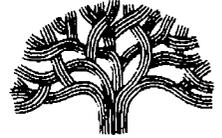


2017 JUN 29 PM 7:28

CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
Barbara J. Parker
City Attorney

(510) 238-3601
FAX: (510) 238-6500
TTY/TDD: (510) 238-3254

July 11, 2017

Community and Economic Development Committee
Oakland City Council
One Frank H. Ogawa Plaza, Second Floor
Oakland, CA 94612

Re: Ordinance Enacting Oakland Municipal Code Chapter 1.10 (Civil Remedies For Municipal Code Violations) And Amending Chapter 1.08 (Civil Penalties) And Chapter 1.12 (Administrative Citations) To Clarify And Strengthen The City's Remedies And Penalties For Violations Of The Oakland Municipal Code

Dear Chairperson Annie Campbell-Washington and Members of the Committee:

RECOMMENDATION

City Attorney Barbara J. Parker recommends that the City Council adopt the referenced ordinance which clarifies our Office's ability to obtain civil penalties and remedies for violations of the Oakland Municipal Code (hereafter sometimes referred to as the "OMC").

EXECUTIVE SUMMARY

This report summarizes the provisions of the referenced ordinance which will clarify the City Attorney's ability to obtain civil penalties in enforcement of Oakland's health and safety laws—in particular and especially those related to unsafe housing and Oakland's minimum wage.

BACKGROUND/LEGISLATIVE HISTORY

The ability to assess civil penalties for violations of Oakland law is an indispensable tool to enforce a host of Oakland's most important community protections, including, but not limited to protections for health and safety, minimum wage, illegal dumping, public nuisance, and violations related to unsafe housing.

Re: Ordinance Enacting Oakland Municipal Code Chapter 1.10 (Civil Remedies For Municipal Code Violations) And Amending Chapter 1.08 (Civil Penalties) And Chapter 1.12 (Administrative Citations) To Clarify And Strengthen The City's Remedies And Penalties For Violations Of The Oakland Municipal Code

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Many violations of the aforesaid provisions can be more effectively enforced and remedied through civil actions by the City Attorney, rather than through an administrative process; and the ability to obtain penalties is crucial to prevent unlawful behavior. Civil penalties provide a disincentive for potential violators to take advantage of Oakland's residents that simple recovery fees and costs, cannot. Such disincentives are especially important in cases related to tenant protection, minimum wage, and health and safety ordinances, for which the City Attorney is a primary enforcer of the OMC, or with respect to which the City Attorney may bring a civil action to obtain injunctive or other relief; and it is more effective and efficient to include civil penalties in such actions, rather than as a separate administrative action.

Currently, the Oakland Municipal Code allows for the assessment of civil penalties of up to \$1,000 per violation of a variety of Oakland codes and state public nuisance laws. The City Attorney has always taken the position, based on the language of the current OMC, that assessment of civil penalties is available in litigation as well as through administrative action. However, the text of Chapter 1.08 (Civil Penalties) and 1.12 (Administrative Citations) are somewhat contradictory because they both reserve the right to obtain civil penalties in civil actions and *also* describe the assessment of such citations as "administrative." This has led to some confusion when the City Attorney rightly seeks civil penalties in court, as opposed to in an administrative, action.

This Ordinance therefore clarifies the City Attorney's ability to obtain civil penalties, and thereby to robustly enforce Oakland's protections for its most vulnerable citizens. This Ordinance also will assist the City Attorney in obtaining for City departments the costs and fees associated with remedying violations of the OMC.

ANALYSIS

The Ordinance does three main things. First, the Ordinance creates a new Chapter—1.10—that makes more explicit the City Attorney's ability to seek and obtain civil penalties, fees, and costs through litigation. In doing so, the Ordinance mirrors the preexisting scope of the authority to seek those remedies under Chapters 1.08 and 1.12. The new Chapter also makes clear that the City Attorney does not displace any other remedies that exist, including administrative actions by City staff (such as code enforcement or nuisance staff), by seeking a remedy through litigation.

Second, the Ordinance amends Chapters 1.08 and 1.12 to clarify their application to all violations of the OMC that provide for civil penalties within the text of the specific enactment.

