APPROVED AS TO FORM AND LEGALITY

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER UNGER

ORDINANANCE AMENDING OAKLAND MUNICIPAL CODE 1.08 TO RAISE MAXIMUM CIVIL PENALTIES FOR NUISANCE TO UP TO $2,500 PER DAY FOR REPEATED OR CONTINUING VIOLATIONS, AND UP TO $10,000 PER DAY FOR UNABATED NUISANCES ON REAL PROPERTY AFTER NOTICE AND AN OPPORTUNITY TO ABATE

WHEREAS, the City Charter as adopted by the voters in 1968 provided that the City Council could impose fines for violation of ordinance but that such fines could not exceed $1,000; and

WHEREAS, in 1995, the City Council adopted Ordinance 11805 CMS, establishing administrative civil penalties, administrative citations, and limitations on property use as an alternative method of enforcement to abate violations of certain provisions of the City's codes and ordinances; and

WHEREAS, the 1995 ordinance established a maximum civil penalty of $1,000 per day and $250,000 per calendar year for an individual parcel or structure thereon; and

WHEREAS, the ordinance was codified in 1997 as Oakland Municipal Code Chapter 1.08 (Civil Penalties), Oakland Municipal Code 1.12 (Administrative Citations), and Oakland Municipal Code 1.16 (Limitations on Property Use);

WHEREAS, in 2004, the City Council Adopted Ordinance 12623 which amended Oakland Municipal Code 1.08 and increased the maximum civil penalty per calendar year to $365,000 for an individual parcel or structure thereon, but did not raise the maximum daily penalty; and

WHEREAS, the Council amended Oakland Municipal Code 1.08 multiple times over the next thirty years to expand the scope of applicability but never increased the maximum daily civil penalty from $1,000 per day; and

WHEREAS, in 2020, the voters approved Measure RR which removed the provision of the City Charter that limited penalties to $1,000 and provided that the City Council must establish the fine limit by ordinance approved following a public hearing; and

WHEREAS, it was the opinion of the Director of Planning and Building and Chief Building Officer at the time of Measure RR's introduction that increased fines would be a more effective tool for code enforcement; and

WHEREAS, the fine limit of $1,000 was set in 1968 and has not changed since; and

WHEREAS, while Oakland has been able to issue fines of up to $1,000 for violations of ordinances that create public nuisances, these fines are not always sufficient to induce an outcome that rectifies the violations; and

WHEREAS, ordinance violations that remain unrectified can be public health risks, nuisances to nearby neighbors or businesses, and safety concerns; and

WHEREAS, it is the job of the City to ensure the protection of public health and public safety; and

WHEREAS, fine increases above the $1,000 limit are only given after receiving the initial fine and after sufficient time to rectify the violations is made; and

WHEREAS, the City is allowed to issue fines "up to" the amounts specified in this ordinance and when are not required to fine the maximum amount for lesser offenses; and

WHEREAS, the increased fines will only target the worst offenders across the city who continue to scoff at the law;

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

SECTION 1. Recitals: The City Council of the City of Oakland hereby determines that the preceding recitals are true and correct and an integral part of the Council's decision to enact this legislation, and hereby adopts and incorporates them into this Ordinance.

SECTION 2. Amendment of Oakland Municipal Code Chapter 1.08. Oakland Municipal Code Chapter 1.08 is hereby amended as set forth below. Additions are shown as double underlined and deletions are shown as ~~strikethough~~.

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: Buildings and Construction Code (O.M.C. Title 15)~~Oakland Building Code (O.M.C. Chapter 15.04), the Oakland Housing Code (O.M.C. Chapter 15.08), Uniform Fire Code (O.M.C. Chapter 15.12), Fire Damaged Area Protection and Improvement Code (O.M.C. Chapter 15.16), Mandatory Seismic Evaluation and Retrofit of Certain Multi-Unit Residential Buildings (O.M.C. Chapter 15.27), Bedroom Window Security Bar and Smoke Detector Permit Code (O.M.C. Chapter 15.64),~~ Oakland Planning Code (O.M.C. Title 17), Transient Occupancy Tax Code (O.M.C. Chapter 4.24), Business Taxes. Permits and Regulations Code (O.M.C. Title 5), ~~Hotel Rates and Register Code (O.M.C. Chapter 5.34),~~ Animal Code (O.M.C. Title 6), Health and Safety Code (O.M.C. Title 8), Public Peace, Morals and Welfare Code (O.M.C. Title 9), Vehicles and Traffic Code (O.M.C. Title 10), Streets, Sidewalks and Public Places Code (O.M.C. Title 12), Creek Protection, Storm Water Management and Discharge Control Code (O.M.C. Chapter 13.16) and the Oakland Sign Code (O.M.C. ~~Chapter~~ Title 14); 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 other public nuisance as known at common law or in equity jurisprudence, or

4. The violation of any state, local, or federal law or regulations under which such violation is deemed a public nuisance.

B. Civil penalties established in this Chapter are in addition to any other administrative or legal remedy which may be pursued by the City and/or by the People of the State of California to address violations of the codes and ordinances identified in this Chapter.

1.08.030 – Definitions ~~Violations~~.

A. Major Violation. A major violation shall exist whenever any provision of the codes and ordinances identified in this Chapter has been violated and 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~~ an act or condition on a property is maintained in violation of codes and ordinances identified

in this Chapter 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 Administrator ~~Manager~~ 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.

