

## Title 1 - GENERAL PROVISIONS

### Chapters:

#### Chapter 1.01 - CODE ADOPTION

### Sections:

##### 1.01.010 - Code adopted.

There is hereby adopted by the city of La Mesa that certain document entitled "La Mesa Municipal Code," three copies of which are now on file in the office of the city clerk. The La Mesa Municipal Code, along with the secondary codes adopted therein by reference, is adopted by reference under the provisions of Sections 50022.1 through 50022.10 of the government code of the state of California, as though fully set forth herein.

(Ord. 1566 § 1; October 11, 1966)

##### 1.01.020 - Title and citation.

This code shall be known as the La Mesa Municipal Code. In any prosecution for the violation of any provision of this code, it shall be sufficient to refer to the code as the municipal code. Any ordinance adding to, amending or repealing any provision of this code may be designated as an addition or amendment to, or repeal of, the municipal code.

(Ord. 938, as amended by Ord. 1566 § 1; October 11, 1966)

##### 1.01.030 - Definitions.

Unless a different meaning is apparent from the context or is specified elsewhere in this code, the following words are used as defined in this chapter:

- (1) "City" means the city of La Mesa, California.
- (2) "Council" means the city council of this city.
- (3) "County" means the county of San Diego, state of California.
- (4) "Oath" includes affirmation.
- (5) "Person" includes every natural person, individual, firm, corporation, copartnership, association, club, society or any other organization.
- (6) "Title," "chapter" and "section" mean, respectively, title, chapter and section of this code.
- (7) "Shall" is mandatory; the word "may" is permissive.
- (8) "Written" includes all forms of legible recording.

(Ord. 938; July 17, 1958)

#### 1.01.040 - Effect of code.

The adoption of this code and the repeal of ordinances by this code shall not affect the following matters:

- (1) Actions and proceedings which began before the effective date of this code;
- (2) Prosecution for ordinance violations committed before the effective date of this code;
- (3) Licenses and penalties due and unpaid at the effective date of this code, and the collection of these licenses and penalties;
- (4) Bonds and cash deposits required to be posted, filed or deposited pursuant to any ordinance;
- (5) Matters of record which refer to or are connected with ordinances the substances of which are included in this code; these references shall be construed to apply to the corresponding provisions of the code;
- (6) Where they are substantially the same as existing law, the provisions of this code shall be considered continuations of existing law and shall not be considered new enactments.

(Ord. 1566 §§ 2, 3; October 11, 1966; prior Ord. 938; July 17, 1958)

#### 1.01.050 - Interpretation.

- (a) Generally. The provisions of this code and all proceedings under it are to be construed to effect its objects and to promote justice.
- (b) Headings. Title, chapter and section headings contained herein shall not be deemed to govern, limit or modify, or in any manner affect the scope, meaning, or intent of any provision of this code.
- (c) Territorial limitation. This code shall refer only to the omission or commission of acts within the territorial limits of this city and to that territory outside of this city over which the city has jurisdiction or control by virtue of the constitution, or any law, or by reason of ownership or control of property.
- (d) Local signification. References in this code to streets, blocks, property descriptions, landmarks, natural features, places, locations, buildings, structures or other things, indicate such streets, blocks, property descriptions, landmarks, natural features, places, locations, buildings, structures or other things within or bordering on this city, unless otherwise expressed or apparent from the context.
- (e) Titles. The use of the title of any officer, employee, office, board, commission or ordinance shall mean such officer, employee, office, board, commission or ordinance of this city, unless otherwise designated.
- (f)

Civil code provisions adopted. The provisions of the Civil Code of California, Sections 13 and 1645, are adopted in the interpretation of words and phrases, unless otherwise provided herein.

- (g) Words and phrases. Words and phrases used in this code and not specifically defined shall be construed according to the context and approved usage of the language.
- (h) Number, gender and tense. Words used in the singular include the plural, and the plural the singular; the masculine gender includes the feminine and neuter; and the present tense includes the past and future tenses; and the future, the present.
- (i) Severability. If for any reason any section, subsection, sentence, clause, or phrase of this code shall be held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this code. The council hereby declares that it would have adopted this code and each section, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional. If any provision of this code or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

(Ord. 938, as amended by Ord. 1566 §§ 7, 8; October 11, 1966)

#### 1.01.060 - Repeal of existing ordinances.

Every ordinance which is neither excluded from this code nor specifically continued in force by this code is hereby repealed. This section shall not be construed to revise any ordinance which was repealed before the adoption of this code.

(Ord. 1566 § 4; October 11, 1966)

#### 1.01.070 - Exception to repeal of existing ordinances.

The repeal provided for in Section 1.01.060 shall not apply to or affect any of the following types of ordinances:

General tax levy ordinances; ordinances levying special tax assessments; appropriation ordinances; ordinances re boundaries and annexations; franchises and other ordinances granting special rights to persons or corporations; ordinances authorizing execution of contracts or the issuance of warrants; salary ordinances; improvement ordinances; bond ordinances; ordinances relating to elections; ordinances to transfer or acceptance of real estate; or any interest therein, by or from the city; ordinances relating to the purchase and condemnation or appropriation of property for public use; zoning ordinances; subdivision ordinances; ordinances opening, establishing, naming, widening, vacating or narrowing streets, highways, or boulevards; ordinances establishing or changing grades of streets, highways or boulevards; ordinances creating districts for public improvements of whatsoever kind and

nature; ordinances establishing or changing public transportation routes; and all special ordinances; provided, that the above enumeration of excepted ordinances shall not be held or deemed to be exclusive, it being the purpose and intention of this section to exclude from repeal any and all ordinances of a special nature.

