



1.20

NEIGHBORHOODS, PLANNING
AND DEVELOPMENT SERVICES
DEPARTMENT

CITY OF SACRAMENTO
CALIFORNIA

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CODE ENFORCEMENT DIVISION

APPROVED
BY THE CITY COUNCIL

August 18, 1998

SEP 1 1998

OFFICE OF THE
CITY CLERK

City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: An Ordinance Amending Section 1.07.070 of the Sacramento City Code, Relating to Criminal Sanctions, Civil Actions, and Administrative Penalties For Violations of the Sacramento City Code, Charter, Uncodified Ordinances, Uniform Codes, Orders, Conditions and Requirements (2/3 vote required)

LOCATION/COUNCIL DISTRICT: Citywide

STAFF RECOMMENDATION:

It is recommended that the City Council enact the proposed ordinance amending Section 1.07.070.

CONTACT PERSON: Josh Pino, Interim Chief of Code Enforcement, 264-8733

FOR COUNCIL MEETING OF: September 1, 1998

SUMMARY

This report recommends enactment of an ordinance amending Section 1.07.070 of the Sacramento City Code, relating to criminal sanctions, civil actions, and administrative penalties for violations of the City Code and other specified codes and requirements. The ordinance restores several provisions to Section 1.07.070(d)(4) that were inadvertently repealed in late 1997 and clarifies certain existing provisions. The specific provisions being restored are subparagraphs (d)-(g) of Section 1.01.070(d)(4).

City Council
August 18, 1998
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the Sacramento City Code, Relating to Criminal
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BACKGROUND INFORMATION

The City has had an Administrative Penalties program since 1996. Administrative penalties are one of many tools available to facilitate code enforcement, encourage compliance with city conditions and requirements, and recover enforcement costs. Administrative penalties are imposed by the City on violators who have not been responsive to prior requests for compliance. The program provides an appeal procedure for persons upon whom penalties are imposed.

On November 18, 1997, the City Council enacted amendments to the City's Administrative Penalty program to add detailed standards for selecting the level of administrative penalty to be imposed. The November 18, 1997 ordinance inadvertently repealed some of the then-existing procedures relating to the administrative penalties process. The specific provisions being restored are subparagraphs (d)-(g) of Section 1.01.070(d)(4). This ordinance restores those sections and clarifies that it was not the City Council's intent to repeal these sections.

In addition, the proposed ordinance makes some non-substantive clarifications of existing provisions, and eliminates certain remedies for the collection of administrative penalties that the City Attorney has advised are not available to the City as a matter of law.

FINANCIAL CONSIDERATIONS

This report has no financial implications.

ENVIRONMENTAL CONSIDERATIONS

Enactment of the proposed ordinance will not have any impact on the environment and no environmental assessment is required.

POLICY CONSIDERATIONS

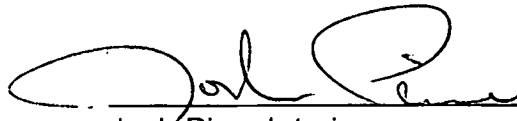
The purpose of the ordinance is to restate the City Council's policy with respect to administrative penalties.

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MBE/WBE

No acquisition of goods or services is involved.

Respectfully submitted,

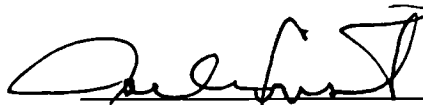


Josh Pino, Interim
Chief of Code Enforcement

RECOMMENDATION APPROVED:



WILLIAM H. EDGAR
CITY MANAGER



JACK CRIST
DEPUTY CITY MANAGER
NEIGHBORHOODS, PLANNING AND
DEVELOPMENT SERVICES DEPARTMENT

APPROVED
BY THE CITY COUNCIL

ORDINANCE NO. 98-038

SEP 1 1998

ADOPTED BY THE SACRAMENTO CITY COUNCIL

OFFICE OF THE
CITY CLERK

ON DATE OF _____

AN ORDINANCE AMENDING SECTION 1.01.070 OF THE SACRAMENTO CITY CODE RELATING TO CRIMINAL SANCTIONS, CIVIL ACTIONS, AND ADMINISTRATIVE PENALTIES FOR VIOLATIONS OF THE SACRAMENTO CITY CODE, CHARTER, UNCODIFIED ORDINANCES, UNIFORM CODES, ORDERS, CONDITIONS, AND REQUIREMENTS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Section 1.01.070 of the Sacramento City Code is hereby amended to read as follows:

