

ORDINANCE 2007-19

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONROVIA, CALIFORNIA AMENDING TITLE 1 (GENERAL PROVISIONS) ESTABLISHING AN ADMINISTRATIVE FINE PROGRAM

THE CITY COUNCIL OF THE CITY OF MONROVIA, CALIFORNIA does ordain as follows:

SECTION 1. The City Council of the City of Monrovia hereby finds that the enforcement of the Monrovia Municipal Code and adopted ordinances throughout the City is an important public service. A program for enforcement of local codes is vital to protect public health, safety, and welfare. The establishment of a comprehensive and effective code enforcement program that is able to utilize both administrative and judicial remedies against violations of the City's laws is best equipped to protect public health, safety, and welfare.

SECTION 2. Government Code Section 53069.4 authorizes local jurisdictions to establish an administrative fine program. The City Council intends, pursuant to this statute, to establish an administrative fine program that:

1. Imposes a non-judicial civil fine for offenses of the Monrovia Municipal Code;
2. Encourages prompt abatement or correction of prohibited conditions, uses or activities in the City; and,
3. Creates deterrence against future violation of the City's laws.

SECTION 3. The administrative fine remedy is not intended to replace any other remedy allowed by the Monrovia Municipal Code or state law. It is intended to provide an additional means by which the City's laws may be enforced.

SECTION 4. Title 1 (General Provisions) of the Monrovia Municipal Code is hereby amended by adding a new Chapter 1.17 to read as follows:

**Chapter 1.17
ADMINISTRATIVE FINES - CITATIONS**

Sections:

- | | |
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§ 1.17.010 Applicability

A. Use of this Chapter shall be at the sole discretion of the City and is one remedy that the City has to address violations of the Monrovia Municipal Code. By adopting this Chapter, the City does not intend to limit its discretion or ability to utilize any criminal, civil or other remedies, or any combination thereof, to address any violations of the City's laws.

B. This Chapter makes any violation of the provisions of the Monrovia Municipal Code subject to civil fines.

C. This Chapter establishes the administrative procedures for the imposition, enforcement, collection, and administrative review of civil fines pursuant to Government Code, Section 53069.4.

D. An administrative fine shall be imposed by means of an administrative notice and citation issued by an Officer, and shall be paid directly to the City of Monrovia. Payment of a fine shall not excuse a failure to correct a violation, nor shall it bar concurrent or further enforcement actions by the City.

E. The City Manager, or a designee thereof, may dismiss a citation at any time if a determination is made that it was issued in error, in which event any deposit of a fine shall be refunded. Notice of such action shall be given to the Citee in writing.

F. The City Manager, or a designee thereof, is authorized to promulgate procedural rules and regulations governing the provisions in this Chapter.

Section 1.17.020 Definitions

As used in this Chapter, the following words are defined as follows:

CITATION means an administrative citation that is issued to a Responsible Person pursuant to this Chapter.

CITEE means a Responsible Person to whom a citation is issued.

CITY means the City of Monrovia, California.

CIVIL FINE is the monetary sanction established by resolution of the City Council that is imposed by a Citation.

CODE shall include: (i) the entire Monrovia Municipal Code and all Los Angeles County and other codes incorporated therein by adoption or reference, (ii) any uncodified ordinance adopted by the Monrovia City Council, and, (iii) all other state laws applicable to the City of Monrovia.

CITY MANAGER shall mean the chief administrative official of the City as appointed by the City Council.

ENFORCEMENT OFFICER (also referred to as **OFFICER**) shall mean any City employee with obligations to enforce the Monrovia Municipal Code. The City Manager may designate additional persons to act as Officers for purposes of implementing the provisions of this Chapter.

HEARING OFFICER shall include a private entity, organization, association or person, or a public official, or duly constituted reviewing authority or commission that the City Manager designates or appoints to consider all timely requests for an administrative hearing upon issuance of a citation.

OWNER means and includes any person having legal title to, or who leases, rents, occupies or has charge, control or possession of, or responsibility for, any real property in the City, including all persons identified as owners on the last equalized assessment roll of the Los Angeles County Assessor's Office. An owner of personal property or animals shall be any person who has legal title, charge, control or possession of, or responsibility for, personal property. An owner may include an agent, manager or representative thereof.

