

Chapter 1

GENERAL PROVISIONS

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§ 1-1. How Code designated and cited.

The ordinances embraced in the following chapters and sections shall constitute and be designated as the "Escondido Municipal Code," and may be so cited.
(Ord. No. 84-3, §§ 1, 1-11-84)

§ 1-2. Rules of construction and definitions.

In the construction of this Code, the rules and definitions set out in this section shall be observed, unless such construction would be inconsistent with the manifest intent of the city council. The rules of construction and definitions set out herein shall not be applied to any section of this Code which shall contain any express provision excluding such construction, or where the subject matter or context of such section may be repugnant thereto.

All general provisions, terms, phrases and expressions contained in this Code shall be liberally construed in order that the true intent and meaning of the city council may be fully carried out.

In the interpretation and application of any provision of this Code, they shall be held to be

the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Where any provision of the Code imposes greater restrictions upon the subject matter than the general provision imposed by the Code, the provision imposing the greater restriction or regulation shall be deemed to be controlling.

City, in the city. The words "the city" or "this city" shall mean the City of Escondido, California. The words "in the city" shall mean and include all territory over which the city now has or shall hereafter acquire jurisdiction for the exercise of its police powers or other regulatory powers.

City Hall. The words "City Hall" shall mean 201 North Broadway, Escondido, California.

Computation of time. Unless otherwise specifically provided, the time within which an act is required to be done shall be computed by excluding the first day and including the last; except that the last day shall be excluded if it is Sunday or a holiday.

Council. Whenever the word "council" is used in this Code, it shall be construed to mean the city council of the City of Escondido, California.

County. The words "the county" or "this county" shall mean the County of San Diego in the State of California.

Day. A day is the period of time between any midnight and the midnight following.

Daytime, nighttime. "Daytime" is the period of time between sunrise and sunset. "Nighttime" is the period of time between sunset and sunrise.

Delegation of authority. Whenever a provision appears requiring the head of a department or other officer of the city to do some act or perform some duty, or granting some right to him as such official, it shall be construed to authorize such department head or officer to designate, delegate and authorize subordinates to do the required act or perform the required duty, or it shall grant to them such right, unless the terms of the provisions designate otherwise.

Gender. A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships and corporations as well as to males.

Holiday. Those dates established by resolution of the city council from time to time on which the public offices of the city shall be closed.

Month. The word "month" shall mean a calendar month.

Nontechnical and technical words. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning. Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense.

Number. The singular number shall include the plural and the plural number shall include the singular.

Oath. The word "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

Official time. Whenever certain hours are named in this Code, they shall mean Pacific standard time or daylight-saving time, as may be in current use in the city.

Officials, officers, departments, etc. Whenever reference is made to officials, boards, commissions, departments or other municipal agents by Title only, such reference shall be read

as though followed by the words "of the City of Escondido, California."

Owner. The word "owner" applied to real estate shall include any part owner, joint owner, tenant in common, tenant in partnership, joint interest or other fee interest in the whole or a part of such real estate.

Person. The word "person" shall mean a natural person, firm, corporation, organization, company, association, business trust, joint-stock company, partnership, joint venture, club, or the agent, servant, manager, officer, employee or lessee of any of them.

Personal property. Includes every species of property, except real property as defined in this section.

Preceding, following. The words "preceding" and "following" shall mean next before and next after, respectively.

Process. The word "process" shall include a writ or summons issued in the course of judicial proceedings of either a civil or criminal nature.

Property. The word "property" shall include real and personal property.

Real property. The words "real property" shall include lands, tenements and hereditaments.

Shall, may. "Shall" is mandatory and "may" is permissive.

Signature or subscription by mark. "Signature" or "subscription" includes a mark when the signer or subscriber cannot write, such signer's or subscriber's name being written near the mark by a witness who writes his own name near the signer's or subscriber's name; but, a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names thereto.

State. The words "the state" or "this state" shall mean the State of California.

Street. The word "street" shall be construed to include streets, avenues, boulevards, roads, alleys, lanes, viaducts and all other public ways in the city and shall include all parts thereof constituting the designated right-of-way.

