



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: ADOPTION OF A RESOLUTION
TO AMEND THE SCHEDULE OF
ADMINISTRATIVE FINES FOR
CERTAIN CODE VIOLATIONS

DATE: June 1, 2009

Approved

Date

6/5/09

COUNCIL DISTRICT: Citywide
SNI AREA: N/A

RECOMMENDATION

It is recommended that the City Council adopt a resolution to:

A) Amend the Administrative Schedule of Fines to do the following:

1. Increase the administrative fine amount for violation of San Jose Municipal Code Section 9.54.010, discing of vacant parcels without permit, from \$25 to \$2,500 per violation;
2. Set administrative fine amounts for violation of San Jose Municipal Code Section 20.40.500, late night activity in Commercial Districts located within 150 feet of residential property, at \$250, \$500, and \$1,000 for initial and repeat violations;
3. Set administrative fine amounts for violation of San Jose Municipal Code Section 20.100.310, violation of development permit requirements, at \$250, \$500, and \$1,000 for initial and repeat violations;
4. Increase administrative fine amounts for violation of San Jose Municipal Code Section 9.44.010, smoking or allowing smoking, from \$100, \$200 and \$500 to \$250, \$500 and \$1,000 for initial and repeat violations; and
5. Increase the administrative fine amount for violation of San Jose Municipal Code Section 17.72.600, parking on an unpaved surface, from \$75 to \$100.

B) Repeal Resolution No. 74398, effective July 1, 2008.

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OUTCOME

Increasing the administrative fine for discing of vacant lands without a proper permit from \$25 to \$2,500 per violation would result in greater protection to burrowing owl habitats.

Increasing the administrative fine for engaging in prohibited late night uses and outdoor activity in the Commercial Zoning District from \$25 to \$250 for the first violation and \$500 and \$1,000 for the second and third violations would result in a decrease in nuisance activities associated with late night activities and their impacts on surrounding neighborhoods.

Establishing administrative fines of \$250, \$500, and \$1,000 for violations of development permit regulations would ensure that permit holders comply with approved permit conditions.

Increasing the administrative fine for smoking or allowing smoking in buildings open to the public from \$100, \$200 and \$500 to \$250, \$500 and \$1,000 would provide a greater disincentive to business owners to continue to allow illegal smoking in their establishments and encourage compliance with the laws against smoking in public places.

Increasing the administrative fine for parking on an unpaved surface from \$75 to \$100 per violation would encourage compliance with regulations and prevent neighborhood deterioration and harm to the environment.

EXECUTIVE SUMMARY

The Administrative Citation has proven to be an effective enforcement tool to gain compliance with provisions of the San Jose Municipal Code involving violations that are deemed to be minor or transient in nature. Code Enforcement Division staff will periodically recommend the establishment of an administrative fine or an increase in existing fine amounts for violations of such provisions to ensure that the fine is an adequate incentive to achieve compliance.

BACKGROUND

In November 1994, the City Council approved the Administrative Citation Ordinance (Ordinance No. 24725), which established administrative citations as an alternative enforcement tool to address discrete, minor and transient Code violations. The ordinance was developed to provide quick and effective enforcement tools in these situations.

On July 6, 1995, the City Council adopted Resolution No. 65950 which established the Administrative Citation Schedule of Fines. This resolution created a standard fine of \$25 for violations of the Code *unless* (emphasis added) a particular Code section provided for an alternative fine amount. The Code Enforcement Division periodically requests amendments to the Administrative Citation Schedule of Fines. Therefore, the following amendments to the Administrative Citation Schedule of Fines are proposed for consideration.

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Municipal Code Section	Description of Violation	Current Administrative Citation Fine	Proposed Administrative Citation Fine
9.54.010	Discing to vacant parcels that are over two (2) acres in size.	\$25	\$2,500
20.40.500 A & B	Late night use and activity in a Commercial District without a Condition Use Permit First violation Second violation within one year period Third violation within one year period	\$25	\$250 \$500 \$1,000
20.100.310	Failure to adhere to permit conditions involving property maintenance and performance standards First violation Second violation within one year period Third violation within one year period	No current fine	\$250 \$500 \$1,000
9.44.010	Smoking or allowing smoking in any building open to the public. First violation Second violation within one year period Third violation within one year period	\$100 \$200 \$500	\$250 \$500 \$1,000
17.72.600	Keeping, storing or parking of a trailer, boat or motor vehicle on any portion of a front yard or corner lot side yard facing a street	\$75	\$100.00

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ANALYSIS

It is the goal of the Code Enforcement Division to obtain voluntary compliance for violations of the San Jose Municipal Code. It is standard practice to provide education, outreach and a reasonable time for compliance prior to the use of administrative citations, except in cases where there is an imminent threat to life or property.