July 11, 2017

Re: Ordinance Enacting Oakland Municipal Code Chapter 1.10 (Civil Remedies For Municipal Code Violations) And Amending Chapter 1.08 (Civil Penalties) And Chapter 1.12 (Administrative Citations) To Clarify And Strengthen The City's Remedies And Penalties For Violations Of The Oakland Municipal Code

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Third, the Ordinance amends Chapters 1.08 and 1.12 to clarify that the notification procedures that apply to *administrative* actions in order to satisfy due process standards do not apply to civil litigation. This is because the judicial process involved in civil litigation already must satisfy the standards of due process, and in many ways surpasses the notification procedures of the administrative process outlined by 1.08 and 1.12.

FISCAL IMPACT

The Ordinance would not have a negative fiscal impact and it has the potential to have a positive fiscal impact because it will clarify that City Departments have the right to recover costs and fees associated with remedying violations of the OMC. It also will streamline and potentially save resources because it would clarify that the City Attorney can secure civil penalties in court as part of a civil action, rather than having to separately seek the penalties administratively.

COORDINATION

We have advised City staff of the proposed Ordinance.

SUSTAINABLE OPPORTUNITIES

Economic: The enforcement of the OMC through civil actions and assessing civil penalties will improve the quality of Oakland's housing, the health of its residents, thereby supporting economic development.

Environmental: The amendments will assist the City in addressing blight, public nuisances and health and safety violations all of which negatively impact the environment and the health of our residents.

Social Equity: One of the main purposes of the provisions of the OMC is to protect and advance the rights of all Oaklanders, and in particular, our most vulnerable residents, regarding health and safety, minimum wage, illegal dumping, public nuisance, and violations related to unsafe housing. Clarifying and strengthening the civil remedies and penalties for violations of the OMC, will enhance the City's ability to recover costs and fees, impose civil penalties and remedies, thereby serving the goal of social equity.

Chairperson Annie Campbell-Washington and Members of the Committee
July 11, 2017

**Re: Ordinance Enacting Oakland Municipal Code Chapter 1.10 (Civil Remedies For
Municipal Code Violations) And Amending Chapter 1.08 (Civil Penalties) And
Chapter 1.12 (Administrative Citations) To Clarify And Strengthen The City's
Remedies And Penalties For Violations Of The Oakland Municipal Code**

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ACTION REQUESTED OF THE COMMITTEE AND THE CITY COUNCIL

The City Attorney requests that the Committee take the following action:

- Pass a motion recommending that the Council adopt the above Ordinance and forward the Ordinance to the Council for its consideration.

The City Attorney further requests that the Council adopt the Ordinance.

Respectfully Submitted,



BARBARA J. PARKER
City Attorney

Attorneys Assigned:
Erin Bernstein

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CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE ENACTING OAKLAND MUNICIPAL CODE CHAPTER 1.10 (CIVIL REMEDIES FOR MUNICIPAL CODE VIOLATIONS) AND AMENDING CHAPTER 1.08 (CIVIL PENALTIES) AND CHAPTER 1.12 (ADMINISTRATIVE CITATIONS) TO CLARIFY AND STRENGTHEN THE CITY'S REMEDIES AND PENALTIES FOR VIOLATIONS OF THE OAKLAND MUNICIPAL CODE

WHEREAS, the Oakland Municipal Code provides for administrative and penal enforcement of Municipal Code violations, and allows for civil enforcement, but does not provide specific standards for civil enforcement and remedies; and

WHEREAS, many Municipal Code violations can be more effectively enforced and remedied through civil actions brought by the City Attorney and the City Attorney currently brings such actions; and

WHEREAS, the enforcement of health and safety laws in particular and especially those related to unsafe housing, is of paramount importance for the general welfare of the residents of the City of Oakland; and

WHEREAS, the City Attorney is a primary enforcer of the City's health, safety, minimum wage, Tenant Protection Ordinance, and other municipal codes; and

WHEREAS, the ability of the City Attorney to obtain justice for the City's residents where health, safety, or other legal protections and municipal codes are compromised is essential to creating a disincentive to take advantage of Oakland's residents; and

WHEREAS, the City's ability to recover costs, fees, and penalties incurred by the legal actions is an essential exercise of the City's police power that will allow the City to continue expending substantial resources to enforce the law against dangerous, predatory, and unethical actors; and

WHEREAS, clarifying and strengthening the availability of civil and administrative remedies will add to the City's ability to enforce its laws; and

WHEREAS, this Ordinance will clarify the City Attorney's existing power to obtain civil penalties and other remedies and also clarify administrative penalties and remedies;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this Ordinance.

