



THE CITY OF SAN DIEGO
Historical Resources Board

DATE ISSUED: August 18, 2011 REPORT NO. HRB-11-059

ATTENTION: Historical Resources Board
Agenda of August 25, 2011

SUBJECT: **ITEM #14 – Land Development Code Amendments – Code Violations**

APPLICANT: City of San Diego, Development Services Department

LOCATION: City-wide

DESCRIPTION: Consider the proposed amendments to the San Diego Municipal Code related to issuance and collection of civil penalties for code violations impacting historical resources and designated historical resources.

STAFF RECOMMENDATION

Recommend to the City Council approval of the proposed Municipal Code amendments related to issuance and collection of civil penalties for code violations impacting historical resources and designated historical resources.

BACKGROUND

This item is being brought before the Historical Resources Board in conjunction a proposed amendment to San Diego Municipal Code Chapter 1, Article 2, Division 8 and Chapter 1, Article 3, Division 4, which allow for the issuance and recovery of Administrative Civil Penalties resulting from code violations.

Over the past year to two years, staff has noted a significant increase in the number of code enforcement actions impacting designated historic resources and in particular, buildings that are not currently designated but are 45 years old or older and therefore subject to review under SDMC Section 143.0212 to determine whether or not a historic resource is present prior to the issuance of a permit. During this review, staff evaluates the building's current and prior condition through available historic photographs and surveys to determine whether or not the building would have been eligible for designation under adopted criteria prior to the unpermitted work. In instances where the work is minor and reversible, staff can work with the applicant to correct the modifications in a manner consistent with the U.S. Secretary of the Interior's Standards (the

Standards), thereby preserving the integrity of the building and its potential significance. However, restoration or rehabilitation consistent with the Standards may not be feasible in instances where the unpermitted work has resulted in substantial alteration, extensive loss of historic fabric, or complete demolition. This results in an impasse where staff has determined that the unpermitted work has adversely impacted a potential resource and that the violation cannot be remedied through project design. In looking for other recourse, staff has discovered that the existing code does not provide clear authority to issue civil penalties to those who destroy potential historic resources through unpermitted modifications or demolition; and therefore provides no deterrent to those who may be inclined to do so in the future.

Working with Neighborhood Code Compliance, staff has identified the Municipal Code sections that would require revision in order to issue civil penalties for code violations impacting historical resources and designated historical resources, and to deposit those penalties into the Historic Preservation Fund.

ANALYSIS

The Historical Resources Regulations (SDMC Chapter 14, Article 3, Division 2), which contain regulations related both to historical resources and designated historical resources as defined by the Code, currently provides language that the provisions of the Regulations shall be enforced pursuant to Chapter 1, Article 1, Division 2, which identifies enforcement authorities for the Land Development Code. This Division, in turn, refers to the City's enforcement authority and powers and ability to "use whatever judicial and administrative remedies are available under the Municipal Code or applicable state codes." With this direct relationship between the requirements of the Historical Resources Regulations and the code enforcement regulations clearly established, the deficiency was identified within the code enforcement regulations themselves.

SDMC Section 12.0805 identifies the factors which the Director may take into consideration when determining the amount of the civil penalty to be assessed on a daily rate. One factor included is "Whether the offense impacted environmentally sensitive lands or historical resources." Because the term "historical resources" is not italicized in this section, it does not refer back to the definition of a historical resource defined in Chapter 11, Article 3, Division 1. Therefore, the interpretation of this section has been that the building has to be designated. However, the Code does provide a number of definitions related to historic resources, including *historical resource*, *designated historical resource*, *historical building*, *historical district*, *historical landscape*, *historical object* and *historical structure*. A *designated historical resource* is a historical building, district, landscape, object or structure which has been designated by the Historical Resources Board. A *historical resource* includes all of the above, which is not limited to resources that are designated. City staff, acting for the Mayor, has the authority to determine whether a building, district, landscape, object or structure would be considered a historical resource under the Code.

By changing SDMC Section 12.0805(c)(5) to read, "Whether the offense impacted environmentally sensitive lands, a *historical resource* or a *designated historical resource*, as defined in Chapter 11, Article 3, Division 1 of the Municipal Code" the Director would be able to assess civil penalties for unpermitted work impacting both designated historical resources and

historical resources, as identified by staff during the permit review process. This would provide some level of recourse for the loss of a historic resource, and would hopefully serve as a deterrent to those who might consider starting work prior to obtaining a permit.