PERSON means and includes any individual, partnership of any kind, a corporation of any kind, limited liability company, association, joint venture or other organization or entity, however formed, as well as fiduciaries, trustees, heirs, executors, administrators, or assigns, or any combination of such persons. "Person" also includes any public entity or agency that acts as an owner in the City.

PROPERTY or **PREMISES** means any real property, or improvements thereon, or portions thereof, as the case may be. **PROPERTY** includes any parkway or unimproved public easement abutting such real property. **PROPERTY** shall also include all forms of personal property or animals, where applicable.

RESPONSIBLE PERSON means any person, whether as an owner, or otherwise, that allows, causes, creates, maintains, or permits a violation of the Code to exist or continue, by any act or the omission of any act or duty.

VIOLATION shall mean an act or omission of any act, or use or condition that constitutes an offense of the Code, as well as a breach or violation of any condition of a permit, approval or license issued pursuant to the Code. A **TRANSIENT VIOLATION** is one that is brief or spontaneous in its commission, or that is not typically confined to a fixed location. A **NON-TRANSIENT VIOLATION** is continuing in nature and generally present at one location.

Section 1.17.030 Scope

This Chapter provides for imposition of a civil fine pursuant to a Citation for any violation of the Code, as well as for a breach or violation of any condition of a permit, approval or license issued pursuant to the Code. This remedy may be utilized in place of, or in addition to, any other remedy allowed by the Code or state law. The City Manager, or designees thereof, shall have sole discretion to utilize any remedy or remedies as authorized by law.

Section 1.17.040 Issuance of Administrative Citation; Contents Thereof

A. Whenever an Officer determines that a violation of the Code has occurred, the Officer may issue a Citation on a City-approved form imposing a civil fine or fines to the Responsible Person(s) in accordance with the provision of this Chapter.

B. When the violation pertains to building, plumbing, electrical or other similar structural or zoning issues that creates an immediate danger to health or safety, a citation may be issued forthwith. In the absence of an immediate danger, a citation for such a violation shall not be issued pursuant to this Chapter unless the Responsible Person has first been provided with a reasonable period, as determined by the Officer, in which to complete the abatement or compliance actions.

C. An Officer may issue a Citation for a violation not committed in the Officer's presence if the Officer has determined, through investigation, that the Citee did commit, or is otherwise responsible for, the violation.

D. Each day that a prohibited condition, use or activity under the Code is committed, continued or permitted, shall be a separate violation for which a citation may be issued. A Citation may charge several violations of the Code.

E. Each Citation shall contain the following information:

1. Name and mailing address of the Responsible Person.
2. The address or description of the location of the violation.
3. The date and approximate time of commission of the violation(s), or detection thereof by an Officer.
4. The Code ordinance section(s) violated;
5. A description of the violation(s);
6. Amount of the fine for each violation, the procedure and place to pay the fine(s), and any late and interest charge(s), if not timely paid;

7. When appropriate, the action(s) required to correct the violation(s), and, if applicable, any deadlines or time limitations for commencing and completing such action(s).

8. A description of the administrative citation review process and the manner by which a hearing on a Citation may be obtained (including the form to be used, where it may be procured from, and the period in which a request must be made in order to be timely).

9. The name and signature of the Officer, and the signature of the Citee, if he or she is physically present and will sign the Citation at the time of its issuance. The refusal of a Citee to sign a citation shall not affect its validity or any related subsequent proceeding, nor shall signing a Citation constitute an admission that a person has committed a violation of the Code.

10. Any other information deemed necessary by the City Manager.

Section 1.17.050 Service of Citation

A. A Citation may be served either by personal delivery to the Citee or by first class mail through the United States Postal Service. The date of personal service shall constitute the issuance date of a Citation.

B. If served by first class mail, the Citation shall be sealed in an envelope with postage prepaid and addressed to the Citee at his or her last-known business or residence address as same appears in public records of the City. The date a Citation is deposited with the United States Postal Service shall: (i) constitute its issuance date, and (ii) the date that service by first class mail shall be deemed to have been completed.

C. If an agent, manager or representative of a Responsible Person is personally served with a citation, a copy thereof shall also served by first class mail to the Responsible Person at his or her last-known business or residence address as same appears in public records of the City. In such instances, the date a copy of the Citation is deposited with the U.S. Postal Service shall constitute the issuance date of a Citation.

D. If service cannot be accomplished personally or by mail for Citations involving a real property-related violation of the Code, the officer shall post the Citation on said real property in the City in which the Citee is known to have a legal interest in, or possession, or dominion or control of, said property, or a portion thereof. The date of posting shall constitute the issuance date of a Citation.