1.01.070. General penalty; continuing violations; imposition of administrative penalties.

- (a) Criminal sanctions.
 - (1) Misdemeanors and infractions. Whenever in this code, or in any other ordinance of the City, any act is prohibited or is made or declared to be unlawful or an offense, or the doing of any act is required or the failure to do any act is declared to be unlawful or a misdemeanor, where no specific penalty is provided therefor, the violation of any provision of this code or any other ordinance of the City shall be punished by a fine not exceeding one thousand dollars (\$1,000) or imprisonment in the county jail for a term not exceeding six months, or by both a fine and imprisonment, unless the violation is specifically declared to be an infraction, in which case the violation shall be subject to and punishable as provided in Government Code Section 36900(b).
 - (2) Multiple convictions of an infraction. Any offense which would otherwise be

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an infraction is a misdemeanor if the defendant has been convicted of the same offense three or more times within the twelve-month period immediately preceding the commission of the offense and the convictions are alleged in the accusatory pleading. For this purpose, a bail forfeiture shall be deemed to be a conviction of the offense charged.

- (3) Separate offenses. Every day any violation of this code or any other ordinance of the City shall continue shall constitute a separate offense.
- (b) Civil actions. The city attorney may bring an action in a court of competent jurisdiction to enjoin a violation of any provision of this code or any other ordinance of the City, or to enforce administrative penalties imposed.
- (c) Administrative penalties.
 - (1) The purpose of this subsection relating to administrative penalties is to provide alternative remedies to address acts or omissions set forth in Section 1.01.070(c)(2). Violations may be corrected, abated or addressed in a number of ways. It is the intent of this subsection to provide the City with additional remedies to correct violations and, where necessary, to penalize violators for failure to comply with City codes and ordinances. The city council hereby finds and determines that enforcement of the Sacramento city code, other ordinances adopted by the City, conditions on entitlements and terms of City agreements are matters of local concern and serve important public purposes. Consistent with its powers as a charter city, the City of Sacramento adopts this administrative penalty provision in order to achieve the following goals:
 - a) To protect the public health, safety and welfare of the City of Sacramento;
 - b) To provide for an administrative process that has objective criteria for the imposition of penalties and provides for a fair process to appeal the imposition of administrative penalties;
 - c) To provide a method to penalize responsible parties who fail or refuse to comply with provisions of the City Code, ordinances, agreements, or conditions on entitlements in the City of Sacramento;
 - d) To minimize the expense and delay where the sole remedy is to

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pursue responsible parties in the civil or criminal justice system.

The City Council hereby establishes an administrative penalty procedure. All final administrative orders made pursuant to the procedures set forth in this subsection shall be subject to review only as provided in California Code of Civil Procedure Sections 1094.5 and 1094.6. Should any court of competent jurisdiction determine that the City must provide an appeal of any final administrative order in a manner other than set forth in Sections 1094.5 and 1094.6, then it is the intent of the city council that the administrative penalty process remain as provided herein and to provide that any appeal which is timely requested follow the procedures set forth in Government Code Section 53069.4.

- (2) Imposition of Administrative Penalties. In addition to criminal sanctions and other remedies set forth in this code, the City may impose administrative penalties for any of the acts or omissions set forth in this subsection. Administrative penalties shall be imposed, enforced, collected and reviewed in compliance with the provisions of this section. Administrative penalties may be imposed for any of the following acts or omissions:
 - a) All violations of the Sacramento city code;
 - b) All violations of the city charter and other codes or ordinances adopted by the City of Sacramento, including but not limited to the zoning ordinance;
 - c) All violations of uniform codes adopted by the City of Sacramento;
 - d) Failing to comply with any order issued by a commission, board, hearing officer or examiner or other body appointed by the city council and authorized to issue orders, including, but not limited to, the planning commission, the housing code advisory and appeals board, and the design review and preservation board.
 - e) Failing to comply with any condition or requirement imposed on or by any entitlement, permit, contract or environmental document issued or approved by the City of Sacramento;
- (3) Alternative remedy. Nothing in this subsection shall prevent the City from using one or more other remedies to address violations. When the violation upon which the administrative penalty is based pertains to building, plumbing, electrical, structural or zoning provisions, the responsible party shall be provided a reasonable period of time to correct the violation prior to

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imposition of the administrative penalty, except in those cases in which there is an immediate danger to health or safety.