(Ord. 1566 § 5; October 11, 1966)

#### 1.01.080 - Enforcement.

##### (a) General penalty provisions.

- (1) General penalty. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this code. A violation of any of the provisions or failing to comply with any of the mandatory requirements of this code shall constitute an infraction; except for any violation of the zoning, building, mechanical, housing, plumbing, fire, or emergency code (including but not limited to Title 24) which shall be misdemeanors, or in cases where a different punishment is prescribed by any ordinance of the city of La Mesa.

Further, notwithstanding any of the provisions of this code, any violation of this code constituting a misdemeanor or any infraction of this code may, at the discretion of the attorney having prosecutorial functions, be charged and prosecuted as a misdemeanor or an infraction.

- (2) Arrest procedure for violations. If any person is arrested for violation of this code or the ordinances of this city, and such person does not demand to be taken before a magistrate, the arresting officer or other authorized arresting official may issue a citation in the manner prescribed in Chapter 5(c) (commencing with Section 853.5) of Title 3, Part 2 of the Penal Code of this state, or as prescribed in Division 17, Chapter 1, Article 1, Section 40000.1 of the Vehicle Code, or as prescribed in the Welfare and Institutions Code, beginning with Div. 2, Chapter 2, Article 14 and Article 15, Section 601 through 641, whichever is appropriate.
- (3) Penalty for violations. Any person convicted of a misdemeanor under the provisions of the code, unless provision is otherwise made herein, shall be punished by a fine of not more than one thousand dollars or by imprisonment in the county jail of San Diego County for a period of not more than six months, or by both such fine and imprisonment. Any person convicted of an infraction under the ordinances of this city shall be punished by a fine not exceeding two hundred fifty dollars. Such violations may also be redressed by civil action.
- (4) Continuing violations. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this code is committed, continued, or permitted by such person; and he shall be punished accordingly.
- (5) Participating in violations. Whenever this code makes any act or omission unlawful it shall include causing, permitting, aiding, abetting, suffering, or concealing the fact of, such act or omission.

- (6) Nuisances. In addition to the penalties hereinabove provided, any condition caused or permitted to exist in violation of any of the provisions of this code shall be deemed a public nuisance and may be, by this city, abated as such.

(b) Civil penalties?Procedures.

- (1) Any person or organization violating any land use ordinance as defined in Chapter 10.170, or rules and regulations adopted thereunder, or the conditions of any permit issued pursuant to such ordinance, rule or regulation, or by any act of commission or omission procures, aids or abets such violation, shall be subject to civil penalties as provided in this chapter.
- (2) Civil penalties may be directly assessed by means of a notice and order issued pursuant to Chapter 10.170, or may be recovered by legal action.
- (3) Civil penalties assessed by means of a notice and order shall be collected in accordance with the lien, personal obligation and other procedures specified in this code. Civil penalties assessed in a legal action shall be collected in the same manner as judgments in civil actions.
- (4) Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation. Civil penalties for failure to obtain any required permit shall begin to accrue on the first day activity subject to the permit requirement is commenced, and shall cease to accrue on the day the permit is obtained. Civil penalties for violation of any order to cease violation or notice and order to correct shall begin to accrue on the first day the said order or notice is posted, and shall cease on the day the violation is actually stopped.
- (5) a. A civil penalty for a violation of any land use ordinance, rule or regulation by a person engaged in a noncommercial venture shall be assessed at the rate of fifty dollars per day per violation.  
b. A civil penalty for a violation of any land use ordinance, rule or regulation by a person engaged in a commercial venture shall be assessed at the rate of one hundred dollars per day per violation.
- (6) Penalties for the second separate violation of a like nature by the same person shall be double the rates identified in subsection (b)(5) of this section. Penalties for any separate violation of a like nature beyond a second violation by the same person shall be triple the rates identified in subsection (b)(5) of this section.

(Ord. 938, as amended by Ord. 1566 §§ 9?13; October 11, 1966 and Ord. 1654 § 1; May 28, 1968: Ord. 2638 § 1; November 23, 1993: Ord. 2650 § 4; July 26, 1994)

1.01.090 - Effective date.

This chapter and the La Mesa Municipal Code adopted by reference herein shall take effect and be in force on and after thirty days from the publication of this ordinance.

(Ord. 1566 § 14; October 11, 1966)

#### 1.01.100 - Notices.

Whenever a notice is required to be given under this code, unless different provisions are otherwise specifically made herein, such notice may be given either by personal delivery thereof to the person to be notified or by deposit in the United States mail in a sealed envelope, postage prepaid, addressed to such person to be notified, at his last known business or residence address as the same appears in the public records or other records pertaining to the matter to which such notice is directed.

Service by mail shall be deemed to have been completed at the time of deposit in the post office.

Proof of giving any notice may be made by the certificate of any officer or employee of this city or by affidavit of any person over the age of eighteen years, which shows service in conformity with this code or other provisions of law applicable to the subject matter concerned.

(Ord. 938; July 17, 1958)

#### 1.01.110 - Maintenance and distribution of code.

Not less than three copies of this code, duly certified by the city clerk, shall be kept on file in the office of the city clerk for examination and use by the public. Amendments to this code shall be noted, by ordinance number, on the appropriate pages of all three copies of the code, and three complete files of amendatory ordinances, indexed for ready reference, shall be maintained in the office of the city clerk for use and examination by the public.

