



CITY OF PALO ALTO OFFICE OF THE CITY ATTORNEY

March 2, 2020

The Honorable City Council
Palo Alto, California

Adoption of an Ordinance Amending Chapter 1.12 (Administrative Penalties – Citations) to Provide for an Administrative Hearing upon Partial Advance Deposit of \$250 and Clarify Existing Procedures for Hearings

Recommendation

Staff recommends that the City Council adopt the attached ordinance (Attachment A) to amend five sections of Chapter 1.12 (Administrative Penalties – Citations) to update the procedures for collecting administrative penalties and administering hearings that contest Code violations, including: (a) for large administrative penalties, allowing a hearing to be requested and held upon partial advance deposit of \$250, with any additional amount of penalties subsequently upheld by the hearing officer due within 30 days of the hearing officer's decision; (b) and making various non-substantive amendments to clarify procedural requirements as described below.

Background and Discussion

The City uses administrative citations and compliance orders to enforce various sections of the Palo Alto Municipal Code ("Code"). If a citation or compliance order is issued, the Code currently requires the deposit of all penalties before a hearing can be held to contest the alleged violations.¹

The proposed amendment will retain the requirement to deposit in advance the full amount of the penalty for penalties of \$250 or less. Where penalties for a citation (or series of related citations in cases of ongoing violations) are more than \$250, a hearing may be requested and held upon partial advance deposit of \$250, with the balance of any penalties subsequently upheld by the hearing officer due within 30 days of the hearing officer's decision. The amendment will update the City's administrative hearing procedures and align them with best practices. In addition, the amendment may reduce the burden to both the public and the City of administering hardship waiver requests and will reduce the City's exposure to statutory interest in the event a large deposit is ordered to be refunded. The amendment will not affect the hearing officer's ability to impose penalties, nor will it limit or constrain the City's ability to collect large penalties, where appropriate under the Code.

¹ The Code makes an exception for any person who establishes financial inability to make the advance deposit. Any such person may request a hardship waiver. If a waiver application is filed, the Director of Administrative Services or her designee will render a decision. If the waiver is denied, the applicant has 10 days to remit the full deposit.

Separately, this amendment makes two clarifications. First, subsections (e), (f), and (g), relating to deposit waivers in Section 1.12.030 (Administrative Citation) are redundant and being deleted in favor of the same language in the section regarding deposit waivers, Section 1.12.070. Second, subsection (a) of 1.12.100 (Hearing officer's decision) requires the decision of the hearing officer within 30 days of the end of the hearing, but another section requires the decision "within a reasonable time." The amendment keeps the 30-day requirement and deletes "within a reasonable time."

Resource Impact

This Code amendment will not have a significant impact on staff resources.

Policy Implications

This Code amendment updates and clarifies existing Code requirements.

Environmental Review

Approval of this ordinance is not a project subject to review under the California Environmental Quality Act.

ATTACHMENTS:

- Attachment A - Amending Five Sections of Chapter 1.12 (Administrative Compliance Orders) of the Palo Alto Municipal Code (PDF)

Department Head: Molly Stump, City Attorney

Ordinance No. _____
Ordinance of the Council of the City of Palo Alto Amending Five Sections of
Chapter 1.12 (Administrative Compliance Orders) of the Palo Alto Municipal
Code.

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Section 1.12.030 (Administrative citation) of the Palo Alto Municipal Code is hereby amended as follows (~~striketrough~~ text is deleted, underlined text is added):

1.12.030 Administrative citation.

(a) Whenever a code enforcement officer charged with the enforcement of any provision of this code to which this chapter is applicable determines that a violation of such code provision has occurred, the code enforcement officer shall have the authority to issue an administrative citation to any person responsible for the violation.

(b) Each administrative citation shall contain the following information:

- (1) The date of the violation;
- (2) The address or a definite description of the location where the violation occurred;
- (3) The section or sections of this code violated and an abbreviated description of the acts or omissions constituting the violation;
- (4) The amount of the penalty for the code violation;
- (5) A description of the penalty payment process, including a description of the time within which and the place to which the penalty shall be paid;
- (6) A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request for hearing form to contest the administrative citation may be obtained; and
- (7) The name and signature of the citing code enforcement officer.

(c) Prior to the issuance of an administrative citation for a violation which pertains to building, plumbing, electrical, or similar structural or zoning matters that do not create an immediate danger to health or safety, the code enforcement officer shall provide a reasonable period of time not less than five business days to correct or otherwise remedy the violation.