SECTION 2. Oakland Municipal Code Chapter 1.10 is hereby enacted as set out in Exhibit A attached hereto and incorporated herein.

SECTION 3. Oakland Municipal Code Chapter 1.08 is hereby amended as set out in Exhibit B attached hereto and incorporated herein. Added provisions are shown in double underline and deletions are shown as ~~strikethrough~~.

SECTION 4. Oakland Municipal Code Chapter 1.12 is hereby amended as set out in Exhibit C attached hereto and incorporated herein. Added provisions are shown in double underline and deletions are shown as ~~strikethrough~~.

SECTION 5. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

SECTION 6. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 7. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN, KALB, KAPLAN, AND
PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Date of Attestation: _____

EXHIBIT A

Chapter 1.10 - CIVIL REMEDIES

1.10.010 - Purpose.

The purpose of this Chapter is to clarify the City's ability to bring civil actions in Superior Court in order to seek civil penalties, administrative citations, recovery of administrative and other costs, and any damages to the City that the City incurs as a result of violations of law. This Chapter affords the City with additional resources for vigorous civil law enforcement, and will thereby enhance the City's ability to protect the health, safety, and general welfare of its residents.

1.10.020 - City Attorney Authority.

- A. The City Attorney is authorized to bring a civil action in order to seek any or all of the following against a party who violates any law, including any City ordinance or regulation, unless sole and exclusive enforcement authority has been awarded to a different agent or agency:
1. Civil Penalties or Administrative Citations under the same standards as may be taken administratively under O.M.C Chapters 1.08 and 1.12 and in lieu of actions taken administratively pursuant those Chapters;
 2. Recovery of administratively assessed Civil Penalties or Administrative citations;
 3. Recovery of any unpaid taxes or fees assessed by the City by or through its agencies or employees;
 4. Recovery of the City's costs, including the costs of assessing civil penalties or administrative citations;
 5. Recovery of any damages incurred by the City as a result of such violation;
 6. Recovery of the City's costs and reasonable attorney's fees incurred in bringing the civil action.
 7. Attorney's Fees.
 - a. For any cause of action in a civil action or special proceeding that is not based on nuisance, as defined in state, local, or common law, the City may seek an award of attorney's fees and costs.
 - b. For any cause of action in a civil action or special proceeding that is based on nuisance, as defined in state, local, or common law, the City may, at the initiation of the proceeding, seek an award of attorney's fees for that cause of action. If the City seeks an award of attorney's fees, the award shall be made to the prevailing party. Provided however, that no award may be made to a prevailing party that exceeds the amount of reasonable attorney's fees incurred by the City in the action or proceeding.

- B. In lieu of bringing a civil action, the City Attorney may refer the matter to the appropriate City department for administrative action.
- C. Any amounts recovered by the City Attorney shall be credited within the City and shall accrue to the account of the responsible department.

1.10.030 - Remedies not exclusive.

Remedies under this Chapter are in addition to and do not supersede or limit any and all other remedies, civil, criminal, or administrative, including injunctive or other equitable relief. The remedies provided for herein are cumulative and not exclusive of other remedies, including actions by the City administration.

1.10.040 - Implementation.

The City Attorney is authorized to develop any procedures, rules, or regulations to implement this Chapter.

EXHIBIT B

Chapter 1.08 - CIVIL PENALTIES

1.08.010 - Purpose.

The purpose of this chapter is to provide for the protection, health, safety, and general public welfare of the residents of the city and to preserve the livability, appearance, property values, and social and economic stability of the city by providing an alternative method of code enforcement to effect abatement of violations of the laws, codes, ordinances and regulations identified in this chapter.

1.08.020 - Scope.