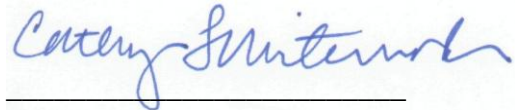
Lastly, an appropriate repository for the civil penalties collected for code violations impacting historical resources and designated historical resources must be identified. In July 2009, the City Council established the historic preservation fund for any and all potential grants, donations, fines, penalties, or other sources of funding for the purpose of historic preservation. Expenditure of these funds requires approval by the City Council. As this fund was intended to include fines and penalties, the Code will be amended to include SDMC Section 13.0403, which states that civil penalties collected for violations of the Historical Resources regulations shall be deposited into the Historic Preservation Fund.

CONCLUSION

At this time staff recommends that the Board Recommend to the City Council approval of the proposed Municipal Code amendments related to issuance and collection of civil penalties for code violations impacting historical resources and designated historical resources.



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KS/cw

Attachment(s):

1. Excerpt of SDMC Section 113.0103, which defines Historical Resource and Designated Historical Resource.
2. SDMC Chapter 1, Article 2, Division 8, with amendments to Section 12.0805(c)(5)
3. SDMC Chapter 1, Article 3, Division 4, with an amendment adding Section 13.0403

Condominium conversion means the change in ownership from a single *structure* or group of *structures* used for residential rental units to individual ownership of apartments or units under a condominium plan or to a cooperative or stock apartment project pursuant to the applicable provisions of the laws of the State of California.

Construction permit means a permit issued pursuant to Land Development Code Chapter 12, Article 9. Construction permits include the following: Building Permits, Electrical Permits, Plumbing/Mechanical Permits, Demolition/Removal Permits, Grading Permits, Public Right-of-Way Permits, and Sign Permits.

Court, interior (See *interior court*)

Coverage, lot (See *lot coverage*)

Date of final action means the date all rights of appeal are exhausted for a permit, map, or other matter.

Decision date means the date a designated staff person approves or denies a permit or other matter.

Dedication means real property or an interest in real property offered to and accepted by the City for public use.

Dedication, unaccepted offer of (See *unaccepted offer of dedication*)

Deemed complete means that the City Manager has determined that an application includes all of the information, materials, fees, and deposits required.

Density means the relationship between the number of dwelling units existing or permitted on a *premises* and the area of the *premises*. See Section 113.0222 for additional information on calculating *density*.

Designated historical resource means a *historical building*, *historical district*, *historical landscape*, *historical object*, or *historical structure*, *important archaeological site* or *traditional cultural property* which has been designated by the Historical Resources Board pursuant to Land Development Code Chapter 12, Article 3, Division 2, is included in the City of San Diego Historical Resources Board Register, or has been listed in or determined to be eligible for listing in the California Register of Historic Resources or the National Register of Historic Places.

Historical building means a construction that possesses historical, scientific, architectural, aesthetic, or cultural significance that was created principally to shelter human activity (such as a house, barn, *church*, *hotel*, or similar construction).

Historical district means a significant concentration, linkage, or continuity of sites, buildings, *structures*, or objects that are united historically, geographically, or aesthetically by plan or physical *development* and that have a special character, historical interest, cultural or aesthetic value, or that represents one or more architectural periods or styles in the history and *development* of the City.

Historical landscape means a modified feature of the land that possesses historical, scientific, aesthetic, cultural, or ethnic significance to a neighborhood or community.

Historical object means a construction of historical, scientific, aesthetic, cultural, or ethnic significance that is usually by design or nature movable and primarily artistic in nature or relatively small in scale and simply constructed (such as *signs*, light fixtures, and *street* or garden furniture).

Historical resource means a *designated historical resource*, *historical building*, *historical structure*, *historical object*, *important archaeological site*, *historical district*, *historical landscape*, or *traditional cultural property*.

Historical structure means a functional construction that possesses historical, scientific, architectural, aesthetic, or cultural significance, usually made for purposes other than sheltering human activity (such as large-scale engineering projects, water control systems, transportation systems, mine shafts, kilns, ovens, lighthouses, and radio telescopes).