(d) An administrative citation and all other notices required by this chapter to be served subsequent to service of a citation may be served either by personal delivery or by certified mail, postage prepaid, return receipt requested, addressed to a location reasonably calculated to give notice to the responsible

party, and shall be deemed effective on the date of personal delivery or when the certified mail is either delivered or delivery is attempted.

If the certified mail receipt is returned unsigned, then service may instead be effected by regular first class mail, postage prepaid, provided that the notice sent by regular mail is not returned by the postal service as undeliverable, and shall be deemed effective on the date three days following deposit in the mail.

Where a violation of code provisions concerning the condition of real property is involved, an administrative citation or subsequent written notices authorized by this chapter may be served by certified mail at the address as shown on the last equalized county assessment roll.

Where a violation of code provisions concerning the condition of real property is involved and personal delivery or service by certified mail upon the property owner is unsuccessful, service may be effected alternately or additionally by posting a copy of the order at a conspicuous location on the property which is the subject of the order. Where service of any notice required under this chapter is effected in compliance with the requirements of this section and with due process the asserted failure of any person to receive the notice shall not affect the validity of any proceedings taken under this chapter.

~~—(e) If the director of administrative services determines not to issue an advance deposit hardship waiver, the person shall remit the deposit to the city within ten days of the date of that decision in order to secure the hearing.~~

~~—(f) The director of administrative services shall issue a written determination listing the reasons for determining to issue or not issue the advance deposit hardship waiver. The written determination of the director of administrative services shall be final, subject only to judicial review as provided by law.~~

~~—(g) The written determination of the director of administrative services shall be served upon the person who applied for the advance deposit hardship waiver.~~

SECTION 2. Section 1.12.050 (Payment of administrative penalties) of the Palo Alto Municipal Code is hereby amended as follows:

1.12.050 Payment of administrative penalties.

(a) The administrative penalty for an administrative citation shall be paid to the city through its revenue collections official within thirty calendar days from the date the administrative citation is served, except as otherwise provided in Section 1.12.060. ~~If a hearing is requested pursuant to Section 1.12.060, the administrative penalty or portion thereof shall be deposited with the revenue collections official or a notice shall be filed with the revenue collection official that an advance deposit hardship waiver has been requested as required in Section 1.12.060 1.12.070.~~

~~(b) Any administrative citation penalty shall be refunded in accordance with Section 1.12.100 if it is determined, after a hearing, that the person charged in the administrative citation was not responsible for the violation or that there was no violation by the person charged in the administrative citation.~~

(~~e~~b) Payment of an administrative penalty under this chapter shall not bar enforcement proceedings for any continuation or repeated occurrence of any code violation that is the subject of an administrative citation.

SECTION 3. Section 1.12.060 (Hearing request) of the Palo Alto Municipal Code is hereby amended as follows:

1.12.060 Hearing request.

(a) Any recipient of an administrative citation may contest that there was a violation of the code or that the contestant is responsible for the violation by completing a request for hearing form and returning it to the revenue collection official within thirty calendar days from the date of service of the administrative citation, together with either: (1) an advance deposit of the total amount of the administrative penalty where the penalty for the administrative citation or series of related citations is \$250 or less, or a partial advance deposit of \$250 where the penalty for the administrative citation or series of citations is more than \$250; or (2) notice that a request for an advance deposit hardship waiver has been duly filed pursuant to Section 1.12.070.

(b) A request for hearing form may be obtained from the revenue collection official.

(c) The person requesting the hearing shall be notified of the time and place set for the hearing at least ten days prior to the date of the hearing.

(d) If the code enforcement officer submits an additional written report concerning the administrative citation to the hearing officer for consideration at the hearing, then a copy of this report also shall be served on the person requesting the hearing at least five days prior to the date of the hearing.

SECTION 4. Section 1.12.070 (Advance deposit hardship waiver) of the Palo Alto Municipal Code is hereby amended as follows:

1.12.070 Advance deposit hardship waiver.

(a) Any person who ~~intends to request~~ a hearing to contest an administrative citation and who claims to be financially unable to make the advance deposit of the ~~fine penalty~~ as required in Section 1.12.060 may file a request for an advance deposit hardship waiver.

(b) The request shall be filed with the director of administrative services within thirty days following the date of service of the administrative citation.

