparison of the proposed Administrative Fine Schedule in relation to these comparable jurisdictions is attached to this memorandum as ATTACHMENT 1.

The table below includes recommended administrative citation fine amounts for violation of fire safety and hazardous material provisions of the Municipal Code that are frequently encountered by Fire Department inspection staff or are considered significant violations. The fine amounts

proposed remain consistent with fine values already established by other City Departments as well as other local jurisdictions.

**Table of Proposed Fine Amounts:**

Section	Offense	Current San Jose Fine	Proposed Fine Amount
Any violation of Chapter 17.12 or Chapter 17.68, unless a specific fine amount has been established for a particular Code Section with such Chapters.	Various	\$25	
	First violation		\$500
	Second violation within a one year period		\$750
	Third violation within a one year period		\$1,000
17.12.700 (CFC* 8001.3.1)	FALSE ALARMS	\$25	
	Non-residential occupancy/ residential over 4 Units (R-1 greater than 4 Units) and/or activation by any alarm service company during servicing		
	Third false alarm within 90 day period		\$350
	Fourth false alarm within 90 day period		\$750
	Fifth and subsequent false alarm within 90 day period		\$1,000
	Residential occupancy up to 4 Units (R-3 and R-1 up to 4 Units), except activation by any alarm service company during servicing		
	Third false alarm within 90 day period		\$100
	Fourth false alarm within 90 day period		\$150
	Fifth and subsequent false alarm within 90 day period		\$200

17.12.700 (CFC* 8001.3.1)	Failure to obtain permit to store, dispense, use or handle hazardous materials, or to install, repair, abandon, remove, temporarily or permanently close or substantially modify a hazardous materials storage facility or other regulated area.	\$25	\$1,000
	Second violation within one year period		\$1,500
	Third violation within one year period		\$2,000
17.12.820	Failure to report a threatened release or unauthorized discharge of hazardous materials	\$25	\$500
17.68.310	Failure to submit timely updated Hazardous Materials Management Plan	\$25	\$500
	Second violation within a one year period		\$750
	Third violation within a one year period		\$1,000
17.68.350	Failure to submit timely updated Hazardous Materials Management Inventory Statement	\$25	\$500
	Second violation within one year period		\$750
	Third violation within one year period		\$1,000

\* All references to "CFC" are to the California Fire Code as adopted and amended by the City of San Jose in Chapter 17.12 of the San Jose Municipal Code.

Any Violation of Chapter 17.12 & 17.68

The Fire Department believes fines under this section present significant fire and life safety hazards and the fine amount should be at a level sufficient to discourage businesses from failing to correct Fire Code violations. The Department recommends that the administrative citation fine amount be increased from \$25 to \$500 for any violation of the Fire Code under Municipal Code Chapters 17.12 and 17.68 unless a specific fine amount has been established for a particular code section with such chapters. Fire Inspectors are frequently required to return for 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> inspections at the same facility for compliance. The ability to issue an administrative citation will greatly enhance the efficiency and effectiveness of the Bureau of Fire Prevention and be an effective tool to discourage a business from non-compliant behavior.

Examples of violations that will be cited under Chapters 17.12 and 17.68 include, but are not limited to, failure to provide and service fire extinguishers, blocking exit pathways, failure to maintain fire suppression systems, overcrowding, failure to correct a dangerous situation presenting a fire hazard, and the dangerous storage of combustible materials.

#### 17.12.400 Non Residential and Residential False Alarms

The Department recommends that an administrative citation fee amount be established for nuisance and recalcitrant false alarms. The Fire Department's engine and truck companies respond to numerous false alarms throughout the City. The Department is following the recommendation of an independent consultant for development of a false alarm citation program. As part of an overall report on "Revenue Alternatives," prepared for the City Manager's Office in May, 2003, Performance Management Partners highlighted the potential revenue generation, and operations efficiencies that could result from a fine on false alarms:

During the FY 00/01, there were 4,816 false alarms responded to by Fire Department Emergency units. Using the "low end" approach, a four person fire engine followed by other units to create a 13 person on-scene response is going to be very expensive. Assuming a 10 minute response time, a 5 minute on-scene time, and a 15 minute return to station and to conditions that existed prior to dispatch, 13 people involved in the dispatch will use approximately 390 minutes or 6.5 person hours. If one assumes even as high as 2,200 hours/year/firefighter, each response equates to 3/10ths of 1% of an annual firefighter's capacity. This would be \$295/incident if we assume a \$100,000/year annual cost of a firefighter. In fact these rates are higher. This also excludes overhead on either a departmental or citywide basis. If we look for a high-end number (e.g. one calculated by dividing the Fire budget by the annual number of calls-for-service) we will get a number close to the \$1000/incident range.