E. Any notice or order given pursuant to any provision of this Chapter shall be served in the manner provided for in this section, unless otherwise stated.

F. Failure of a Citee to receive a Citation or notice shall not invalidate any fine, late charge, action or proceeding that is imposed or brought pursuant to this Chapter, if service was given in a manner stated in this section.

Section 1.17.060 Civil Fines, Late Charges; Collection of Fees and Costs

A. The amounts of the fines imposed pursuant to this Chapter shall be set forth in a schedule of fines established by resolution of the City Council. The City Council may, by resolution, also impose escalating fines in amounts it deems appropriate for repeat offenses in a twelve-month period. The amounts of fines may be modified from time to time by a resolution of the City Council.

B. If a violation is classified as an infraction under the Code, the civil fine shall not exceed \$100.00 for a first offense, \$200.00 for a second offense within one year, and \$300.00 for a third offense within one year as set forth in subdivision (b) of Section 25132 and subdivision (b) of Section 36900 of the California Government Code. The amounts of such fines may be modified from time to time by a resolution of the City Council provided they do not exceed the limits allowed by state law.

C. Failure to pay a civil fine within the period required from the issuance date of a citation shall result in a late charge as established by a resolution of the City Council. The amount of a late charge may be modified from time to time by a resolution of the City Council.

D. The City Council may, by resolution, also establish and impose a daily interest charge on fines that are not fully paid to the City within sixty (60) days of their issuance when they are not contested, or within sixty (60) days of their non-payment following the decision of a hearing officer or a judicial officer to uphold or confirm the fine. Interest shall not be imposed on a late charge. The rate of interest and the commencement of its accrual may be modified from time to time by a resolution of the City Council.

E. Civil fines and any late charges and interest due shall be paid to the City at such location or address as stated in the citation, or as may otherwise be designated by the City Manager.

F. The due date for the City's receipt of a civil fine shall be fifteen (15) calendar days from the issuance date of a citation. Thereafter, a late charge shall be due and owing, as well as interest, as imposed by this Chapter.

G. Payment of a civil fine shall not excuse or discharge a Citee from the duty to immediately abate a violation of the Code, nor from any other responsibility or legal consequences for a continuation or repeated occurrence(s) of a violation of the Code.

H. Abatement of a violation shall not excuse the obligation of a Citee to pay a civil fine, or any late charge or interest.

I. Unpaid civil fines and/or late charges, as well as interest shall constitute a debt that may be collected in any manner allowed by law. The City shall be entitled to recover its attorney fees and costs arising from an action to collect a civil fine and/or late charge if it is the prevailing party and provided it made the election to seek attorney fees at the commencement of the action. A Citee shall be entitled to recover his or her attorney fees if the City made the election to seek attorney fees at the outset of the action and the Citee prevails thereon.

J. The City may record a Notice of Lien Claim against real property in Monrovia with the Los Angeles County Recorder's Office, on a form approved by the City Attorney or City Prosecutor, for an unpaid civil fine when all of the following conditions have been met:

- (1) The Citee has an ownership interest in real property in Monrovia.
- (2) The Citee committed, or was responsible for, the commission of a violation that occurred on, or concerned, that real property.
- (3) The Citation has become final or confirmed because:
 - (a) The Citee failed to request an administrative hearing by the required date, or did not do so in a timely manner; or,
 - (b) The Citee failed to appeal a hearing officer's decision upholding a Citation to the superior court by the required date, or did not do so in a timely manner; or,
 - (c) The superior court ruled against the Citee and upheld the citation.
- (4) The fine, as well as any late charges and accrued interest, have not been fully received by the City within thirty (30) calendar days of the date referenced in (3)(a) or (b) or (c).

A copy of the Notice of Claim shall be mailed by first class mail to the Citee to the address shown in the Citation.

K. Upon receipt of the entire amount of the City's unpaid civil fine, as well as all late charges and accrued interest, the City shall, within thirty (30) calendar days of said date, record a Notice of Rescission of Lien Claim with the Los Angeles County Recorder's Office. The City Attorney or City Prosecutor shall approve this form. A copy of the Notice of Rescission of Lien Claim shall be mailed by first class mail to the Citee to the address shown in the Citation.