Tenant or occupant. The word "tenant" or "occupant," applied to a building or land, shall include any person holding a written or an oral lease of, or who occupies the whole or a part of, such building or land, either alone or with others.

Tenses. The present tense includes the past and future tenses, and the future includes the present.

Writing. Writing includes any form of recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, statement or record is required or authorized by this Code, it shall be made in writing in the English language, unless expressly provided otherwise.

Year. The word "year" means a period of 365 days. The added day of leap year, and the day immediately preceding, if they occur in any such period, shall be reckoned together as one day. (Code 1957, §§ 0000—0004, 0006, 0015, 0016, 0017—0017.2; Ord. No. 86-1, § 1, 1-15-86 ; amended during 3-94 supplement)

§ 1-3. Provisions considered as continuations of existing ordinances.

The provisions appearing in this code, so far as they are substantively the same as those of ordinances existing at the time of the effective date of this code, shall be considered as continuations thereof insofar as they apply to conditions existing prior to the effective date of this code.

(Code 1957, § 0031)

§ 1-4. Catchlines of sections.

The catchlines of the several sections of this code printed in boldface type are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, nor as any part of the section, unless otherwise expressly provided, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted.

§ 1-5. Effect of repeal of ordinances.

The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect.

The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding for violation of said ordinance pending at the time of the repeal.

§ 1-6. Effect of Code on prosecution for prior ordinance violation.

Prosecution for violation of ordinances committed prior to the effective date of this code shall not be affected by the adoption of the code or by its repeal of such ordinances.
(Code 1957, § 0032)

§ 1-7. Effect of Code on licenses, penalties.

Neither the adoption of this code nor its repeal of any ordinance shall be construed as a waiver of any license or penalty due and unpaid under such ordinance at the effective date of the code; nor shall such adoption or repeal be construed as affecting any provision of such ordinance relating to the collection of any such license or penalty or the penal provisions applicable to the violation thereof.
(Code 1957, § 0033)

§ 1-8. Effect of Code on bonds, cash deposits.

Neither the adoption of this code nor its repeal of any ordinance shall affect the validity of any bond or cash deposit required to be posted, filed or deposited pursuant to such ordinance; and all rights and obligations thereunder shall continue in full force and effect.
(Code 1957, § 0034)

§ 1-9. Affect of Code on matters of record.

This code shall not affect deposits or other matters of record which refer to, or are otherwise connected with, ordinances which are therein specially designated by number or otherwise and which are included in the code; but such references shall be construed to apply to the corresponding provisions of the code.
(Code 1957, § 0035)

§ 1-10. Severability of parts of Code.

It is hereby declared to be the intention of the city council that the sections, paragraphs, sentences, clauses and phrases of this code are severable, and if any phrase, clause, sentence, paragraph or section of this code shall be declared unconstitutional, invalid or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality, invalidity or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

(Code 1957, § 0018)

§ 1-11. Amendments to Code; effect of new ordinances; amendatory language.

All ordinances passed subsequent to the Municipal Code which amend, repeal or in any way affect this Municipal Code, may be numbered in accordance with the numbering system of this code and printed for inclusion herein. When subsequent ordinances repeal any chapter, section or subsection or any portion thereof such repealed portions may be excluded from this code by omission from reprinted pages. The subsequent ordinances as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time that this municipal code and subsequent ordinances numbered or omitted are readopted as a new municipal code by the city council.

Amendments to any of the provisions of this code may be made by amending such provisions by specific reference to the section number of this code in the following language: "That section _____ of the Escondido Municipal Code is amended to read as follows: _____." The new provisions shall then be set out in full as desired.

In the event a new section not heretofore existing in the code is to be added, the following language may be used: "That the Escondido Municipal Code is amended by the addition of section _____ which reads as follows: _____." The new section shall then be set out in full as desired.

(Code 1957, § 0023; Ord. No. 84-3, § 2, 1-11-84)

§ 1-12. Altering Code.