Distribution or sale of additional copies of this code shall be made as directed by the city council.

(Ord. 1566 § 6; October 11, 1966)

#### 1.01.120 - Mandatory duties.\*

It is the intent of the city council of the city of La Mesa that any ordinance establishing performance standards or establishing an obligation to act upon a city officer or employee, shall not be construed as creating a mandatory duty for purposes of tort liability, if the officer or employee fails to perform said act.

(Ord. 2383 § 1; June 25, 1985)

\* This ordinance is declarative of past and existing council policy and intent. Section 1.01.120 shall apply to all provisions of the La Mesa Municipal Code regardless of when such provisions were adopted.

#### 1.01.130 - Misdemeanor penalties.

Notwithstanding any of the provisions of this code, any violation of any of the provisions or failing to comply with any of the mandatory requirements of Sections 6.20.030, 7.20.055, 7.20.130, 8.04.100, 8.04.200, 8.04.300, 9.08.060, 10.52.040 shall constitute misdemeanors and shall be subject to the provisions of the general penalty clause set out in Section 1.01.080 of the code of the city of La Mesa.

(Ord. 2638 § 6; November 23, 1993)

## Chapter 1.02 - DATE FOR GENERAL MUNICIPAL ELECTION

### Sections:

#### 1.02.010 - Date for general municipal election.

Pursuant to Section 36503.5 of the California Government Code, the General Municipal Election for the City of La Mesa shall be held on the same day as the day of the Statewide General Election.

(Ord. 2280; November 24, 1981) (Readopted January 26, 1982)

## Chapter 1.03 - JUDICIAL REVIEW PROCEDURE

### Sections:

#### 1.03.010 - Purpose.

It is the declared purpose of this chapter to make the provisions of Section 1094.6 of the California Code of Civil Procedure applicable to decisions of the city, or of any commission, board, officer or agent thereof. The provisions of this chapter shall prevail over any conflicting provision in any otherwise applicable law, ordinance, or rule relating to the subject matter.

(Ord. 2639 § 1; November 23, 1993)

#### 1.03.020 - Definitions.

For the purposes of this chapter:

- (a) "Decision" means a decision subject to review pursuant to Section 1094.5 of the Code of Civil Procedure, suspending, demoting, or dismissing an officer or employee, revoking or denying an application for a permit, license or other entitlement, or denying an application for any retirement benefit or allowance.

- (b)

"Party" means an officer or employee who has been suspended, demoted, or dismissed; a person whose permit or license has been revoked or whose application for a permit or license has been denied; or a person whose application for a retirement benefit or allowance has been denied.

(c) "Petitioner" means a person who has filed for a petition for writ of mandate pursuant to Section 1094.5 of the California Code of Civil Procedure.

(Ord. 2639 § 1; November 23, 1993)

#### 1.03.030 - Judicial review of final decisions.

Judicial review of any decision of the city, or of any commission, board, officer, or agent thereof, may be had pursuant to Section 1094.5 of the California Code of Civil Procedure only if the petition for writ of mandate authorized by said section is filed within the time limits specified in this chapter.

(Ord. 2639 § 1; November 23, 1993)

#### 1.03.040 - Judicial review?Time limits.

Any petition for writ of mandate authorized by Section 1094.5 of the California Code of Civil Procedure must be filed no later than the ninetieth day following the date on which the decision becomes final. If there is no provision for reconsideration of the decision in any applicable provision of any statute, ordinance, or rule, for the purposes of this chapter, the decision is final on the date it is made. If there is such provision for reconsideration, the decision is final for the purposes of this chapter upon the expiration of the period during which such reconsideration can be sought; provided, that if reconsideration is sought pursuant to any such provision the decision is final for the purposes of this chapter on the date that reconsideration is rejected.

(Ord. 2639 § 1; November 23, 1993)

#### 1.03.050 - Record of proceedings.

The complete record of the proceedings at which the decision was reached shall be prepared by the city or its commission, board, officer or agent making the decision and shall be delivered to the petitioner within ninety days after the filing of a written request therefor. The city may recover its actual costs for transcribing or otherwise preparing the record. Such record shall include the transcript of the proceedings, all pleadings, all notices and orders, any proposed decision by a hearing officer, the final decision, all admitted exhibits in the possession of the city or its commission, board, officer or agent, all written evidence, and any other papers in the case.

(Ord. 2639 § 1; November 23, 1993)

#### 1.03.060 - Judicial review?Extension of time limit.



If the petitioner files a request for the record as specified in Section 1.03.050 of this chapter within ten days after the date the decision becomes final as provided in Section 1.03.040 of this chapter, the time within which a petition pursuant to Section 1094.5 of the California Code of Civil Procedure may be filed shall be extended to not later than the thirtieth day following the date on which the record is either personally delivered or mailed to the petitioner or the attorney of record.

(Ord. 2639 § 1; November 23, 1993)

#### 1.03.070 - Notice of final decision.

In making a decision as defined in Section 1.03.020(a) of this chapter, the city shall provide notice to the party that the time within which judicial review must be sought is governed by this chapter and Section 1094.6 of the California Code of Civil Procedure.

(Ord. 2639 § 1; November 23, 1993)

### Chapter 1.04 - CITY SEAL

#### Sections:

#### 1.04.010 - City seal—Codification—Description.

The city council does hereby codify the corporate seal of the city with lettering, form, arrangement and design all as set forth and shown as follows:



The only form of the corporate seal for use by or for the city shall be the form of seal set forth in this section.