- (4) Definitions. For purposes of this chapter, the term "responsible party" shall refer to any person, business, company or entity, and the parent or legal guardian of any person under the age of eighteen (18) years, who has done any act for which an administrative penalty may be imposed.

(d) Imposition of administrative penalties.

- (1) Notice. Where the City has determined that any responsible party has violated this code or other provisions as set forth in Section 1.01.070(c)(2), the City may commence an administrative proceeding to impose administrative penalties. Any department in the City responsible for enforcement of codes or ordinances may initiate administrative penalty proceedings. To commence such proceedings, the department head or designee shall issue an order imposing administrative penalties. The order shall contain:

- a) The name and address of the responsible party in violation. If the administrative penalty results from events occurring on, or the status or condition of, property, the order shall also contain the address of the property;
- b) A statement from the City official responsible for issuing the order of the acts or conditions which violate the City Code or other provisions as set forth in Section 1.01.070(c)(2) and the specific code or provisions which have been violated;
- c) The amount of the administrative penalty the City imposes for the violation;
- d) A statement that the responsible party in violation may appeal the imposition of the administrative penalty within 20 days of the date the order is served;
- e) A statement that if the responsible party fails to request an appeal of the imposition of the administrative penalty, the order imposing the penalty shall be final;
- f) A statement that any responsible party upon whom a final

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administrative penalty has been imposed may seek review of the order imposing the penalty pursuant to California Code of Civil Procedures Sections 1094.5 and 1094.6.

(2) Service of administrative penalty order.

- a) Persons entitled to service. The administrative penalty order shall be served upon the responsible party in violation. The failure of the City official issuing the order to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed on him/her.
- b) If the violation is the result of a condition existing on property in the City and the City proposes to impose a lien on the property, one copy of the administrative penalty order shall also be served on each of the following if known to the City official issuing the order or disclosed from official public records: (a) the holder of any mortgage or deed of trust or other lien or encumbrance of record; and (b) the owner or holder of any lease of record. The failure of the City official issuing the order to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed on him/her.
- c) Method of service. Service of an administrative penalty order may be made upon all persons entitled thereto either by personal delivery or by certified mail, return receipt requested. Service on any owner in violation is deemed complete when it is served at the address listed by the owner on the latest equalized assessment roll of Sacramento County, or as known to the City official issuing the order. In lieu of personally serving the responsible party by personal delivery or certified mail, service of the administrative penalty order and any amended or supplemental order may be made as follows:
 - (i) In the event that service by certified return receipt mail cannot be effected or the recipient cannot be personally served, service may be made by substituted service. Substituted service may be accomplished as follows: a. By leaving a copy during usual business hours in the recipient's business with the person who is apparently in charge, and by thereafter mailing

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by first-class mail a copy to the recipient at the address where the copy was left; b. By leaving a copy at the recipient's dwelling or usual place of abode, in the presence of a competent member of the household, and thereafter mailing by first-class mail a copy to the recipient at the address where the copy was left.

- (ii) In the event the violation results from an event occurring on, or a condition existing on, property in the City and the recipient cannot be served by certified return receipt mail or cannot be personally served and has a property manager or rental agency overseeing the premises, substituted service may be made as set forth in (a) above upon the property manager or rental agency.
- (iii) If the responsible party resides or has his/her/its business address out of state and service cannot be effected by certified return receipt mail, then service may be made by first-class mail.
- (iv) In the event the violation relates to a condition on a property in the City, substituted service may be effected by posting the property with the administrative penalty order and mailing a copy of the order to the responsible party in violation, at the address of the property on which the violation has occurred or is occurring.
- (v) If the responsible party in violation or other person entitled to service cannot be located or service cannot be effected as set forth in this section, service may be made by publication in a Sacramento newspaper of general circulation which is most likely to give actual notice to the owner. Service shall be deemed sufficient when it is accomplished pursuant to Government Code Section 6063.

The failure of any person to receive such administrative penalty order shall not affect the validity of any proceedings taken under this section against any other responsible party. Service by certified mail in the manner herein provided shall be effective on the date of mailing.