A. This chapter authorizes the administrative assessment of civil penalties to effect abatement of:

1. Any violations of provisions of the following Oakland Municipal Codes: Oakland Building Code (OMC Chapter 15.04), the Oakland Housing Code (OMC Chapter 15.08), Uniform Fire Code (OMC Chapter 15.12), Fire Damaged Area Protection & Improvement Code (OMC Chapter 15.16) Bedroom Window Security Bar & Smoke Detector Permit Code (OMC Chapter 15.64), Oakland Planning Code (OMC Title 17), Transient Occupancy Tax Code (OMC Chapter 4.24), Hotel Rates & Register Code (OMC Chapter 5.34), Animal Code (OMC Title 6), Health & Safety Code (OMC Title 8), Public Peace, Morals and Welfare Code (OMC Title 9), Vehicles and Traffic Code (OMC Title 10), Streets, Sidewalks & Public Places Code (OMC Title 12), Creek Protection, Storm Water Management and Discharge Control Code (OMC Chapter 13.16), Affordable Housing Impact Fees (OMC Chapter 15.72), Transportation and Capital Improvements Impact Fees (OMC Chapter 15.74), and the Oakland Sign Code (OMC Chapter 14), or any other Oakland Municipal Code that provides for a civil penalty for a violation; or,
2. The occurrence of anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, which affects-at-the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; or
3. The occurrence of any public nuisance as known at common law or in equity jurisprudence, or

4. The violation of any Oakland, state, or federal law or regulations under which such violation is deemed a public nuisance; or
 5. The violation of any Oakland Municipal Code provision that is punishable as a misdemeanor pursuant to Chapter 1.28 or a specific provision of this Code.
- B. Civil penalties established in this chapter are in addition to any other administrative or legal remedy which may be pursued by the city to address violations of the codes and ordinances identified in this chapter, including a civil lawsuit pursuant to Chapter 1.10.

1.08.030 - Violations.

- A. Violation. A violation shall exist whenever any provision of the codes and ordinances identified in this chapter has been violated and or the real property or structure thereon identified with the violation has been declared and remains a public nuisance.
- B. Public Nuisance. For the purposes of this chapter, a public nuisance shall exist whenever a condition on a property is maintained in violation of codes and ordinances identified in this Chapter, or in any other provision of the Oakland Municipal Code or ordinance that declares the condition or conduct to be a public nuisance, or in violation of California Civil Code Sections 3479 and 3480, or at common law or in equity jurisprudence. A public nuisance shall also exist whenever a condition so identified is corrected but recurs, and continues as a recurrent problem.
- C. Responsible Department. The responsible department shall be the city department, its Director or Deputy Director, or other person so designated either by the City ~~Manager~~Administrator or code or ordinance as responsible for enforcement of the provisions of the codes and ordinances identified in this chapter.
- D. Responsible Person. The responsible person shall be a natural person, heirs, executors, administrators, or assigns, firm, partnership, or corporation, its heirs or their successors or assigns, or the agent of any of the aforesaid, responsible for the creation, existence, commission, and/or maintenance of a violation of the codes and ordinances identified in this chapter, and may include a lessee or occupant of a property, in addition to the property owner.

1.08.040 - Authority.

- A. Whenever conditions upon a property or structure thereon constitute a major violation as defined in this chapter, or the violation of a provision of the Oakland Municipal Code is punishable as a misdemeanor, administrative civil penalties may be assessed to affect abatement.

- B. The City Manager Administrator, or his or her designee, is authorized to assess civil penalties administratively in accordance with the procedures established in this chapter.
- C. The responsible person(s) creating, committing, condoning, or maintaining a major violation of any provision of the codes and ordinances identified in this chapter shall be subject to civil penalties as established in this chapter.
- D. Each and every day a major violation of any provision of the codes and ordinances identified in this chapter exists shall constitute a separate and distinct offense.
- E. Separate civil penalties may be assessed for separate major violations or separate dates of occurrence.
- F. Full or partial reimbursement or recovery of civil penalties and administrative expenses shall not excuse the failure to correct the major violations wholly and permanently nor shall it preclude the assessment of additional civil penalties or other abatement actions by the city.
- G. Civil penalties, ~~and~~ related administrative fees and expenses, including attorneys' fees, shall accrue to the account of the responsible department and may be recovered by all appropriate legal means, including but not limited to nuisance abatement lien and special assessment/priority lien of the general tax levy, or by civil and small claims action brought by the city, or both.

1.08.050 - Notification.