The majority of violations are resolved through voluntary compliance. In those instances where an individual or business will not voluntarily comply, then the issuance of an administrative citation, which carries a fine, is necessary in an effort to motivate compliance. However, the standard fine of \$25 is not sufficient to encourage compliance for some violations. Consequently, it is recommended that a progressive schedule of fines be adopted in lieu of the standard \$25 fine for violation of certain San Jose Municipal Code provisions. It is important to note that in the event that compliance is not achieved through the issuance of administrative citations, Code Enforcement Division staff may consider alternative enforcement tools, which include the administrative remedies process, abatement of the nuisance, or referral of the issue to the City Attorney for legal action.

Discing Restrictions

In June 2001, Ordinance No. 26419, the Discing Restriction Ordinance, was enacted by the City Council to protect burrowing owl habitats and to ensure compliance with State and Federal laws, such as the Migratory Bird Treaty Act, by placing restrictions on discing activity throughout the City. The restrictions on discing apply to vacant parcels that are over two acres in size and require property owners to maintain their parcels free of overgrown weeds and hazardous vegetation without engaging in discing activities that can be harmful to the burrowing owl, an endangered species. The City of San Jose currently contracts with the Santa Clara County Department of Agriculture and Resource Management to abate hazardous vegetation on private property, after the City Council has declared hazardous vegetation to be a nuisance, following a public hearing that affords the property owner the opportunity to protest the inclusion of their property on the Report that identifies parcels subject to weed abatement.

Property owners of vacant land are encouraged to abate hazardous vegetation, but are not permitted to disc vacant lands greater than two acres. A number of property owners voluntarily maintain their parcels rather than pay the costs of abatement by the County. Code Enforcement Division staff has received complaints that some property owners, or their contractors, have not been following the requirements of the ordinance when clearing weeds and other vegetation, in that parcels greater than two acres were being disced and, therefore, that they may have destroyed or disturbed burrowing owl habitats. The current \$25 administrative fine is not a sufficient deterrent to prevent violations of the Discing Restriction Ordinance and the possible destruction or disturbance to this endangered species. In addition, property owners have discovered that discing on parcels greater than two acres is significantly less expensive than alternative methods, such as hand cutting or mowing. An increase of the fine to \$2,500 per

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violation would act as a strong deterrent in an effort to ensure that property owners follow proper processes and regulations while maintaining their vacant parcels free of hazardous vegetation.

Code Enforcement Division staff looked at various factors in determining an appropriate fine. The State Department of Fish and Game has responsibility for citing individuals who destroy or illegally capture birds. The standard fine for killing non-game birds, including the burrowing owl, is \$2,250 for the first bird and \$380 for each additional bird. Comparatively, San Jose Municipal Code Section 7.08.400 prohibits poisoning or abusing dogs, cats, and other domestic animals. The administrative fine for violation of this Municipal Code section is \$1,000. The maximum fine allowed for any Administrative Citation is \$2,500. Since the destruction of burrowing owl habitat could potentially affect more than one bird, it is recommended that the fine be raised to the level being proposed.

Late Night Use and Activity in Commercial Districts.

Section 20.40.500 A and B of the San Jose Municipal Code restrict activity between the hours of 12:00 midnight and 6:00 a.m. in Commercial Zoning Districts, unless a Conditional Use Permit (CUP) has been obtained and approved. Since 2002, Code Enforcement Division staff has received over 200 complaints (26 during FY 2008-09) from residents who live in close proximity to commercial businesses alleging late night activity by adjacent property owners who have not obtained the requisite CUP. These complaints include activities that affect the peace and tranquility of nearby residences, and include some of the following: noisy trash pick-up, loading and unloading of deliveries, and cleaning or maintenance activities.

The current \$25 administrative fine is too small to discourage late night business activities. Compliance can be difficult to achieve if a business owner or delivery truck driver considers such a minor fine as the "cost of doing business." Establishing an appropriate fine level of \$250 for the first violation and then escalating the fine amount to \$500 and \$1,000 for the second and third violations, which occur within a 12-month period, would provide a disincentive to chronically non-compliant businesses. The proposed amended fines are in keeping with the fine amounts already established for a large number of Code violations, including graffiti, illegal signs and blight regulations.

Violation of Specific Planning Use Permit Requirements

In April 2007, the City Council adopted Resolution No. 73712, which established an administrative fine amount for any violation of the property maintenance and performance standards for Off-Sale of Alcoholic Beverage Establishments, i.e. liquor stores. This resolution further established a fine of \$1,000 for the first violation and a fine of \$2,500 for the second and subsequent violations within a 12-month period for all violations of the property maintenance or performance standards as defined and described in the resolution. The issuance of an administrative citation, and associated administrative fines, has been an effective enforcement tool in correcting code violations for Off-Sale of Alcoholic Beverage Establishments.