(3) Amount of administrative penalty. Unless the city council has by resolution

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or by ordinance adopted a separate and distinct administrative penalty for the particular violation, the amount of the administrative penalty to be imposed shall be set by the department head or his/her designee responsible for issuing the administrative penalty order. Each day a violation continues or occurs constitutes a separate violation. Unless otherwise provided in this code, administrative penalties may be imposed in any amount not less than \$100.00 nor more than \$25,000.00 per violation. In determining the amount of the administrative penalty to be imposed, the City official shall consider factors including but not limited to the seriousness of the violation, the responsible party 's efforts to correct the violation, the injury/damage, if any, suffered by any member of the public, any instances in which the responsible party has been in violation of the same or similar code provisions in the previous three years, the amount of City staff time which was expended investigating or addressing the violation, and the amount of administrative penalties which have been imposed in similar situations. The amount of the administrative penalty shall be set according to the following schedule:

- a) Level A violations are violations that present a substantial probability that death or serious physical harm to the public at large or person(s) would result therefrom. Level A violations shall be subject to an administrative penalty of \$5,000.00 to \$25,000.00;
- b) Level B violations are violations that either (1) present the threat, but not substantial probability, that serious physical harm to the public at large or person(s) would result therefrom or (2) present circumstances that are likely to cause and/or do cause serious harm to public or private property or (3) present a conscious and willful disregard of (i) a hearing examiner's order or orders, or (ii) orders or notices of violation issued by any agency or commission authorized to issue such orders or notices. Level B violations shall be subject to an administrative penalty of \$2,500.00 to \$4,999.99;
- c) Level C violations are violations that present circumstances that either (1) are likely to cause and/or do cause harm to public or private property or (2) show repeated or continuous noncompliance with (i) a hearing examiner's order or orders, or (ii) orders or notices of violation issued by any agency or commission authorized to issue such orders or notices. Level C violations shall be subject to an administrative penalty of \$1,000.00 to \$2,499.99;
- d) Level D violations are violations other than Level A, B, or C

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violations. Level D violations shall be subject to an administrative penalty of \$100.00 to \$999.99.

- (4) Administrative hearing appeal.
- a) Notice of appeal. Any responsible party upon whom an administrative penalty has been imposed may appeal the administrative penalty by filing with the office of the City Clerk a written notice of appeal within 20 calendar days of service of the administrative penalty order. The written notice of appeal shall contain:
- (i) A brief statement setting forth the interest the appealing party has in the matter relating to the imposition of the penalty;
 - (ii) A brief statement, in ordinary and concise language, of the material facts which the appellant claims support his/her/its contention that no administrative penalty should be imposed or that an administrative penalty of a different amount is warranted; and
 - (iii) An address at which the appellant agrees notice of any additional proceeding or an order relating to the imposition of the administrative penalty may be received by first class mail.
- b) Payment of appeal fee. Any responsible party appealing the imposition of an administrative penalty shall be required to pay to the City Clerk, at the time the written notice of appeal is filed, an appeal fee as herein provided. The appeal fee is intended to cover the costs, expenses and City employees' time incurred by the City in processing, preparation for, and hearing of the appeal, and shall be refunded to the appellant if the hearing examiner determines that imposition of the penalty is not warranted or is not in the interest of justice. No notice of appeal is valid unless accompanied by the appeal fee, unless otherwise waived pursuant to Section 2.06.490 of the City Code. In the event an appeal fee is waived and the violation results in a lien against the appellant's property, the appeal fee which was waived shall be added to the amount of the lien. The appeal fee shall be :
- (i) Level A violation: \$ 500.00
 - (ii) Level B violation: \$ 250.00

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- (iii) Level C violation: \$ 100.00
- (iv) Level D violation: \$ 50.00

- c) Hearing examiner. The administrative penalty appeal shall be heard by a hearing examiner appointed by the city council to hear administrative appeals. The hearing examiner shall not be a City employee.

- d) Setting administrative penalty appeal hearing. The administrative penalty appeal hearing shall be set by the city clerk or his/her designee, and notice of the appeal hearing shall be sent to the appellant by first class mail at the address provided with the written notice of appeal. The hearing shall be held no sooner than twenty (20) days after the notice of appeal is filed. Notice of the appeal hearing shall be mailed to the appellant at least 15 days before the hearing date.