(Ord. 97-2682 § 1 (part); August 26, 1997)

#### 1.04.020 - City seal—Unlawful uses.

It shall be unlawful for any person to make or use the seal of the city or any cut, facsimile or reproduction of the seal, or to make or use any seal or any design which is an imitation of the seal, or of the design thereof, which may be mistaken for the seal of the city by an ordinary reasonable person, for any purpose other than for city purposes without the express consent of the city council.

(Ord. 97-2682 § 1 (part); August 26, 1997)

#### 1.04.030 - City seal—Custody.

The city clerk shall have the official custody of the official seal of the city.

(Ord. 97-2682 § 1 (part); August 26, 1997)

#### 1.04.040 - Violation—Penalties.

Any person, firm or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor.

(Ord. 97-2682 § 1 (part); August 26, 1997)

### Chapter 1.05 - ELECTRONIC FILING OF CAMPAIGN DISCLOSURE STATEMENTS AND STATEMENT OF ECONOMIC INTEREST

#### Sections:

##### *Footnotes:*

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**Editor's note—** Ord. 2020-2882, § 3, adopted October 27, 2020, repealed ch. 1.05, §§ 1.05.010—1.05.090 and enacted a new ch. 1.05. Former ch. 1.05 pertained to election campaigns—voluntary expenditure ceiling and derived from Ord. 97-2685, § 1(part), adopted October 14, 1997.

#### 1.05.010 - General.

- (a) Any elected officer, candidate, committee, or other person required to file statements, reports, or other documents ("statements") as required by Chapter 4 of the Political Reform Act (California Government Code Section 84100 et seq.) may file such statements using the city clerk's online system according to procedures established by the city clerk. These procedures shall ensure that the online system complies with the requirements set forth in Section 84615 of the Government Code. From and after January 1, 2022, elected officers, candidates, and committees required to file statements must file such statements using the city clerk's online system, unless exempt from the requirement to file online pursuant to Government Code Section 84615(a) because the officer, candidate, or committee receives less than two thousand dollars in contributions and makes less than two thousand dollars in expenditures in a calendar year.
- (b) The online filing system shall ensure the integrity of the data transmitted and shall include safeguards against efforts to tamper with, manipulate, alter, or subvert the data.
- (c)

The online filing system shall only accept a filing in the standardized record format that is developed by the California Secretary of State pursuant to Section 84602(a)(2) of the California Government Code and that is compatible with the Secretary of State's system for receiving an online or electronic filing.

- (d) The online filing system shall include a procedure for filers to comply with the requirement that they sign statements and reports under penalty of perjury pursuant to Section 81004 of the Government Code.

(Ord. 2020-2882, § 3, October 27, 2020)

#### 1.05.020 - Procedures for utilizing online filing.

- (a) During the period commencing with the effective date of this chapter and ending December 31, 2021, an elected officer, candidate, or committee may choose to utilize the electronic filing system by electronically filing a statement that is required to be filed with the city clerk pursuant to Chapter 4 of the Political Reform Act. Once the elected officer, candidate, or committee has filed electronically, all subsequent statements shall be filed electronically. From and after January 1, 2022, electronic filing is mandatory unless the officer, candidate, or committee is exempt as described in Section 1.05.010(A).
- (b) Any elected officer, candidate, or committee who has electronically filed a statement using the city clerk's online system is not required to file a copy of that document in paper format with the city clerk.
- (c) The city clerk shall issue an electronic confirmation that notifies the filer that the statement was received, which notification shall include the date and the time that the statement was received and the method by which the filer may view and print the data received by the city clerk. The date of filing for a statement filed online shall be the day that it is received by the city clerk.
- (d) If the city clerk's system is not capable of accepting a statement due to technical difficulties, an elected officer, candidate, or committee shall file that statement in paper format with the city clerk.
- (e) The online filing system shall enable electronic filers to complete and submit filings free of charge.

(Ord. 2020-2882, § 3, October 27, 2020)

#### 1.05.030 - Availability of statements for public review; record retention.

- (a) The city clerk's system shall make all the data filed available on the city's webpage in an easily understood format that provides the greatest public access. The data shall be made available free of charge and as soon as possible after receipt. The data made available on the city's webpage shall not contain the street name and building number of the persons or entity representatives listed on the electronically filed forms or any bank account number required to be disclosed by

the filer. The city clerk's office shall make a complete, unredacted copy of the statement, including any street names, building numbers, and bank account numbers disclosed by the filer, available to any person upon request.

- (b) The city clerk's office shall maintain, for a period of at least ten years commencing from the date filed, a secured, official version of each online or electronic statement which shall serve as the official version of that record for purpose of audits and any other legal purpose.

(Ord. 2020-2882, § 3, October 27, 2020)

#### 1.05.040 - Severability.

If any provision, clause, sentence or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of the provisions of this chapter which can be given effect without the invalid provision or application; accordingly, the provisions of this chapter are hereby declared to be severable.

(Ord. 2020-2882, § 3, October 27, 2020)

### Chapter 1.07 - ADMINISTRATIVE CITATION AND APPEAL PROCEDURES

#### Sections:

#### 1.07.010 - Issuance of administrative citation.

Whenever a code compliance officer or other authorized agent determines that an infraction or misdemeanor violation of the municipal code has occurred or that a violation exists which is deemed to constitute a public nuisance pursuant to the municipal code and/or applicable statute, rule, code or regulation, the officer or agent may issue an administrative citation to any party responsible for the violation. Each and every day that a violation of any provision of the municipal code continues to exist constitutes a separate and distinct offense. A separate citation may be issued for each day such violation continues to exist.