Excessive false alarms place a tremendous burden on San Jose Fire Department resources, resulting in increased response times beyond established response time goals and decreased levels of service. False alarms render first, second, and sometimes third due in units out of service until incidents are assessed, and proper levels of response determined. The Fire Department generally agrees with the Revenue Alternatives Report discussion of staffing (although a typical response involves 14, rather than 13 people). However, there are initial responses that consist of differing levels of resources, including responses to high-rise alarm (more resources), and most single-family residential responses (fewer resources). It should be noted that the current hourly rate for a responding engine company, consisting of a Captain, Fire Engineer, Firefighter/Paramedic, Firefighter, is \$169.12, including benefits, retirement, and overhead costs. Fire Department staff believes a citation program for excessive false alarms will help decrease the amount of false alarm responses and allow Fire Department resources to be allocated to actual events.

17.12.700 Failure to Obtain a Permit to Store, Dispense, Use or Handle Hazardous Materials

The Department recommends that an administrative citation fine amount be established for the failure to obtain a permit for storing, using, dispensing or handling hazardous materials. The Fire Code requires businesses using hazardous materials to obtain a hazardous material permit. The San Jose Fire Department will issue a permit authorizing businesses to bring hazardous materials on its premises and ensures the hazardous materials are being used and stored in a safe manner according to San Jose Municipal Code requirements. These permits are reissued annually and the permit fees can range anywhere from \$250-\$7,000 per year, depending upon the level of hazard present at the facility. Currently, there are businesses in San Jose operating without the required annual hazardous material permits, either because of failure to comply with code requirements or from failure to pay permit fees. The Fire Department considers operating without a permit a serious code violation and gives violators an economic advantage over businesses that comply with the law. The current \$25 fine for violating this section is less costly than obtaining the required permits, and to be effective, the fine amount must be sufficient to encourage businesses to obtain required permits.

17.12.820 Failure to Report a Threatened Release or Unauthorized Discharge of Hazardous Materials

The Department recommends that an administrative citation fine amount be established for failure to report a threatened release or unauthorized discharge of hazardous materials, raising the fine for this violation from \$25 to \$500. Federal and State law requires businesses to abide by strict reporting requirements for releases into the environment of hazardous materials. The law requires the local authority or emergency response agency be notified. The Fire Department discovers businesses, through the inspection process or complaint referrals, that have released hazardous materials into the environment and have failed to report the release or call emergency responders. Businesses that will be targeted for fines under this section will be those that have knowingly released a hazardous material into the environment or have performed a negligent act resulting in a hazardous material release and have failed to abide by Federal and State reporting requirements. Fire Department staff considers this a significant violation that can immediately harm or endanger the health of the general public and emergency responders. Furthermore, failing to report a release has the potential to significantly damage the environmental resources within San Jose, whereas had a release been reported as required, steps could be taken to mitigate, control, and minimize the potential environmental and economical damage it may cause. The Fire Department strongly believes the fine amount should be at a level sufficient to discourage potentially harmful conduct.

17.68.310 and 17.68.350 Failure to Submit Timely Updated Hazardous Materials Management Plan or Inventory Statement

The Department recommends that an administrative citation fine amount be established for failure to submit timely updated Hazardous Materials Management Plan (HMMP) or Inventory Statements by increasing the current fine amount from \$25 to \$500. The HMMP and Inventory

Statements are public safety documents required by State law to be submitted to local emergency response agencies. The documents are a resource providing the emergency responders and general public with the knowledge to protect themselves from the dangers of hazardous materials. They are used in emergency response situations providing clear technical information on location, quantities and relative danger of hazardous materials stored. In the City Auditor's November 2003 Audit of the Fire Prevention Bureau it was noted that San Jose Fire Department inspectors made multiple visits to ensure that facilities had current HMMP and Inventory Statements. Creating a specific administrative fine for failure to submit a timely plan follows the City Auditors recommendation #16 to develop procedures and controls to reduce the number of times inspectors return to facilities to confirm that an HMMP is in place and to ensure that facilities submit their HMMP in a timely manner.

### **EVALUATION AND FOLLOW-UP**

After staff receives input from the Committee, comments and recommendations will be forwarded to the Council. Additionally, the targeted effective date of these fines will be on December 1, 2007.

### **PUBLIC OUTREACH/INTEREST**

The San Jose Fire Department's Bureau of Fire Prevention has prepared a document identifying the proposed program goals and benefits. The distribution of this document targets businesses currently being regulated by the San Jose Fire Department. Items highlighted in the document are the ability to gain compliance in a timely manner, ability to reduce economic advantages for businesses operating out of compliance, and a decriminalized citation process.

The San Jose Fire Department's Bureau of Fire Prevention has distributed the document to the Silicon Valley Leadership Group, San Jose Chamber of Commerce, San Jose Downtown Business Association, Building Owners and Managers Association, California Apartment Association, Hispanic Chamber of Commerce, Vietnamese Chamber of Commerce, Portuguese Chamber of Commerce, Filipino Chamber of Commerce, and the Black Chamber of Commerce.

Furthermore, the Department has posted an informational public outreach letter detailing the proposed administrative citation on the City of San Jose's internet home page and the Fire Department's website under public education. The Fire Department has fielded numerous phone calls from interested businesses, the media, and professional organizations as a result of the website postings.