Section 1.17.070 Right to an Administrative Hearing; Waiver of Advance Deposit of Fine

A. Any Citee may contest the violation(s), or that he or she is a Responsible Person, by filing a request for an administrative hearing on a City-approved form with the Office of the City Clerk – Monrovia City Hall, 415 South Ivy Avenue, Monrovia, CA 91016, within fifteen (15) calendar days from the issuance date of a citation. If the Office of the City Clerk does not receive the request in the required period, the Citee shall have waived the right to a hearing and the citation shall be deemed final.

B. No fee shall be charged for the filing of a request for a hearing.

C. Requests for a hearing shall be accompanied by the entire amount of the fine stated in the Citation. Failure to deposit a fine, or the tender of a non-negotiable check in the required period, shall render a request for an administrative hearing incomplete and untimely. Fines that are deposited with the City shall not accrue interest. Fines deposited shall be returned to the person tendering the fines in the event a Citation is overturned.

D. A Citee who is financially unable to deposit the civil fine with his or her request for a hearing may complete a City-approved application form for an advance deposit hardship waiver (hereafter the "Hardship Waiver"). This form and all required accompanying records shall be tendered, along with a request for a hearing, to the Office of the City Clerk – Monrovia City Hall, 415 South Ivy Avenue, Monrovia, CA 91016, within fifteen (15) calendar days from the issuance date of a Citation.

E. To be considered for a Hardship Waiver, the application form must be complete, signed, and must be accompanied by documents that enable the City to reasonably determine the Citee's present inability to deposit the fine. Documents suitable for consideration, may include, without limitation, accurate, complete and legible copies of state and federal income tax returns and all schedules for the preceding tax year; financial statements, loan applications, bank account records, income and expense records for twelve months preceding submittal of the waiver form, as well as other documentation demonstrating the Citee's financial hardship. The City may, at a time chosen in its sole discretion and after a Citation is final or confirmed, destroy or discard the documents submitted by a Citee for a Hardship Waiver without prior notice to the Citee.

F. Failure to submit a completed, signed Hardship Waiver form, along with records that support a claim of financial hardship, shall render the request for hearing incomplete and untimely. In this event, the Citee shall have waived the right to a hearing and the Citation shall be deemed final.

G. The City shall issue a written decision specifying the reasons for issuing or not issuing the Hardship Waiver. This decision is final and non-appealable. The decision shall be served upon the person requesting the Hardship Waiver by first class mail.

(1) Approval of a Hardship Waiver shall result in the City setting a hearing pursuant to subpart (I) of this section.

(2) If the City determines that the Citee is not entitled to a Hardship Waiver, he or she shall tender the full amount of the civil fine to the Office of the City Clerk within seven (7) calendar days of the date the decision is deposited with the U.S. Postal Service. In the event the City Clerk does not receive the full amount of the fine in the required period:

- (a) a late charge shall be imposed;
- (b) the request for a hearing is rendered incomplete and untimely;
- and,

(c) the Citee shall have waived the right to a hearing and the Citation shall be deemed final.

H. A request for a hearing shall contain the following:

- (1) The citation number.
- (2) The name, address, telephone and any facsimile numbers, of each person contesting the citation.
- (3) A statement of the reason(s) why a citation is being contested.
- (4) The date and signature of the Citee(s).

I. The person filing the request for a hearing shall be notified in writing by first class mail of the date, time and place set for this proceeding which shall be conducted within sixty (60) days of the date a timely and complete request is received by the Office of the City Clerk. Such notice shall be given at least ten (10) calendar days prior to the date of the hearing. Service of this notice is deemed complete at time of mailing. The failure of a Citee to receive a properly addressed notice shall not invalidate the Citation or any hearing, City action or proceeding conducted pursuant to this Chapter.

J. If the Officer submits an additional written report concerning the Citation to the Office of the City Clerk for consideration at the hearing, then a copy of this report shall also be served by first class mail on the person requesting an administrative hearing no less than three (3) calendar days prior to the date thereof. Failure to receive said report shall not invalidate the Citation or any hearing, City action or proceeding conducted pursuant to this Chapter.

K. A timely request for a hearing shall not excuse a Citee from the duty to immediately abate a violation of the Code, nor from any other responsibility or legal consequences for a continuation or repeated occurrence(s) of a violation of the Code.

Section 1.17.080 Administrative Hearing – Procedures

A. The City Manager shall designate or appoint a hearing officer who shall be selected in a manner that avoids the potential for pecuniary or other bias and in no event shall the citing Officer be the hearing officer.