- A. Whenever civil penalties are administratively assessed, a notification ~~of the abatement action~~ shall be served upon the responsible person and, as applicable, to any other party revealed by public records to have record title or similar legal interest in the property. Such notification may be served in conjunction with notification of other actions by the city to abate the violation.
- B. The assessment notice shall be served by one or more of the following methods:
 1. Personal delivery with acknowledged receipt;
 2. Certified mail with return receipt requested to the last known mailing address;
 3. Regular mail with an affidavit of service certifying to the time and manner that such notification was sent placed in the files of the department assessing the penalty; or
 4. Constructive public notification, including but not limited to the following:
 - a. Publication in a newspaper of general circulation, or
 - b. ~~Filing of an affidavit with the Office of the City Clerk certifying to the time and manner in which such notification was sent by regular mail, or~~
 - c. Conspicuous posting on or in the vicinity of the property.

- C. Failure to serve such person(s) or failure of such person(s) to receive timely notification shall not affect in any manner the validity of any abatement actions taken or procedures conducted as established in this chapter.
- D. The assessment notice shall minimally identify the following factors:
 - 1. The provisions of the code or ordinance violated and the descriptive nature of the major violations;
 - 2. The locations of the major violations and the dates of occurrence;
 - 3. The remedial actions required to correct the violations wholly and permanently and the time constraints for commencing and completing the corrections;
 - 4. The dollar amount and rate of recurrence and duration of civil penalties;
 - 5. The dates when civil penalties will begin to accrue and will cease;
 - 6. The criteria used in determining the amount and rate of recurrence and duration of civil penalties;
 - 7. Other consequences, as applicable, should the violations not be wholly and permanently corrected in accordance with the terms and conditions and time constraints identified; and
 - 8. The procedures for obtaining an administrative hearing regarding the assessment of civil penalties.
- E. The notification procedures set out in this subsection do not apply to civil litigation taken by the City Attorney, only notification and service requirements for civil actions are required.

1.08.060 - Assessment.

- A. The City Manager Administrator, or his or her designee, is authorized to establish a schedule of violations and assessments or similar guidelines for assessing the amount, rate of recurrence, and duration of administratively assessed civil penalties. For actions taken by the City Attorney, pursuant to Chapter 1.10, the City Attorney shall determine the amount to be assessed for each violation.
- B. Civil penalties, excluding accruing interest, shall not be assessed at more than one thousand dollars (\$1,000.00) each day nor more than three hundred sixty five thousand dollars (\$365,000.00) cumulatively each calendar year for an individual parcel or separate structure thereon for any related series of major violations.
- C. The assessment of civil penalties may begin to accrue on the date of initial occurrence of the violation, as identified by the city.
- D. The assessment of civil penalties shall cease when all major violations are wholly and permanently corrected.
- E. Civil penalties shall be assessed based upon the following factors:
 - 1. The duration and frequency of recurrence of the major violation;

2. The detrimental effects of the major violation on the occupants of the property and the surrounding neighborhood and the community at large;
3. The history of compliance efforts by the responsible person to correct the major violation wholly and permanently;
4. The viability of the civil penalty to effect abatement of the major violation wholly and permanently;
5. Other factors that serve justice.

1.08.070 - Administrative expenses and Attorney's Fees.

A. Administrative Expenses. Administrative costs, charges, fees, and interest shall be as established in the master fee schedule of the city.

B. Attorney's Fees.

1. For any cause of action in a civil action or special proceeding that is based on nuisance, as defined in state, local, or common law, the City may, at the initiation of the proceeding, seek an award of attorney's fees for that cause of action. If the City seeks an award of attorney's fees, the award shall be made to the prevailing party. Provided however, that no award may be made to a prevailing party that exceeds the amount of reasonable attorney's fees incurred by the City in the action or proceeding.
2. For any administrative proceeding that is not for a nuisance violation, the City may seek an award of attorney's fees and costs.

1.08.080 - Administrative hearing.

A. For civil penalties that are assessed administratively, ~~t~~The responsible person(s) may request an administrative hearing to adjudicate the assessment of civil penalties by filing such request in writing with the City Manager, or his or her designee, pursuant to standards and procedures established in the Oakland Housing Code except that alternate or additional standards may be promulgated by the City Manager, or his or her designee, for requesting an administrative hearing regarding the assessment of civil penalties for violations of codes and ordinances other than the Oakland Housing Code.