1.08.040 - Authority.

A. Whenever an act or conditions upon a property or structure thereon constitute a major violation as defined in this Chapter, administrative civil penalties may be assessed to affect abatement.

B. The City Administrator ~~Manager,~~ 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 and/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 ~~predude~~ preclude the assessment of additional civil penalties or other abatement actions by the City and/or the People of the State of California.

G. Civil penalties and related administrative expenses, ~~induding~~ including attorneys' fees, shall accrue to the account of the responsible department and may be recovered by all appropriate legal means, ~~induding~~ including but not limited to nuisance abatement lien and special assessment/priority lien of the general tax levy, or by civil ~~and~~ or small claims action brought by the City, or both. In the event of a civil action under this Chapter, the City may seek an award of attorney's fees at the initiation of the proceeding. If the City seeks an award of attorney's fees, the award shall be made to the prevailing party according to the lodestar method; provided however that, pursuant to California Government Code section 38773.5(b), 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.

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; or

3. Certified mail to the record owner's address as it appears on the last equalized assessment roll of the Alameda County Tax Assessor; 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 where the violation occurs.

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, and the dollar amount assessed for each violation;

3. The remedial actions required to correct the violations wholly and permanently and the time constraints for commencing and completing the corrections, if any;

4. The dollar amount and rate of recurrence and duration of civil penalties;

5. The dates when civil penalties began or 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 and time limits for obtaining an administrative hearing regarding the assessment of civil penalties.

1.08.060 - Assessment.

A. The City Administrator~~Manager~~, 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 civil penalties.

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.~~

Except as otherwise permitted by law, civil penalties, excluding accruing interest, shall not be assessed at more than one thousand dollars ($1,000.00) for a first violation, nor more than two thousand and five hundred dollars ($2,500) for each subsequent or continuing violation in a calendar year. If a responsible person has failed to abate a public nuisance on real property after notice and an opportunity to abate, civil penalties of up to ten thousand dollars ($10,000.00) per day may be assessed until the nuisance is wholly and permanently abated. Civil penalties shall not exceed three million six hundred and fifty thousand dollars ($3,650,000.00) cumulatively each calendar year for an individual parcel or separate structure thereon or 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. However, penalties in excess of $2,500 per day shall not be assessed without notice and an opportunity to abate.

D. The assessment of civil penalties shall cease when all major violations are wholly and permanently ~~permanentiy~~ 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/or 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. Whether the nuisance resulted from commercial activity or financially benefited the responsible person;
6. Other factors that serve justice, including equity considerations.

1.08.070 - Administrative expenses.

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

1.08.080 - Administrative hearing.

A. 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 Administrator~~Manager~~, or their ~~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 Administrator~~Manager~~, 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. Except where otherwise required by law, ~~In all instances~~, the determination regarding civil penalties resulting from the administrative hearing shall be final and conclusive.

D. The City Administrator~~Manager~~, 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 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 decision to select a particular remedy is not subject to appeal. This Chapter should be construed liberally for the accomplishment of its purposes.

SECTION 3. No Conflict of Law. 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 4. This Ordinance serves the public interest and is necessary to protect the health, safety and/or general welfare of the citizens of Oakland, and is enacted pursuant to the City of Oakland's general police powers, Section 106 of the Charter of the City of Oakland, and Article XI, Sections 5 and 7 of the California Constitution.

SECTION 5. Administrative Regulations The City Administrator may adopt and amend administrative regulations, as needed, to implement the administrative enforcement provisions of this ordinance including establishing an administrative hearing process.

SECTION 6. California Environmental Quality Act Compliance. The legislation contains no provisions modifying the physical design, development, or construction of residential or nonresidential structures. Accordingly, it can be seen with certainty that there is no possibility

that it: (1) may have a significant effect on the environment and/or (2) would result in any physical changes to the environment. As a result, this action is exempt from the CEQA pursuant to the following CEQA Guidelines, taken together and each as a separate and independent basis: Section 15301 (existing facilities), Section 15378 (regulatory actions), Section 15060(c)(2) (no direct or reasonably foreseeable indirect physical change in the environment), and Section 15061(b)(3) (no significant environmental impact).

SECTION 7. Correction of Errors. The City Council hereby authorizes the City Attorney to make non-substantive, technical conforming changes (essentially correction of typographical and clerical errors), prior to formal publication of the Amendments in the Oakland Municipal Planning Code.

SECTION 8. Severability. 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 9. Effective Date. 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 - BROWN, FIFE, GALLO, HOUSTON, RAMACHANDRAN, UNGER, WANG, AND PRESIDENT JENKINS

NOES –

ABSENT –

ABSTENTION –

ATTEST:_____

ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

3007758/LL

NOTICE AND DIGEST

ORDINANANCE AMENDING OAKLAND MUNICIPAL CODE 1.08 TO RAISE MAXIMUM CIVIL PENALTIES FOR NUISANCE TO UP TO $2,500 PER DAY FOR REPEATED OR CONTINUING VIOLATIONS, AND UP TO $10,000 PER DAY FOR UNABATED NUISANCES ON REAL PROPERTY AFTER NOTICE AND AN OPPORTUNITY TO ABATE

This Ordinance increases the maximum Civil Penalties the City can impose for continuing public nuisances from the current maximum of $1,000 per day to up to $2,500 per day, and up to $10,000 per day for unablated nuisances after notice and an opportunity to abate.