It shall be unlawful for any person, firm or corporation to change or amend by additions or deletions, any part or portion of this code or to insert or delete pages, or portions thereof, or to alter or tamper with such code in any manner whatsoever which will cause the law of the city of Escondido to be misrepresented thereby.

§ 1-13. General penalty.

- (a) It shall be unlawful for any person to violate or fail to comply with any provisions 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 a misdemeanor except that notwithstanding any other provisions of this code, any such violation constituting a misdemeanor under this code may, in the discretion of the city attorney having prosecutorial functions, be charged and prosecuted as an infraction. Any person convicted of a misdemeanor under the provisions of this code shall be punished by fine of not exceeding \$1,000, or imprisonment not exceeding six months, or by both such fine and imprisonment in the discretion of the court.

- (b) Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of this code is committed, continued or permitted by such person; and he or she shall be punished accordingly.

(Code 1957, §§ 0041, 0044; Ord. No. 85-4, § 1, 1-23-85 ; Ord. No. 2003-02, § 1, 2-5-03)

§ 1-14. Violations of Code a nuisance.

In addition to the penalties provided in section 1-13, 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 the city, summarily abated as such; and each day that such condition continues shall be regarded as a new and separate offense.

(Code 1957, § 0046)

§ 1-15. Service of notice.

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.

§ 1-16. Proof of service of notice.

Proof of giving any notice may be made by the certificate of any officer or employee of the city or by affidavit of any person over the age of 18 years, which shows service in conformity with this Code or other provisions of law applicable to the subject matter concerned.

(Ord. 1956, § 0052)

§ 1-17. Penalty for infractions.

- (a) Any person violating or failing to comply with any provisions of this Code or committing any act or omission to act declared to be an infraction, where no specific penalty is provided therefor, shall be punished by a fine not more than \$100 for a first violation, and for a second violation of the same ordinance within one year by a fine of not more than \$200, and for each additional violation of the same ordinance within one year, by a fine of not more than \$500.
- (b) 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.

(Ord. No. 75-4, § 1, 2-13-75 ; Ord. No. 85-4, § 2, 1-23-85)

§ 1-18. Mandatory appearance.

Whenever any person is arrested for any violation of this code, not declared to be a felony, the arrested person shall be taken without unnecessary delay before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made in any of the following cases:

- (a) When the person arrested fails to present his driver's license or other satisfactory evidence of his identity for examination;
 - (b) When the person arrested refuses to give his written promise to appear in court;
 - (c) When the person arrested demands an immediate appearance before a magistrate.
- (Ord. No. 75-45, § 1, 11-19-75)

§ 1-19. Limitation on liability.

Except when otherwise specifically indicated the obligations imposed upon city officers or employees for implementation and enforcement of this Code are directory in nature. Nothing in this Code shall be construed as limiting or eliminating any defense or immunity from liability for the city or its officers or employees established by the provisions of Title 1, Division 3.6 of the California Government Code or by any other provision of law. Except when otherwise specifically indicated, the manner and timing of enforcement and implementation of this Code shall be within the discretion of the city manager or other designated city officers or employees. Except when otherwise specifically indicated this Code shall not be construed to hold the city or any officer or employee of the city responsible for any damage to persons or property by reason of a failure to enforce, implement or execute any of the provisions of this Code. Nothing in this Code shall be construed to hold the city or any officer or employee of the city responsible for any damage resulting to persons or property by reason of any interpretation of this Code by any city officer or employee.

(Ord. No. 85-41, § 1, 6-19-85)

§ 1-20. Civil penalties—Procedures.

- (a) Declaration and purpose.
 - (1) The council finds and determines that there is a need for alternative methods of enforcement of this code, the zoning code, and laws which these codes adopt by reference. The council further finds and declares that the imposition of civil penalties upon violators of provisions of the codes is a necessary alternative method of enforcement.
 - (2) The procedures established in this section shall be in addition to any other legal remedy established by law which may be pursued to address violations of the codes.
 - (3) The civil penalties provided by sections 1-20 through 1-27 of this chapter are designed to provide remedial sanctions to approximate the damages, costs, and other losses to the city when violations of the codes occur.

(Ord. 90-45, § 1, 9-5-90)

§ 1-21. Definitions.