A Fire Department representative spoke about the administrative citation program at the most recent monthly stake holder meeting of the Tri County California Apartment Association and was able to receive some very positive feedback. Most recently, an article by the San Jose Mercury News on August 15<sup>th</sup> outlined the specifics in detail of the proposed administrative

citation fine increases. In the article, Jody Hansen, Vice President of Public Policy with the San Jose Silicon Valley Chamber of Commerce, was quoted as saying businesses welcome the change because it will decriminalize safety code enforcement.

- Criteria 1: Requires Council action on the use of public funds equal to \$1 million or greater. (Required: Website Posting)
- ✓ Criteria 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. (Required: E-mail and Website Posting)
- Criteria 3: Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)

### COORDINATION

This document has been coordinated with the City Attorney's Office, City Managers Office and the Finance Department. The San Jose Fire Department has also communicated with the Environmental Services Department and the Code Enforcement division of PBCE that currently utilize an Administrative Citation Program.

### COST SUMMARY/IMPLICATIONS

Although fines from administrative citations go into the General Fund and do not come back to the Fire Department as "revenue," the department will be tracking the amount of money that this program raises. The Fire Department has not been issuing any administrative citations for several years, so the baseline for the first year of the program is zero dollars. Since the program is intended to gain compliance, and not as a revenue generator, an optimum outcome (after a predicted initial jump upwards) would be a reduction in revenue from these fines over time, as businesses become more code compliant. The Fire Department will, however, be able to develop projections of revenue from this program for future budget cycles.

The proposed program for the Fire Department is in accordance with the Mayor's March Budget Message for FY 2004-2005. Implementation of the amended fine schedule will enable the Bureau of Fire Prevention to expand its ability to provide essential public services by reducing the amount of time required for Inspectors to gain compliance from businesses operating in conflict with the law. A reduction in the number of times an Inspector must return to a facility to gain compliance has three additional outcomes. First, the Fire Prevention Bureau will become more efficient, being able to utilize Inspector field time for additional inspections. Second, businesses may see a reduction in costs, since additional re-inspections are charged by the hour.

Finally, it will also help to “level the playing field,” as chronically non-compliant businesses will no longer have an economic advantage over businesses that comply with the law.

CEQA

Not a project.



DARRYL VON RAESFELD  
Fire Chief

September 11, 2007

**Subject: Resolution Amending Administrative Citation Schedule of Fines**

Page 10

**Attachment 1**Table of Comparison of Administrative Citations Fine Amounts for  
Fire Code and Hazardous Material Violations

Violation	San Jose Fire Dept. (Current)	San Jose Fire Dept. (Proposed)	Milpitas Fire Dept.	Mountain View Fire Dept.	Palo Alto Fire Dept.
Various Violations of the Fire Code	\$25	\$500  SJ Mun. Code Chapter 17.12 & 17.68	\$500  Milpitas Municipal Code Sect. 103.4.3.1	\$500  Mt. View City Code Section 14.1/14.50	\$250 unless other wise specified. Palo Alto Mun. Code Section 15.04.012
Failure obtain a permit to store dispense, use or handle hazardous materials	\$25	\$1,000  SJ Mun. Code Chapter 17.12.700 (8001.1.1)	\$250  Milpitas Municipal Code Section 8001.3	\$1,000.  Mt. View City Code Section 24.3.0	\$1,000  Palo Alto Mun. Code Section 17.32.010
Failure to report a threatened release/dischage hazardous materials	\$25	\$500  SJ Mun. Code Chapter 17.12.820	\$1,000  Milpitas Municipal Code Section 8001.5.2.2	\$1,000  Mt. View City Code Section 24.5.0	\$1,000  Palo Alto Mun. Code Section 17.24.010
Failure to submit timely updated hazardous materials management plan	\$25	\$500  SJ Mun. Code Chapter 17.68.310	\$500  Milpitas Municipal Code Section 8001.3.2	\$750  Mt. View City Code Chapter 24	\$250  Palo Alto Mun. Code Section 17.16.010
Failure to submit timely updated hazardous materials inventory statement	\$25	\$500  SJ Mun. Code Chapter 17.68.350	\$500  Milpitas Municipal Code Section 8001.3.3	\$750  Mt. View City Code Chapter 24	\$250  Palo Alto Mun. Code Section 17.20.010

**Note 1:** City of Santa Clara has recently established an administrative citation program with default fine amount of \$50 for various failure to comply violations of the fire code. Santa Clara Fire Dept. indicates the fine amounts will be raised to \$250 -\$500, and specific violations of the Fire Code will be established in the November 2007 code adoption process. Currently, any significant violation of the Fire Code is handled by the City Attorney for criminal conviction.

**Note 2:** City of Sunnyvale Public Safety utilizes the administrative enforcement order. Santa Clara County Fire Department does not have an administrative citation program.

**Note 3:** The Cities of Phoenix, San Antonio, Seattle, Denver, San Francisco, San Diego, Sacramento, Monterey, and Los Angeles County were surveyed and either do not have an administrative citation program or enforce hazardous materials and fire code violations exclusively through the criminal citation process.