Hotel/Motel means a building containing six or more *guest rooms* that are rented for less than 30 days and used or designed to be used for sleeping purposes. *Hotel* or *motel* does not include any jail, hospital, asylum, sanitarium, orphanage, prison, detention home, or other institution in which human beings are housed and detained under legal restraint.

Idle means to curtail for a period of one year or more surface mining operations by more than 90 percent of the operation's previous maximum annual mineral production, with the intent to resume those surface mining operations at a future date.

[Editors Note: This definition only applies outside of the Coastal Overlay Zone.]

Important archaeological site means a site or location of past human occupation with significant subsurface deposits, where important prehistoric or historic activities or events occurred, that possesses unique historical, scientific, cultural, religious, or ethnic value of local, regional, state, or federal importance. *Important archaeological sites* include:

**Article 2: Code Enforcement
Judicial and Administrative Remedies**

Division 8: Administrative Civil Penalties
*(“Administrative Civil Penalties”
added 8–10–1993 by O–17956 N.S.)*

§12.0801 Administrative Civil Penalties

Division 8 of Article 2 of Chapter 1 governs the administrative assessment of civil penalties for violations of the Municipal Code and applicable state codes.
(Renumbered from Sec. 13.0330, retitled to “Administrative Civil Penalties” and amended 8–10–1993 by O–17956 N.S.)

§12.0802 Declaration of Purpose

The Council finds that there is a need for alternative methods of enforcement of the San Diego Municipal Code and applicable state codes. The Council further finds that the assessment of civil penalties through an administrative hearing procedure for code violations is a necessary alternative method of code enforcement.

The administrative assessment of civil penalties established in Division 8 of this Article is in addition to any other administrative or judicial remedy established by law which may be pursued to address violations of the Municipal Code or applicable state codes.
(Renumbered from Sec. 13.0331, retitled to “Declaration of Purpose” and amended 8–10–1993 by O–17956 N.S.)

§12.0803 Authority

- (a) Any person violating any provision of the Municipal Code or applicable state code may be subject to the assessment of civil penalties pursuant to the administrative procedures provided in Sections 12.0804 through 12.0810 of this Division.
- (b) Each and every day a violation of any provision of the Municipal Code or applicable state code exists constitutes a separate and distinct violation.
- (c) Civil penalties may be directly assessed by means of a Notice and Order issued by the Director or affirmed by a City Manager’s Enforcement Hearing Officer. Civil penalties may be recovered by assessment of a Code Enforcement Lien pursuant to Division 2 of Article 3 of Chapter 1 or subsequent legal action brought by the City Attorney.

- (d) Civil penalties for violations of any provision of the Municipal Code or applicable state codes shall be assessed at a daily rate determined by the Director or Enforcement Hearing Officer pursuant to the criteria listed in Section 12.0805 of this Division. The maximum rate shall be \$2,500 per violation. The maximum amount of civil penalties shall not exceed \$250,000 per parcel or structure for any related series of violations.

(Amended 5-20-2003 by O-19177 N.S.)

§12.0804 Procedures—Notice and Order

- (a) Whenever a Director determines that a violation of one or more provisions of the Municipal Code or applicable state code has occurred or continues to exist, a written civil penalties Notice and Order may be issued to the Responsible Person.
- (b) The Notice and Order shall refer to all code sections violated and describe how each section is or has been violated.
- (c) The Notice and Order shall refer to the dates and locations of the violations.
- (d) The Notice and Order shall describe all remedial action required to permanently correct outstanding violations and establish time frames for completion.
- (e) The Notice and Order shall establish a daily amount of civil penalties. The Director shall determine the daily amount of civil penalties pursuant to the criteria in Section 12.0805 of this Division.
- (f) The Notice and Order shall identify a date when the civil penalties began to accrue and a date when the assessment of civil penalties ended, unless the violation is continuous. In the case of a continuous violation, there shall be an ongoing assessment of penalties at the daily rate established in the Notice and Order until the violations are corrected.
- (g) If a Director determines that the violations are continuing, the Notice and Order shall demand that the Responsible Person cease and desist from further action causing the violations and commence and complete all action to correct the outstanding violations under the guidance of the appropriate City Departments.
- (h) The Notice and Order shall enumerate any other consequences should the Responsible Person fail to comply with the terms and deadlines as prescribed in the Notice and Order.