(c) The requirement of depositing ~~the full amount of the~~ the full or partial administrative penalty (or portion thereof as specified in Section 1.12.060) shall be stayed unless or until the director of administrative services makes a determination not to issue the advance deposit hardship waiver.

(d) The director of administrative services may waive the requirement of an advance deposit and issue the advance deposit hardship waiver only if the cited party submits to the director of administrative services a sworn declaration, together with any supporting evidence demonstrating to the satisfaction of the director of administrative services the person's actual financial inability to deposit ~~the full amount of the fine~~ penalty (or portion thereof as specified in Section 1.12.060) in advance of the hearing.

(e) If the director of administrative services determines not to issue an advance deposit hardship waiver, the person shall remit the full or partial deposit (as specified in Section 1.12.060) to the city within ten days of the date of that decision in order to secure the hearing.

(f) The director of administrative services shall issue a written determination listing the reasons for determining to issue or not issue the advance deposit hardship waiver. The written determination of the director of administrative services shall be final, subject only to judicial review as provided by law.

(g) The written determination of the director of administrative services shall be served upon the person who applied for the advance deposit hardship waiver.

SECTION 5. Section 1.12.100 (Hearing officer's decision) of the Palo Alto Municipal Code is hereby amended as follows:

1.12.100 Hearing officer's decision.

(a) After considering all the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision to uphold or cancel the administrative citation and the reasons for that decision. The decision of the hearing officer shall be issued within thirty days following completion of the hearing. The decision of the hearing officer shall be final upon service on the responsible party, subject only to judicial review as allowed by law.

(b) The hearing officer shall consider any written or oral evidence submitted at the hearing consistent with ascertainment of the facts regarding the violation and compliance with the order.

(c) ~~Within a reasonable time following the conclusion of the hearing~~ the time specified in subsection (a) of this Section 1.12.100, the hearing officer shall make findings and issue a decision regarding:

- (1) The existence of the violation;
- (2) The extent of compliance, if any ~~with the order.~~

(d) The hearing officer shall issue written findings on each violation. The findings shall be supported by evidence received at the hearing.

(e) If the hearing officer determines from a preponderance of the evidence that the contestant committed the violation charged in the administrative citation, then so much of the amount of the administrative penalty ~~on deposit with the city~~ as is assessed by the hearing officer shall become final (subject only to appellate remedies provided below) and shall become a debt to the city collectable through the processes provided herein. If only a portion of the administrative penalty assessed by the hearing officer was deposited prior to hearing, the balance shall be paid to the city through its revenue collections official within thirty calendar days from the date the hearing officer's written decision is served on the responsible party. The hearing officer may alternatively set forth in the decision a payment schedule for the administrative penalty as well as for payment of any administrative costs assessed by the hearing officer.

(f) If the hearing officer determines that the administrative citation should be upheld and the administrative penalty has not been deposited pursuant to an advance deposit hardship waiver, the hearing officer shall set forth in the decision a payment schedule for the administrative penalty as well as for payment of any administrative costs assessed by the hearing officer.

(g) If the hearing officer determines that the administrative citation should not be sustained, then the hearing officer shall issue a decision canceling the administrative citation, and if the administrative penalty or portion thereof was deposited with the city, then the city shall promptly refund the ~~amount of the deposited administrative penalty~~ deposited amount, together with interest at the average rate earned on the city's portfolio for the period of time that the ~~administrative penalty~~ deposited amount was held by the city.

(h) The recipient of the administrative citation shall be served with a copy of the hearing officer's written decision within ten calendar days following its issuance.

(i) The employment, performance evaluation, compensation, and benefits of the hearing officer shall not be directly or indirectly conditioned upon the amount of administrative citation penalties upheld by the hearing officer.

SECTION 6. Severability. If any provision, clause, sentence or paragraph of this ordinance, or the application to any person or circumstances, shall be held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this ordinance are hereby declared to be severable.

SECTION 7. CEQA. The City Council finds and determines that this Ordinance is not a "project" within the meaning of section 15378 of the California Environmental Quality Act (CEQA) Guidelines because it has no potential for resulting in physical change in the environment, either directly or ultimately.

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SECTION 8. Effective Date. This ordinance shall be effective on the thirty-first date after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST:

APPROVED:

City Clerk

Mayor

APPROVED AS TO FORM:

City Attorney or Designee

City Manager

Director of Administrative Services
Department