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The Code Enforcement Division is requesting that violations of permit conditions as outlined in Administrative, Site Development, Single-Family House, Planned Development, Special Use, Conditional Use, Variance, Exception, Sidewalk Café and Tree Removal permits, be handled in a similar manner and are proposing that administrative fines in the amount of \$1,000 for the first violation and a fine of \$2,500 for the second and subsequent violations within a 12 month period be adopted for any Planning Permit condition violation. The permit conditions subject to administrative citations would include operating past midnight, excessive noise, providing entertainment without a permit, sign code violations, and other similar conditions that create a nuisance or blighting effect in business districts or negatively impact the peace and tranquility of nearby residences.

Currently, no administrative citation fines exist because the permittee's, generally the property owners, have previously agreed to comply with these conditions when the above permits are reviewed and approved at a Planning Director's or a Planning Commission hearing or City Council meeting. As such, violations of these permit conditions are addressed through the issuance of a compliance order and the administrative remedies administrative hearing process. If not corrected by the property owner within a reasonable period of time, the violations may result in the Appeals Hearing Board, the body that oversees the administrative remedies process, imposing administrative fines in the amount of \$2,500 per day, per violation. However, the administrative process can sometimes be a lengthy process and often the property owners will continue to violate the terms of their permits while the case is pending before the Board. The ability to issue an administrative citation would assist the City in achieving more timely compliance.

Smoking Restrictions

The City of San Jose's Smoking Regulations prohibit smoking in any building open to the public. As with most ordinances, outreach and education generally will result in compliance. However, recently, the Code Enforcement Division has received several complaints where education and outreach, followed by the issuance of administrative citations to business/property owners, has not curtailed illegal smoking within the business establishments. These flagrant violations pose an unhealthy situation for the employees and customers alike, and create an unfair business practice.

Since January 2008, Code Enforcement Division staff has received twenty complaints regarding smoking in buildings open to the public. As a result of these complaints, eighteen administrative citations have been issued to five businesses. However, instead of complying with the City's Smoking Regulations, these businesses have viewed the administrative citation as a "cost of doing business." An increase in the fine amount to \$250 for the first violation and \$500 and \$1,000 for the second and third violations should establish a sufficient financial deterrent to encourage compliance.

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Parking on an Unpaved Surface

The Community Preservation Ordinance (Code Section 17.72.600) prohibits the keeping, storing or parking of a trailer, boat or motor vehicle on any portion of a front yard or corner lot side yard facing a street, except on an area that is paved. In other words, this ordinance discourages "lawn parking," which contributes to neighborhood deterioration, as well as poses harm to the environment. Code Enforcement Division staff has received over 600 complaints of parking on an unpaved surface in FY 2007-08 and issued 125 administrative citations in the same time period for a total of \$11,628.12 in fines. Staff is recommending that the fine amount be increased from \$75 per violation to \$100. Since passing of the Community Preservation Ordinance, Code Enforcement Division staff has proposed, and City Council has adopted, increases in this fine incrementally from \$25 to the current amount of \$75. Although there has been an improvement in compliance with each increase in the fine amount, we continue to issue citations for this violation. The increase in the fine amount will provide an incentive for parking legally in residential areas of the City.

CONCLUSION

The Administrative Citation process is an effective tool in achieving compliance with the San Jose Municipal Code. However, the standard fine of \$25 is not a sufficient deterrent in all instances. While it is the goal of the Code Enforcement Division to achieve voluntary compliance whenever possible, it is essential that staff have at their disposal sufficient leverage to motivate responsible parties to comply. The fines that are recommended in this memorandum are considered to be reasonable. In addition, Code Enforcement Division staff will continue to provide warning notices and an opportunity to voluntarily comply prior to the issuance of an Administrative Citation.

EVALUATION AND FOLLOW-UP

Not Applicable.

PUBLIC OUTREACH/INTEREST

Not Applicable.



Criterion 1: Requires Council action on the use of public funds equal to \$1 million or greater.

(Required: Website Posting)

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- Criterion 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)**

- Criterion 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 memo has been coordinated with the City Attorney's Office.

COST SUMMARY/IMPLICATIONS

Fines from administrative citations go into the General Fund and do not come back to the Department of Planning, Building and Code Enforcement as revenue. Although the program is intended to gain compliance and is not a significant revenue generator, there may be an increase in revenue from fines. Implementation of the amended fine schedule will enable the Code Enforcement Division to expand its ability to provide essential services by reducing the amount of time required for Inspectors to gain compliance from persons and businesses operating in conflict with the law. It will also help to "level the playing field" as chronically non-compliant persons and businesses will no longer have an economic advantage over those that comply with the law.

CEQA

Not a project.



JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Michael Hannon, Code Enforcement Official, at 277-4703.