(Ord. 2008-2790 § 1 (part); May 13, 2008)

#### 1.07.020 - Administrative fines.

Any party to whom an administrative citation is issued shall be responsible for payment of an administrative fine in the amount specifically set forth in the municipal code and/or applicable statute, rule, code or regulation violated or, if no amount provided, in the amount as follows:

- (a) An administrative fine in an amount not to exceed two hundred dollars for the first violation;

- (b) An administrative fine in an amount not to exceed four hundred dollars for the second violation of the same provision within a twelve-month period commencing on the date of the first violation;
- (c) An administrative fine in an amount not to exceed one thousand dollars for the third and any subsequent violation of the same provision within a twelve-month period commencing on the date of the first violation.

(Ord. 2008-2790 § 1 (part); May 13, 2008)

#### 1.07.030 - Opportunity to correct or remedy violations—Time period.

- (a) Any party to whom an administrative citation has been issued for violations pertaining to building, plumbing, electrical, fire, or other similar structural or zoning issues that do not create an immediate danger to health or safety, shall be provided not less than ten calendar days in which to correct or otherwise remedy the violation prior to the imposition of any administrative fine. For all other violations, the recipient of an administrative citation shall be provided not less than seven calendar days in which to correct or otherwise remedy the violation prior to the imposition of any administrative fine, unless a shorter period is determined necessary by the code compliance officer or other authorized agent.
- (b) The code compliance officer or other authorized enforcement agent may extend the time in which to correct or otherwise remedy a violation upon a showing that the recipient of the administrative citation requires additional time to complete repairs or upon a showing that the recipient of the administrative citation is awaiting issuance of a permit, provided such person offers proof that he or she has commenced taking action to correct or otherwise remedy the violation and/or that a proper application for such permit has been made.

(Ord. 2008-2790 § 1 (part); May 13, 2008)

#### 1.07.040 - Contents of administrative citation.

An administrative citation shall include all of the following information:

- (a) The name of the person(s) responsible for committing the violation(s);
- (b) The date of the violation(s);
- (c) The street address or a definite description of the location where the violation occurred;
- (d) The code section(s) violated;
- (e) A description of the violation;
- (f) An order prohibiting the continuation or repeated occurrence of the described violation(s);
- (g) The amount of the administrative fine for the violation(s);
- (h)

A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;

- (i) A description of the administrative citation appeal process, including the time within which an appeal must be filed;
- (j) A description of the process by which the city may collect any unpaid fines;
- (k) A description of the potential consequences should the violator continue or repeat the violation;
- (l) The name and signature of the code compliance officer or other authorized agent who issued the administrative citation (the "citing officer").

(Ord. 2008-2790 § 1 (part); May 13, 2008)

#### 1.07.050 - Form of administrative citation.

An administrative citation may be in letter form or any other form which adequately conveys the information set forth in Section 1.07.040.

(Ord. 2008-2790 § 1 (part); May 13, 2008)

#### 1.07.060 - Service of administrative citation.

An administrative citation may be served in any of the following ways:

- (a) By personal delivery to the violator;
- (b) If the violator is being charged for violations occurring at a business operating within the city, and the violator is the owner or an employee of the business, the citation may be served by causing a copy of said citation to be sent by certified mail, postage prepaid, return receipt requested to the address shown on any permit or license issued by the city to said business;
- (c) By causing a copy of said citation to be sent by certified mail, postage prepaid, return receipt requested, to an address otherwise known to the citing officer. The failure of any such person to receive a copy of the administrative citation shall not affect the validity of any proceedings or actions taken under this title. Service by certified mail in the manner herein provided shall be affixed to the copy of the administrative citation and retained by the citing officer.

(Ord. 2008-2790 § 1 (part); May 13, 2008)

#### 1.07.070 - Completion of service of administrative citation.

Service of an administrative citation which is personally served shall be deemed completed at the time of such personal service. Service of an administrative citation which is served by mail is deemed completed on the date said citation is deposited in the mail.

(Ord. 2008-2790 § 1 (part); May 13, 2008)

#### 1.07.080 - Appeal of administrative citation.

Any recipient of an administrative citation may contest that there was a violation or that he or she is the party responsible for committing the violation by filing a complete and proper appeal of the administrative citation with the citing officer pursuant to this chapter.

(Ord. 2008-2790 § 1 (part); May 13, 2008)

#### 1.07.090 - Form for filing of appeal.

All appeals from any administrative citation shall be in writing and shall contain the following information:

- (a) Name(s) of each appellant;
- (b) A brief statement in ordinary and concise language of the specific items protested, together with any material facts claimed to support the contentions of the appellant;
- (c) A brief statement in ordinary and concise language of the relief sought and the reasons why the administrative citation should be rescinded, modified or otherwise set aside;
- (d) The signatures of all parties named as appellants and their mailing addresses. Any appeal filed that fails to provide all of the information required by this section shall be deemed incomplete.

(Ord. 2008-2790 § 1 (part); May 13, 2008)

#### 1.07.100 - Time in which to file appeal.

A complete and proper appeal of an administrative citation as described in this chapter shall be filed with the citing officer within ten calendar days from the date that service of the administrative citation was completed pursuant to Section 1.07.070. Any appeal not timely filed shall be rejected.

(Ord. 2008-2790 § 1 (part); May 13, 2008)

#### 1.07.110 - Fee for filing of appeal.

A filing fee as established by city council resolution or any amendments thereto for an appeal of an administrative citation must be paid to the city at or prior to the time of the filing of such appeal. Any appeal of the administrative citation filed without payment of the filing fee shall be deemed incomplete.