- (i) The Notice and Order shall identify appropriate hearing procedures as required by Sections 12.0401 through 12.0413 of this Chapter.
- (j) The Notice and Order shall be served upon the Responsible Person by any one of the methods of service listed in Section 11.0301 of this Chapter.
- (k) The Notice and Order shall identify the factors used by a Director in determining the duration and the daily amount of civil penalties.
- (l) More than one Notice and Order may be issued against the same Responsible Person if it encompasses either different dates or different violations.
("Procedures—Notice and Order" renumbered from Sec. 13.0334 and amended 8-10-1993 by O-17956 N.S.)

§12.0805 Determination of Civil Penalties

- (a) In determining the date when civil penalties started to accrue, a Director may consider the date when the Department first discovered the violations as evidenced by the issuance of a Notice of Violation or any other written correspondence.
- (b) The assessment of civil penalties shall end when all action required by the Notice and Order has been completed.
- (c) In determining the amount of the civil penalty to be assessed on a daily rate, a Director may consider some or all of the following factors:
 - (1) The duration of the violation.
 - (2) The frequency or recurrence of the violation.
 - (3) The nature and seriousness of the violation.
 - (4) The history of the violation.
 - (5) Whether the offense impacted environmentally sensitive lands, ~~or a~~ historical resources or a designated historical resource, as defined in Chapter 11, Article 3, Division 1 of the Municipal Code.
 - (6) The willfulness of Responsible Person's misconduct.
 - (7) The Responsible Person's conduct after issuance of the Notice and Order.
 - (8) The good faith effort by the Responsible Person to comply.

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- (9) The economic impact of the penalty on the Responsible Person.
 - (10) The impact of the violation upon the community.
 - (11) Any other factors that justice may require.
- (d) The City Manager has the authority to establish a penalty schedule for a Director to use as a guideline in determining the amount of civil penalties in appropriate cases. The Manager shall also establish procedures for the use of this penalty schedule.
(Amended 5-20-2003 by O-19177 N.S.)

§12.0806 Administrative Costs

A Director or Enforcement Hearing Officer is authorized to assess all reasonable costs. Costs may include, but are not limited to: staff time to investigate and document violations; laboratory, photographic, and other expenses incurred to document or establish the existence of a violation; and scheduling and processing of the administrative hearing and all actions. Any determination that documented costs are not reasonable must be supported by written findings.
(“Administrative Costs” added 8-10-1993 by O-17956 N.S.)
(Amended 2-26-2007 by O-19579 N.S.; effective 3-28-2007.)

§12.0807 Failure to Comply with Director’s Notice and Order

A Director shall request the City Manager to appoint an Enforcement Hearing Officer and to establish a date, time and place for the civil penalties hearing in accordance with Division 4 of Article 2 of Chapter 1 when the Responsible Person fails to comply with the terms of the Notice and Order. Failure to comply includes failure to pay the assessed civil penalties, failure to commence and complete corrections by the established deadlines or failure to refrain from continuing violations of the Municipal Code or applicable state codes.
(“Failure to Comply with Director’s Notice and Order” added 8-10-1993 by O-17956 N.S.)

§12.0808 Civil Penalties Hearing

- (a) The procedures for the civil penalties hearing are the same as the hearing procedures set forth in Division 4 of Article 2 of Chapter 1.
- (b) The Enforcement Hearing Officer shall only consider evidence that is relevant to the following issues: (1) whether the Responsible Person has caused or maintained a violation of the Municipal Code or applicable state code that existed on the dates specified in the Notice and Order; and (2) whether the

amount of civil penalties assessed by the Director pursuant to the procedures and criteria outlined in Section 12.0805 was reasonable.
(“Civil Penalties Hearing” added 8-10-1993 by O-17956 N.S.)