Whenever used in this chapter, Code shall mean the Escondido Municipal Code, the Escondido Zoning Code, or any law which they adopt by reference.

"Director" shall include the city manager or any department head in the city, or their designated agents or representatives.

"Hearing officer" means any person appointed by the city manager to preside over the administrative hearings provided for by this section.

"Person" means any natural person, firm, association, club, organization, corporation, partnership, business, trust, company or any other entity which is recognized by law as the subject of rights or duties.

(Ord. 90-45, § 1, 9-5-90)

§ 1-22. Procedures—Generally.

- (a) Any person violating any provisions of the code may be subject to civil penalties as provided in this section.
 - (b) Each and every day a violation of any provision of the code exists constitutes a separate and distinct offense.
 - (c) Civil penalties may be directly assessed by means of a notice and order issued by the director and/or hearing officer and may be recovered by assessment of a lien or legal action brought by the city attorney.
 - (d) Civil penalties assessed by means of a notice and order shall be collected in accordance with the administrative procedures specified in this section or shall be collected in the same manner as judgments in civil actions.
 - (e) A civil penalty for a violation of any provision of the code shall be assessed at a daily rate determined by the director or hearing officer up to a maximum of \$2,500 per day per violation, except that the maximum civil penalty shall not exceed \$100,000 for any related series of violations.
 - (f) In determining the amount of the civil penalty to be imposed, the hearing officer may consider some or all of the following factors:
 - (1) The duration of the violation;
 - (2) The frequency or reoccurrence of the violation;
 - (3) The seriousness of the violation;
 - (4) The history of such violation;
 - (5) The violator's conduct after issuance of the notice and order;
 - (6) The good faith effort by the violator to comply;
 - (7) The economic impact of the penalty on the violator;
 - (8) The impact of the violation upon the community and the city;
 - (9) Any other factors which justice may require.
 - (g) Civil penalties shall begin to accrue 10 days from the date the notice and order is issued and shall cease to accrue on the date the violation is deemed corrected by the director.
 - (h) If compliance is not achieved within 10 days from the date the notice and order is issued, the director shall fix the date, time, and place for an administrative hearing.
- (Ord. 90-45, § 1, 9-5-90)

§ 1-23. Procedures—Notice and order.

- (a) Whenever the director determines that a violation of one or more provisions of the code has occurred or exists, a written notice and order may be issued to the violators and/or any property owners.
 - (b) The notice and order shall refer to the code section violated and describe how the sections are or have been violated.
 - (c) The notice and order shall refer to the dates and locations of all violations.
 - (d) The notice and order shall describe the action required to correct the violation.
 - (e) The notice and order shall require the violators and/or property owners to correct the violations by a certain date. The notice and order shall state that civil penalties shall immediately begin to accrue if compliance is not achieved by the date set forth in the notice and order.
 - (f) The notice and order shall state the consequences should the violators and/or property owners fail to comply with the terms of the notice and order prescribed in this section.
 - (g) The notice and order shall be served upon the violators and/or the property owners or their agents by any one of the following means:
 - (1) Personal service;
 - (2) Certified mail, postage prepaid, return receipt requested; or
 - (3) Posting the notice and order conspicuously on or in front of the property on which the violation is located.
 - (h) The failure of any person with an interest in the property to receive such notice shall not affect the validity of any proceedings taken under this section. Service by certified mail in the manner described in this section shall become effective on the date of mailing.
- (Ord. 90-45, § 1, 9-5-90)

§ 1-24. Hearing.