B. The City Manager Administrator, or his or her designee, is authorized to establish standards and procedures for conducting an administrative hearing and evaluating evidentiary testimony and either affirming the assessment of civil penalties or remanding for further determination, pursuant to standards and procedures established in the Oakland Housing Code, Section 15.08.350C, except that alternate or additional standards and procedures may be promulgated by the City Manager, or his or her designee, for conducting an administrative hearing and evaluating evidentiary testimony regarding the violation of codes and ordinances other than the Oakland Housing Code.

- C. In all instances, the determination regarding civil penalties resulting from the administrative hearing shall be final and conclusive.
- D. The City ~~Manager~~ Administrator, or his or her designee, is authorized to establish standards and procedures for adjustment of civil penalties previously assessed for extraordinary circumstances which are expressly demonstrated to serve the best interests of the city.

1.08.090 - Remedies not exclusive.

Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive. The enforcement official or City Attorney shall have the discretion to select a particular remedy to further the purposes and intent of the chapter, depending on the particular circumstances. The enforcement official's or City Attorney's decision to select a particular remedy is not subject to appeal.

EXHIBIT C

Chapter 1.12 - ADMINISTRATIVE CITATIONS

1.12.010 - Purpose.

The purpose of this chapter is to provide for the protection, health, safety, and general public welfare of the residents of the City and to preserve the livability, appearance, property values, and social and economic stability of the city by providing an alternative method of code enforcement to effect abatement of violations of the laws, codes, ordinances and regulations identified in this Chapter.

1.12.020 - Scope.

A. This chapter authorizes the administrative assessment of citations to effect abatement of:

1. Any violations of the following provisions of the Oakland Municipal Code: the Oakland Building Code (CIVIC Chapter 15.04), the Oakland Housing Code (OMC Chapter 15.08), Uniform Fire Code (CIVIC Chapter 15.12), Fire Damaged Area Protection & Improvement Code (CIVIC Chapter 15.16) Bedroom Window Security Bar & Smoke Detector Permit Code (CIVIC Chapter 15.64), Oakland Planning Code (CIVIC Title 17), Oakland Sign Code (OMC Chapter 146), Transient Occupancy Tax Code (OMC Chapter 4.24), Unattended Donation/Collection Boxes (OMC Chapter 5.19), Hotel Rates & Register Code (CIVIC Chapter 5.34), Animal Code (OMC Title 6), Health & Safety Code (OMC Title 8), Public Peace, Morals and Welfare Code (OMC Title 9), Vehicles and Traffic Code (OMC Title 10), Streets, Sidewalks & Public Places Code (OMC Title 12) and Creek Protection, Storm Water Management and Discharge Control Code (OMC Chapter 13.16) or any other Oakland Municipal Code that provides for an administrative citation for a violation; or
2. The occurrence of anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; or
3. The occurrence of any public nuisance as known at common law or in equity jurisprudence.
4. The violation of any Oakland, state, or federal law or regulations under which such violation is deemed a public nuisance.
5. The violation of any Oakland Municipal Code provision that is punishable as an infraction pursuant to Chapter 1.28 or a specific provision of this Code.

- B. Administrative citations established in this chapter are in addition to any other administrative or legal remedy which that may be pursued by the city to address violations of the codes and ordinances identified in this chapter, including a civil lawsuit pursuant to Chapter 1.10.

1.12.030 - Violations.

- A. Violation. A violation shall exist whenever any provision of the codes and ordinances identified in this chapter has been violated or the real property or structure thereon identified with the violation has been declared and remains a public nuisance.
- B. Public Nuisance. For the purposes of this chapter, a public nuisance shall exist whenever a condition on a property is maintained in violation of codes and ordinances identified in this eChapter, or in any other provision of the Oakland Municipal Code or ordinance that declares the condition or conduct to be a public nuisance, or in violation of California Civil Code Sections 3479 and 3480, or at common law or in equity jurisprudence. A public nuisance shall also exist whenever a condition so identified is corrected but recurs, and continues as a recurrent problem.
- C. Responsible Department. The responsible department shall be the city department, its Director or Deputy Director, or other person so designated either by the City ~~Manager~~Administrator or code or ordinance as responsible for enforcement of the provisions of the codes and ordinances identified in this chapter.
- D. Responsible Person. The responsible person shall be a natural person, heirs, executors, administrators, or assigns, firm, partnership, or corporation, its heirs or their successors or assigns, or the agent of any of the aforesaid, responsible for the creation, existence, commission, and/or maintenance of a violation of the codes and ordinances identified in this chapter, and may include a lessee or occupant of a property, in addition to the property owner.