§12.0809 Administrative Enforcement Order

- (a) Once all evidence and testimony are completed, the Enforcement Hearing Officer shall issue an Administrative Enforcement Order which affirms or rejects the Director’s Notice and Order or which modifies the daily rate or duration of the civil penalties depending upon the review of the evidence. The Enforcement Hearing Officer may increase or decrease the total amount of civil penalties and costs that are assessed by the Director’s Notice and Order.
- (b) The Enforcement Hearing Officer may issue an Administrative Enforcement Order that requires the Responsible Person to cease from violating the Municipal Code or applicable state codes and to make necessary corrections.
- (c) As part of the Administrative Enforcement Order, the Enforcement Hearing Officer may establish specific deadlines for the payment of penalties and costs and condition the total or partial assessment of civil penalties on the Responsible Person’s ability to complete compliance by specified deadlines.
- (d) Enforcement Hearing Officer may issue an Administrative Enforcement Order which imposes additional civil penalties that will continue to be assessed until the Responsible Person complies with the Hearing Officer’s decision and corrects the violation.
- (e) The Enforcement Hearing Officer may schedule subsequent review hearings as may be necessary or as requested by a party to the hearing to ensure compliance with the Administrative Enforcement Order.
(“Administrative Enforcement Order” added 8-10-1993 by O-17956 N.S.)

§12.0810 Failure To Comply With The Administrative Enforcement Order

- (a) Upon the failure of the Responsible Person to comply with the terms and deadlines set forth in the Administrative Enforcement Order, the Director may use all appropriate legal means to recover the civil penalties, administrative costs and obtain compliance with the Administrative Enforcement Order.
- (b) After the Enforcement Hearing Officer issues an Administrative Enforcement Order, the Director shall monitor the violations and determine compliance.
(Renumbered from Sec. 13.0336, retitled to “Failure To Comply With The Administrative Enforcement Order” and amended 8-10-1993 by O-17956 N.S.)

Article 3: Recovery of Code Enforcement Penalties and Costs

Division 4: Recovery of Civil Penalties

*(“Cost Recovery” added 10-7-1991 by O-17694 N.S.)
(Retitled to “Recovery of Civil Penalties”
on 8-10-1993 by O-17956 N.S.)*

§13.0401 Recovery of Civil Penalties

- (a) The Director may collect all civil penalties and related administrative costs by the use of all appropriate legal means, including referral to the City Treasurer and the recordation of a Code Enforcement Lien pursuant to the procedures set forth in Division 2, Article 3 of Chapter 1. If unable to collect the obligation, the Director or City Treasurer may refer the obligation to the City Attorney to file a court action to recover these penalties and costs.

(“Recovery of Civil Penalties” renumbered from Sec. 13.0337 and amended 8-10-1993 by O-17956 N.S.)

§13.0402 Code Enforcement Civil Penalties Fund

Civil penalties collected pursuant to this Division shall be deposited in the Code Enforcement Civil Penalties Fund as established by the City Manager for the enhancement of the City’s code enforcement efforts and to reimburse City Departments for investigative costs and costs associated with the hearing process that are not paid by the Responsible Person. Civil penalties deposited in this fund shall be appropriated and allocated in a manner determined by the City Manager. The City Auditor shall establish accounting procedures to ensure proper account identification, credit and collection.

(“Code Enforcement Civil Penalties Fund” renumbered from Sec. 13.0338, retitled and amended 8-10-1993 by O-17956 N.S.)

§13.0403 Historic Preservation Fund

Civil penalties collected pursuant to this Division for violations of the Historical Resources Regulations within Chapter 14, Article 3, Division 2 of the San Diego Municipal Code shall be deposited in the Historic Preservation Fund established pursuant to City Council resolution R-305067, adopted July 7, 2009. Civil penalties deposited in the Historic Preservation Fund shall be appropriated and allocated in a manner determined by the City Manager in accordance with City Council resolution R-305067. The City Auditor shall establish accounting procedures to ensure proper account identification, credit and collection.

§13.0425 Cancellation of Code Enforcement Lien

Once payment in full is received for the outstanding civil penalties and costs or the amount is deemed satisfied pursuant to a subsequent administrative or judicial

order, the Director shall either record a Notice of Satisfaction or provide the property owner or financial institution with the Notice of Satisfaction so they can record this notice with the County Recorder's office. The Notice of Satisfaction shall include the same information as provided for in the original Code Enforcement Lien as described in section 13.0203(e). Such Notice of Satisfaction shall cancel the Code Enforcement Lien.

("Cancellation of Code Enforcement Lien" added 10-7-1991 by O-17695 N.S.)