- (a) If the violation is not corrected within 10 days from the date the notice and order is issued, the director shall fix a date, time and place for the hearing and request the city manager to appoint a hearing officer. Written notice of the time and place of the hearing shall be served at least 10 days prior to the date of the hearing to the violators and/or each party having a legal interest in the property by any of the methods listed in subsection (g) of section 1-23.
- (b) Scope of hearing.
 - (1) Existence of violation. The hearing officer shall consider whether a preponderance of evidence demonstrates the existence of the violation. The violators and/or record owners or agents or persons in possession of the property on which the violation is located or any other interested persons may present testimony or evidence concerning the existence of the violations, and the means and time frame for correcting the violation.
 - (2) Civil penalties. The hearing officer shall identify the time frame involved in assessing

the civil penalty and shall explain all factors considered in determining the amount of the civil penalty to be imposed. In determining or confirming the amount of the civil penalty to be imposed, the hearing officer shall consider those factors outlined in subsection (f) of section 1-22. The violators, property owners, agents, or persons in possession of the property on which the violation is located or any other interested person may present testimony or evidence relating to the civil penalties and those factors outlined in subsection (f) of section 1-22.

- (c) Procedures for conducting hearings. Hearings shall be conducted in an expeditious manner to enable all interested parties to present relevant evidence on the assessment and amount of the civil penalties. Formal rules of evidence shall not be required. Time limits for presenting evidence, order of testimony, handling of exhibits, and similar matters shall be at the discretion of the hearing officer.
 - (d) Failure to attend hearing. Failure of the violators and/or any party having a legal interest in the property to attend the hearing shall constitute a waiver of rights to an administrative hearing and adjudication of the notice and order or any portion thereof.
- (Ord. 90-45, § 1, 9-5-90)

§ 1-25. Failure to comply with administrative order.

- (a) Failure to pay civil penalties. Upon the failure of any person to pay the assessed civil penalties by the date specified in the hearing officer's decision, the unpaid amount shall constitute:
 - (1) A personal obligation of the violators and/or property owners; and/or
 - (2) A lien upon the real property upon which the violation is located if the civil penalties have been assessed as to the property owners. The lien shall continue until the civil penalties are fully paid or the property is sold or transferred.
 - (b) Failure to correct violation. Upon the failure of the violator and/or property owners or their agents to correct the violations as specified in the hearing officer's decision, civil penalties may continue to accrue on a daily basis until the violation is corrected except that such amount shall not exceed \$100,000.
- (Ord. 90-45, § 1, 9-5-90)

§ 1-26. Recovery of civil penalties.

- (a) Personal obligation. If collected as a personal obligation, the director shall collect this obligation by the use of all appropriate legal means. If unable to collect the obligation, the director shall refer the obligation to the city attorney to file a court action to recover these costs.
- (b) Lien. If collected as a lien, the director shall refer the lien to the county auditor in accordance with the procedures set forth in sections 6-496 and 6-497 of this code. The director shall file a withdrawal of the notice with the county recorder once the civil penalties are paid in full.
- (c) Continuing noncompliance. When a violation continues after the hearing officer renders a decision, the director shall recover the civil penalties in the following manner:

- (1) Review schedule. The director shall set up a schedule to monitor the violation and determine if the violation has been corrected.
- (2) Accounting report. The director shall keep an itemized account of the daily rate and amount of civil penalties accruing.
- (3) Subsequent compliance. If the violation is subsequently corrected, the director shall establish a hearing in the same manner as provided for in section 1-24 of this code and provide a notice to the violators and/or property owners. The notice shall identify the responsible parties and state the outstanding amount of civil penalties which have accrued.
- (4) Recovery of civil penalties. The subsequent civil penalties accrued shall be collected in the same manner provided in this section. If unable to collect any obligation, the director shall refer the obligation to the city attorney to recover these costs.

(Ord. 90-45, § 1, 9-5-90)

§ 1-27. Allocation of civil penalties collected.

All civil penalties shall be deposited in a fund established by the city to reimburse investigative costs. Civil penalties deposited in this fund shall be appropriated and allocated in a manner determined by the city manager. The city finance officer shall establish accounting procedures to ensure proper account identification, credit and collection.

(Ord. 90-45, § 1, 9-5-90)

§ 1-28. Late fees, penalties and interest.

Any person failing to pay any city billing in full within the specified time period shall be charged late fees, penalties and interest as set by resolution.

Interest shall mean a per annum percentage charge commencing when the account becomes past due.

Penalty shall mean a fine imposed for a late payment. A payment is considered late if it is received past the due date.

(Ord. No. 94-40, § 1, 12-14-94)