1.12.040 - Authority.

- A. Whenever any provision of the codes and ordinances identified in this eChapter, or the violation of a provision of the Oakland Municipal Code is punishable as a misdemeanor, has been violated, administrative citations may be assessed to affect abatement
- B. The City ~~Manager~~Administrator, or his or her designee, is authorized to assess citations administratively, in accordance with the procedures established in this chapter.
- C. The responsible person(s) creating, committing, condoning, or maintaining a violation of any provision of the codes and ordinances identified in this chapter shall be subject to administrative citations as established in this chapter.

- D. Each and every day a violation of any provision of the codes and ordinances identified in this chapter exists shall constitute a separate and distinct offense.
- E. Separate administrative citations may be issued for separate violations or separate dates of occurrence.
- F. Full or partial reimbursement or recovery of administrative citations and administrative expenses shall not excuse the failure to correct violations wholly and permanently nor shall it preclude the assessment of additional administrative citations or other abatement actions by the city.
- G. Administrative citations and related administrative expenses, including attorneys' fees, shall accrue to the account of the responsible department and may be recovered by all appropriate legal means, including but not limited to nuisance abatement lien and special assessment/priority lien of the general tax levy, or civil and small claims action brought by the city, or both

1.12.050 - Notification.

- A. Whenever administrative citations are issued, notification shall be served on the responsible person and, as applicable, to any other party revealed by public records to have record title or similar legal interest in the property. Such notification may be served in conjunction with notification of other actions by the city to abate the violation.
- B. The notification shall be served by one or more of the following methods:
 - 1. Personal delivery with acknowledged receipt; or
 - 2. Certified mail with return receipt requested to the last known mailing address; or
 - 3. Regular mail with an affidavit of service certifying to the time and manner that such notification was sent placed in the files of the department assessing the penalty; or
 - 4. Constructive public notification, including but not limited to the following:
 - a. Publication in a newspaper of general circulation, or
 - ~~b. Filing of an affidavit with the Office of the City Clerk certifying to the time and manner in which such notification was sent by regular mail, or~~
 - b. Conspicuous posting on or in the vicinity of the property.
- C. Failure to serve such person(s) or failure of such person(s) to receive timely notification shall not affect in any manner the validity of any abatement actions taken or procedures conducted as established in this chapter.
- D. The notification shall minimally identify the following factors:
 - 1. The provisions of the code or ordinance violated and the descriptive nature of the violations; and
 - 2. The locations of the violations and the dates of occurrence; and

3. The remedial actions required to correct the violations wholly and permanently and the time constraints for commencing and completing the corrections; and
4. The dollar amount and rate of recurrence and duration of administrative citations; and
5. The dates when administrative citations will begin to accrue and will cease; and
6. Other consequences, as applicable, should the violations not be wholly and permanently corrected in accordance with the terms and conditions and time constraints identified; and
7. The procedures for obtaining an administrative hearing regarding the assessment of administrative citations.

E. The notification procedures set out in this subsection do not apply to civil litigation taken by the City Attorney, only notification and service requirements for civil actions are required.

1.12.060 - Assessment.