(Ord. 2008-2790 § 1 (part); May 13, 2008)

#### 1.07.120 - Incomplete filing.

Not later than five calendar days from the date the appeal is filed the citing officer or his or her designee shall determine whether the appeal is complete. If the appeal is determined to be incomplete, the citing officer or his or her designee shall immediately mail to the appellant a notice of incomplete filing which shall provide a written explanation of each reason why the appeal has been determined to be incomplete. If service of the notice of incomplete filing is completed within five calendar days from the date the appeal is filed, the ten calendar day time period within which to file a completed appeal of an administrative citation shall not be extended.

(Ord. 2008-2790 § 1 (part); May 13, 2008)

#### 1.07.130 - Failure to file proper appeal.

Failure to timely and properly file an appeal from an administrative citation shall constitute a waiver of all rights to an administrative appeal hearing and adjudication of the administrative citation or any portion thereof. The determination that the violation occurred and that the violator was responsible for the violation shall be deemed final on the date that service of the administrative citation is deemed completed pursuant to Section 1.07.070.

(Ord. 2008-2790 § 1 (part); May 13, 2008)

#### 1.07.140 - Processing and conducting of appeal.

The appeal of any administrative citation shall be processed in accordance with the provisions of this chapter and conducted in accordance with the provisions of Municipal Code Chapter 1.09.

(Ord. 2008-2790 § 1 (part); May 13, 2008)

#### 1.07.150 - Stay pending appeal.

Enforcement of any administrative citation shall be stayed during the pendency of an appeal therefrom which is properly and timely filed pursuant to this chapter.

(Ord. 2008-2790 § 1 (part); May 13, 2008)

#### 1.07.160 - Time in which to pay fine—Demand for payment—Notice of decision and compliance order—Late payment charges—Collectible debt.

- (a) After an administrative citation becomes final due to the failure to file a timely and proper appeal, the code compliance officer or other authorized agent shall prepare a demand for payment of all applicable administrative fines if the citing officer determines that the person to whom the administrative citation is directed failed, neglected, or refused to obey the orders or adhere to the



terms and conditions set forth in the citation. The demand for payment shall require the person issued the administrative citation to pay all applicable administrative fines no later than thirty calendar days from the date the administrative citation was issued. The amount of the fine for which the recipient shall be responsible shall be as set forth in the administrative citation. Payment of the administrative fine shall be made to the issuing department or division unless otherwise provided by the demand for payment.

- (b) Where a timely and complete appeal of the administrative citation is filed pursuant to this chapter and the citation is upheld, the notice of decision and compliance order issued by the administrative hearing officer shall require appellant to pay all applicable administrative fines no later than ten calendar days from the date the notice of decision and compliance order was issued. The amount of the fine for which the recipient shall be responsible shall be as set forth in the administrative citation. Payment of the administrative fine shall be made to the issuing department or division of the city.
- (c) Any person who fails to pay a fine imposed by this chapter on or before the date payment is due shall also be liable for a late payment charge of twenty-five percent of the fine. Additionally, delinquent fines shall accrue interest at the rate of ten percent per month, excluding penalties from the due date. Any unpaid fines, penalties, and interest shall constitute a debt owing to the city collectable by any and all available legal remedies.

(Ord. 2008-2790 § 1 (part); May 13, 2008)

#### 1.07.170 - Contents of demand for payment.

The demand for payment shall include all of the following, which shall be consistent with the information contained in the administrative citation:

- (a) The name of the person(s) responsible for payment of the administrative fines;
- (b) The date of issuance of the administrative citation and the street address or a definite description of the location where the violation occurred;
- (c) The amount of the administrative fine which shall be immediately due and payable;
- (d) The place where the fine must be paid;
- (e) A description of the process by which the city may collect any unpaid fines. The demand for payment may be in letter form or any other form which conveys the information set forth in this section.

(Ord. 2008-2790 § 1 (part); May 13, 2008)

#### 1.07.180 - Service of demand for payment.

The demand for payment shall be served upon the person(s) responsible for payment of the administrative fines either personally or by certified mail, postage prepaid, return receipt requested; at their address as it appears on the last equalized assessment roll of the county or as otherwise known to the code compliance officer or authorized agent. If an address of any such person does not appear on the last equalized assessment roll or is not otherwise known to the citing officer, then a copy of the demand for payment shall be addressed to such person(s) and mailed to the address of the subject premises. The failure of any such person to receive a copy of the demand for payment shall not affect the validity of any proceedings or actions taken under this chapter. Service by certified mail in the manner herein provided shall be affixed to the copy of the demand for payment and retained by the citing officer.

(Ord. 2008-2790 § 1 (part); May 13, 2008)

#### 1.07.190 - Completion of service.

Service of the demand for payment which is personally served shall be deemed completed at the time of such personal service. Service of a demand for payment which is served by mail is deemed completed on the date said demand for payment is deposited in the mail.

(Ord. 2008-2790 § 1 (part); May 13, 2008)

#### 1.07.200 - Proof of service.

Proof of service of the demand for payment shall be certified at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the date and manner in which service was made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail shall be affixed to a copy of demand for payment and retained by the citing officer.

(Ord. 2008-2790 § 1 (part); May 13, 2008)

#### 1.07.210 - Appeal of administrative fine.

Any party contesting the imposition of the administrative fine(s) may seek judicial review of the imposition of the fine(s) by filing an appeal pursuant to California Government Code Section 53069.4, subdivision (b)(1) after said party has exhausted all available administrative remedies.