B. Administrative hearings are informal and formal rules of evidence and discovery do not apply. The City bears the burden of proof to establish a violation and responsibility therefore by a preponderance of evidence. The citation is prima-facie evidence of the violation, however, and the Officer who issued the Citation is not required to attend or participate at the hearing. The Citee(s), and Officer, if present, shall have an opportunity to present evidence and witnesses and to cross-examine

witnesses. A Citee may bring an interpreter to the hearing provided there is no expense to the City therefore. The hearing officer may question any person who presents evidence or who testifies at any hearing.

C. A Citee may appear at the hearing in person or by written declaration executed under penalty of perjury. Said declaration and any documents in support thereof shall be tendered to and received by the Office of the City Clerk at least three (3) City business days prior to the hearing. If the Citee fails to attend the scheduled hearing, or does not submit a written declaration in a timely manner, he or she shall be deemed to have waived the right to a hearing. In such an instance, the hearing officer shall cancel the hearing and not render a decision. In such instances, the Citation shall be deemed final.

D. Hearings may be continued once at the request of a Citee or the Officer who issued the citation. The hearing officer may also continue the hearing for cause.

Section 1.17.090 Hearing Officer Decision; Right of Appeal Therefrom

A. After considering all of the testimony and evidence submitted at the hearing, the Hearing officer shall issue a written decision to uphold or overturn the Citation and shall state the reasons therefore. If the Citation is upheld and the violation has not been fully corrected as of the date of the hearing, the hearing officer shall order correction thereof in the decision and state deadline(s) to complete said action(s). The decision of the hearing officer shall be final.

B. The Citee(s) shall be served by first class mail with a copy of the hearing officer's written decision. The date the decision is deposited with the U.S. Postal Service shall constitute the date of its service. The failure of a Citee to receive a properly addressed decision shall not invalidate or any hearing, City action or proceeding conducted pursuant to this Chapter.

C. Decisions of the hearing officer are, in accordance with Government Code Section 53069.4(b), appealable to the superior court within twenty (20) days after the date of their service. Each decision shall contain a statement advising the Citee(s) of this appeal right and the procedures and court-filing fee for its exercise. A Citee shall serve a copy of the court filed Notice of Appeal on the Office of the City Clerk – Monrovia City Hall, 415 South Ivy Avenue, Monrovia, CA 91016, by personal service or first class mail within five (5) calendar days of filing the original thereof.

D. If a hearing officer's decision is not appealed in a timely manner, the decision shall be deemed confirmed.

E. The superior court is the sole reviewing authority and an appeal from a hearing officer's decision is not appealable to the City Council. If a Responsible Person prevails on appeal, the City shall reimburse his or her filing fee, as well as the fine deposit in accordance with the court judgment. These monies shall be mailed to the Responsible Person within thirty (30) calendar days of the City's receipt of a notice of judgment or ruling from the superior court clerk.

Section 1.17.100 Miscellaneous Provision

Failure of a Citee to comply with a corrective action stated in any uncontested citation, or with regard to a correction order in any hearing officer decision that is deemed confirmed and not appealed to the superior court, shall constitute a misdemeanor.

SECTION 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 6. The City Clerk shall certify to the passage of this Ordinance and shall cause same to be published pursuant to law within fifteen (15) days after its passage, and said Ordinance shall become effective 30 days after its passage.

INTRODUCED this 20th day of November 2007

PASSED, APPROVED, AND ADOPTED this 4th day of December 2007 by the following vote:

- AYES:**
- NOES:**
- ABSTAIN:**
- EXCUSED:**

BY:

Rob Hammond, Mayor
City of Monrovia

ATTEST:

APPROVED AS TO FORM:

Linda B. Proctor, MMC, City Clerk
City of Monrovia

Craig A. Steele, City Attorney
City of Monrovia

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) §
CITY OF MONROVIA)

I, LINDA B. PROCTOR, MMC, City Clerk of the City of Monrovia, California, do hereby certify that the foregoing Ordinance No. 2007-19 amending Title 1 (General Provisions) (Zoning) of the Monrovia Municipal Code establishing an administrative fine program was duly adopted and passed at a regular meeting of the City Council on the 4th day of December 2007 by the following vote:

AYES:
NOES:
ABSTAIN:
EXCUSED:

ATTEST:

Linda B. Proctor, MMC, City Clerk
City of Monrovia