- A. The City Manager Administrator, or his or her designee, is authorized to establish a schedule of violations and assessments or similar guidelines for issuing administrative citations. For actions taken by the City Attorney, pursuant to Chapter 1.10, the City Attorney shall determine the amount to be assessed for each violation.
- B. Except as otherwise provided herein, administrative citations, excluding accruing interest, shall not be assessed at more than five thousand dollars (\$5,000.00) cumulatively per calendar year for an individual parcel or separate structure thereon for any related series of violations. The citation amount shall not exceed one hundred dollars (\$100.00) for the first issuance, two hundred fifty dollars (\$250.00) for the second issuance, and five hundred dollars (\$500.00) for all subsequent issuances for any related series of violations occurring within a calendar year. For offenses involving violations of Oakland Municipal Code Sections 5.19.170(F)(2), 8.28.060, 8.28.070, 8.28.150, 8.28.160, 13.16.100 and 13.16.110, administrative citations shall not exceed seven hundred fifty dollars (\$750.00) for the first issuance, one thousand dollars (\$1000.00) for the second issuance, and one thousand five hundred dollars (\$1500.00) for all subsequent issuances for any related series of violations occurring within a calendar year.
- C. The issuance of administrative citations may begin to accrue on the date of initial occurrence of the violation, as identified by the city.
- D. The issuance of administrative citations shall cease when all violations are wholly and permanently corrected.

E. Administrative citations shall be issued in accordance with the following factors:

1. The duration and frequency of recurrence of the violation;
2. The detrimental effects of the violation on the occupants of the property and the surrounding neighborhood and the community at large;
3. The history of compliance efforts by the responsible person to correct the violation wholly and permanently;
4. The viability of the administrative citation to effect abatement of the violation wholly and permanently;
5. Other factors that serve justice.

1.12.070 - Administrative expenses and Attorney's Fees.

A. Administrative Expenses. Administrative costs, charges, fees, and interest shall be as established in the master fee schedule of the city.

B. Attorney's Fees.

1. For any cause of action in a civil action or special proceeding that is based on nuisance, as defined in state, local, or common law, the City may, at the initiation of the proceeding, seek an award of attorney's fees for that cause of action. If the City seeks an award of attorney's fees, the award shall be made to the prevailing party. Provided however, that no award may be made to a prevailing party that exceeds the amount of reasonable attorney's fees incurred by the City in the action or proceeding.
2. For any administrative proceeding that is not a for a nuisance violation, the City may seek an award of attorney's fees and costs.

1.12.080 - Administrative appeal.

A. For administrative citations that are administratively assessed, The responsible person(s) may request an administrative hearing to adjudicate the issuance of administrative citations by filing such request in writing with the City Manager, or his or her designee, pursuant to standards and procedures established in the Oakland Housing Code, Section 15.08.350C, except that alternate or additional standards and procedures may be promulgated by the City Manager, or his or her designee, for requesting an administrative hearing regarding the issuance of administrative citations for violations of codes and ordinances other than the Oakland Housing Code.

B. City Manager Administrator, or his or her designee, is authorized to establish standards and procedures for conducting an administrative hearing and evaluating evidentiary testimony and either affirming the issuance of administrative citations or remanding for further consideration, pursuant to standards and procedures established in the Oakland Housing Code, except that alternate or additional standards and procedures for conducting an administrative hearing and evaluating evidentiary testimony may be promulgated by the City

Manager Administrator, or his or her designee, for codes and ordinances other than the Oakland Housing Code.

- C. In all instances, the determination regarding administrative citations resulting from the administrative hearing shall be final and conclusive.
- D. The City Manager Administrator, or his or her designee, is authorized to establish standards and procedures for adjustment of administrative citations previously issued for extraordinary circumstances which are expressly demonstrated to serve the best interests of the residents of the City.

1.12.090 - Remedies not exclusive.

Remedies under this Chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive. The enforcement official or City Attorney shall have the discretion to select a particular remedy to further the purposes and intent of the chapter, depending on the particular circumstances. The enforcement official's or City Attorney's decision to select a particular remedy is not subject to appeal.

NOTICE AND DIGEST

**ORDINANCE ENACTING OAKLAND MUNICIPAL CODE CHAPTER 1.10
(CIVIL REMEDIES FOR MUNICIPAL CODE VIOLATIONS) AND
AMENDING CHAPTER 1.08 (CIVIL PENALTIES) AND CHAPTER 1.12
(ADMINISTRATIVE CITATIONS) TO CLARIFY AND ENHANCE REMEDIES
AND PENALTIES FOR VIOLATIONS OF THE OAKLAND MUNICIPAL
CODE**

This ordinance would enact a new chapter in the Oakland Municipal Code, Chapter 1.10 (Civil Remedies for Municipal Code Violations, and amend two existing chapters: Chapter 1.08 and 1.12