(Ord. 2008-2790 § 1 (part); May 13, 2008)

#### 1.07.220 - Attorney's fees.

The prevailing party in any proceeding conducted pursuant to this chapter and associated with the abatement of a public nuisance shall be entitled to recovery of attorneys' fees incurred in any such proceeding.

(Ord. 2008-2790 § 1 (part); May 13, 2008)

## Chapter 1.09 - ADMINISTRATIVE CITATION APPEAL HEARING PROCESS

### Sections:

#### 1.09.010 - Applicability of administrative appeal hearing procedures.

The procedures adopted in this chapter for the selection of administrative hearing officers shall not replace, substitute for, or in any way affect the administrative hearing board processes created by the California codes, uniform codes and national codes adopted by the city and the administrative hearings provided by such codes shall be treated separate and apart from the administrative appeal hearing procedures adopted herein.

(Ord. 2008-2790 § 2 (part); May 13, 2008)

#### 1.09.020 - Duties of administrative hearing officer.

The administrative hearing officer ("hearing officer") shall conduct all administrative appeal hearings of any timely and properly filed appeal from an administrative citation pursuant to the procedures set forth in this chapter. The hearing officer shall review all evidence, documents, and written testimony and hear all oral testimony submitted by the parties and render all decisions and findings in writing to the appellant with a duplicate copy to the citing officer. The hearing officer may decide to uphold the administrative citation, rescind the citation in part or in its entirety, and/or reduce the amount or waive payment of the administrative fine.

(Ord. 2008-2790 § 2 (part); May 13, 2008)

#### 1.09.030 - Limitations on authority of administrative hearing officer.

The hearing officer's authority to hear and consider appeals shall be limited to passing on only those appeals pertaining to matters within his or her subject matter jurisdiction. The hearing officer shall consider at the hearing on the appeal only those matters or issues which are specifically raised by the appellant in his or her appeal and which are relevant to the issues of the hearing. The hearing officer shall not have the authority to waive any requirements of the municipal code and/or any applicable statutes, rules, codes or regulations, except as otherwise provided in this chapter.

(Ord. 2008-2790 § 2 (part); May 13, 2008)

1.09.040 - Obtaining an administrative hearing officer.

- (a) Within five business days after the city has determined that a timely and complete appeal of an administrative citation has been filed, the citing officer or his or her designee shall provide written notice by first class mail or facsimile to the appropriate association (e.g., San Diego County Bar Association) requesting a hearing officer.
- (b) As soon as practicable, said association will provide to the citing officer and the person or entity who filed the appeal, a notice listing three randomly selected names of hearing officers who are practicing and retired attorneys and judges who have agreed to join a panel from which hearing officers are selected by the said association.
- (c) Each party shall have the opportunity to reject one of the three proposed hearing officers provided by the association. In the event that two out of the three listed hearing officers are rejected by the parties to the hearing by the deadline stated in the notice, the remaining hearing officer shall become the selected hearing officer for purposes of presiding over that particular hearing. In the event that only one or none of the three listed hearing officers are rejected by the parties to the hearing by the deadline stated in the notice, the first hearing officer on the top of the list who has not been rejected shall become the selected hearing officer for purposes of presiding over that particular hearing.

(Ord. 2008-2790 § 2 (part); May 13, 2008)

1.09.050 - Scheduling the administrative appeal hearing.

Once the hearing officer is selected, the citing officer or his or her designee shall contact the hearing officer to schedule a date, time, and location for the administrative appeal hearing. The administrative appeal hearing shall be scheduled as soon as practicable but allowing sufficient time for providing notice of the hearing.

(Ord. 2008-2790 § 2 (part); May 13, 2008)

1.09.060 - Preparation and form of notice of administrative appeal hearing.

Once the date, time and place for the administrative appeal hearing is determined, the citing officer or his or her designee shall prepare a notice of administrative appeal hearing ("hearing notice"), which shall be in substantially the same form as follows:

'You are hereby notified that a hearing will be held before the Administrative Hearing Officer at on the day of at the hour of to hear your appeal of the Administrative Citation served upon you. You may be present at the hearing. You may be, but need not be, represented by an attorney.

You may present any relevant evidence at the hearing and you will be given a full opportunity to cross-examine all witnesses testifying against you.'

(Ord. 2008-2790 § 2 (part); May 13, 2008)

1.09.070 - Time for and method of service of notice of administrative appeal hearing.

The citing officer or his or her designee shall cause a copy of hearing notice to be provided to each appellant either by causing a copy of said notice to be delivered to each appellant personally or by causing a copy of said notice to be delivered by certified mail, postage prepaid, return receipt requested, and addressed to each appellant at the address shown on the appeal.

(Ord. 2008-2790 § 2 (part); May 13, 2008)

1.09.080 - Proof of service of notice of administrative appeal hearing.

Proof of service of the hearing notice shall be certified at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the date and manner in which service was made. The declaration shall be affixed to a copy of the hearing notice and retained by the citing officer or his or her designee.

(Ord. 2008-2790 § 2 (part); May 13, 2008)

1.09.090 - Report and recommendation.

The citing officer shall prepare an administrative hearing packet for the hearing officer to review prior to the hearing. The packet shall include a copy of the administrative citation, a staff report, and any evidence of the violation(s).

(Ord. 2008-2790 § 2 (part); May 13, 2008)

1.09.100 - Admissibility of evidence at administrative appeal hearing.

At the administrative appeal hearing, the hearing officer shall review all evidence, documents, and written testimony and hear all oral testimony offered either in support of appellant's claim or in support of the administrative citation, provided such evidence and testimony is relevant to the issues of the hearing. The hearing officer has the authority to determine the relevance of any evidence to the issues of the hearing. The hearing officer also has the authority to exclude unduly repetitious and cumulative evidence, regardless of its relevancy.

(Ord. 2008-2790 § 2 (part); May 13, 2008)

1.09.110 - Rights of parties at administrative appeal hearing.

Each party appearing at the hearing shall have the following rights:

- (a) To call and examine witnesses;
- (b) To introduce documentary and physical evidence;
- (c) To cross-examine opposing witnesses;
- (d) To impeach any witness regardless of which party first called the witness to testify;
- (e) To rebut evidence;
- (f) To be represented by anyone who is lawfully permitted to do so.

(Ord. 2008-2790 § 2 (part); May 13, 2008)

#### 1.09.120 - Failure to attend administrative appeal hearing.

If the appellant fails to attend the scheduled administrative appeal hearing, the hearing will proceed without appellant and he or she will be deemed to have waived his or her rights to be orally heard at the appeal hearing.

(Ord. 2008-2790 § 2 (part); May 13, 2008)

#### 1.09.130 - Hearing officer's determination on appeal.

Following the appeal of an administrative citation, the hearing officer may decide to uphold the administrative citation, establish a modified schedule for compliance, overturn some or all of the findings of the citing officer and/or rescind the citation in part or in its entirety, and/or reduce the amount or waive payment of the administrative fine. In the event the hearing officer determines to rescind the administrative citation in its entirety, the recipient of the administrative citation shall not be required to pay the administrative fine imposed by said citation.

(Ord. 2008-2790 § 2 (part); May 13, 2008)

#### 1.09.140 - Duty to prepare and serve notice of decision and compliance order.

The hearing officer shall prepare and serve a written notice of decision and compliance order ("decision and compliance order") upon each appellant and the citing officer following the administrative appeal hearing. The decision of the hearing officer shall be final, except as otherwise provided by this chapter.

(Ord. 2008-2790 § 2 (part); May 13, 2008)

#### 1.09.150 - Time in which to serve notice of decision and compliance order.

The hearing officer shall serve the written notice of decision and compliance order to each appellant within twenty calendar days from the date the hearing is deemed closed. The hearing officer shall also provide or cause to be provided a copy of the decision and compliance order to the citing officer.

(Ord. 2008-2790 § 2 (part); May 13, 2008)

#### 1.09.160 - Form of notice of decision and compliance order.

The decision and compliance order for an administrative citation shall state whether the administrative citation has been either upheld, in full or in part, be rescinded, in full or in part. In addition, the decision and compliance order shall contain a brief summary of the evidence considered, findings of fact, a determination of the issues presented, the effective date of the decision, and a compliance order, if applicable, which shall specifically describe the actions which shall be required to be taken to remedy the code violations indicated in the decision and compliance order and shall require the actions to be completed within a specified time period and by a specified deadline. In addition, the decision and compliance order shall contain a compliance order, if applicable, which shall require the administrative citation recipient to pay all applicable administrative fines no later than ten calendar days from the date of issuance of the notice of decision and compliance order. The amount of the fine for which the recipient shall be responsible shall be as set forth in the administrative citation. Payment of the administrative fine shall be ordered to be made to the issuing department or division unless otherwise directed by the city.

(Ord. 2008-2790 § 2 (part); May 13, 2008)

#### 1.09.170 - Service of notice of decision and compliance order.

The hearing officer shall cause a copy of the notice of decision and compliance order to be provided to each appellant either by causing a copy of the decision and compliance order to be delivered to each appellant personally or by causing a copy of said decision and compliance order to be delivered to each appellant by certified mail, postage prepaid, return receipt requested, and addressed to appellant at the address shown on the appeal. A copy of the decision and compliance order shall also be provided to the citing officer.

(Ord. 2008-2790 § 2 (part); May 13, 2008)

#### 1.09.180 - Effective date of notice of decision and compliance order.

The effective date of the hearing officer's notice of decision and compliance order shall be as stated therein or, if none provided, the date of the decision and compliance order.

(Ord. 2008-2790 § 2 (part); May 13, 2008)

#### 1.09.190 - Failure to obey notice of decision and compliance order.

- (a) Failure to obey a notice of decision and compliance order shall be deemed, an infraction violation for purposes of this section. A fourth violation and subsequent violations of this section within a twelve-month period shall be deemed a misdemeanor.
- (b) If, after the notice of decision and compliance order becomes final, the person(s) to whom the decision and compliance order is directed shall fail, neglect or refuse to obey such order, the code compliance officer or other authorized agent may:
  - (1) Cause such person to be prosecuted for an infraction violation for the offense of contempt of the hearing officer's decision and compliance order; and/or
  - (2) Institute any appropriate administrative or legal action or proceeding necessary to gain compliance;
  - (3) For each day that the person(s) to whom the decision and compliance order is directed fails, neglects or refuses to obey such order, a new offense is committed.

(Ord. 2008-2790 § 2 (part); May 13, 2008)

#### 1.09.200 - Attorney's fees.

The prevailing party in any proceeding conducted pursuant to this chapter and associated with the abatement of a public nuisance shall be entitled to recovery of attorneys' fees incurred in any such proceeding.

(Ord. 2008-2790 § 2 (part); May 13, 2008)