- e) Conduct of the administrative penalty appeal hearing.
 - (i) Testimony at the hearing. At the time set for the administrative penalty appeal hearing the hearing examiner shall proceed to hear testimony from the representative of the City, the appellant and any other competent persons with respect to imposition of an administrative penalty.

 - (ii) Record of oral evidence at hearing. The proceedings at the hearing shall be reported by a tape recording. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the requesting party's own expense.

 - (iii) Continuances. The hearing examiner may, upon request of the appellant or the City, or upon his/her own motion, grant continuances from time to time for good cause shown.

 - (iv) Oaths; certification. The hearing examiner shall administer the oath or affirmation.

 - (v) Evidence rules. Government Code Section 11513, subsections (a), (b) and (c), as it exists on the effective date of the ordinance adopting these provisions, or as hereafter

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amended, shall apply to all administrative penalty hearings.

- (vi) Rights of parties.
 - a. Parties may represent themselves, or be represented by any person of their choice.
 - b. If a party does not proficiently speak or understand the English language, he/she may provide an interpreter, at that party's own cost, to translate for the party. An interpreter shall not have had any personal involvement in the issues of the case prior to the hearing.
- (vii) Official notice. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or which may appear in any of the official records of the City or county, or any of their departments.
- (viii) Inspection of premises.
 - a. In the case of a violation related to real property in the City, the hearing examiner may inspect the property prior to, during, or after the hearing, provided that:
 - i. Notice of the inspection shall be given to the parties before the inspection is made;
 - ii. The parties consent and are given an opportunity to be present during the inspection; and
 - iii. Upon completion of the inspection, the hearing examiner shall state for the record during the hearing, or file a written statement after the hearing for inclusion in the hearing record, the material facts observed and the conclusion drawn therefrom.
 - b. Each party then shall have a right to rebut or explain the matters so stated by the hearing examiner either for the

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record during the hearing or by filing a written statement after the hearing for inclusion in the hearing record.

- c. Notice to the parties, or the owner(s)' consent to inspect the property is not required if the property can be inspected from areas to which the general public has access or with permission of other persons authorized to provide access to the property and/or buildings located on the property.
 - d. Subpoenas. The hearing examiner shall have the authority to issue subpoenas compelling witnesses to appear and provide testimony or subpoena duces tecum compelling witnesses to produce documents. The hearing examiner shall issue a subpoena only upon a showing of reasonable necessity by the requesting party. Failure of either party to comply with any subpoena may be considered by the hearing examiner in making his/her decision regarding the imposition of administrative penalties.
- f) Imposition of the administrative penalty; form and contents of decision; finality of decision.
- (i) Factors in hearing examiner's decision. The hearing examiner may affirm the administrative penalty imposed by the City, reduce the penalty to a lower amount within the charged level of violation, reduce the level of violation and reduce the penalty to an amount within the new level of violation, or find that imposition of the penalty is not warranted or is not in the interest of justice. The hearing examiner shall have the discretion to impose a lower, but not a higher, level of violation and/or penalty amount. In making his/her decision regarding the administrative penalty, the hearing examiner shall consider evidence presented by all witnesses, the seriousness of the violation, the responsible party's efforts to correct the violation, the injury or damage, if any, suffered by any member of the public, any instances in which the responsible party has been in violation of the same or similar code provisions in the previous three years, and the amount of City staff time which was expended investigating and addressing the violation.

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- (ii) Hearing examiner's decision. The decision of the hearing examiner shall be issued within 30 days of the hearing, shall be in writing, and shall contain findings of fact and a determination of the issues presented. The decision shall require the administrative penalty to be paid within 25 calendar days of the date of service of the decision. The decision shall inform the responsible party that if the administrative penalty is not paid within the time specified, it may be made a personal obligation of the responsible party, and if applicable may also be made a lien against the property on which the violation occurred, and may be made a special assessment collected at the same time and in the same manner as ordinary secured property taxes are collected. The hearing examiner's decision shall also inform the responsible party that any judicial review of the hearing examiner's decision shall be pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6.
 - (iii) Service of the hearing examiner's decision. Upon issuance of the decision, the City shall serve a copy on the appellant by first class mail to the address provided by appellant in the written notice of appeal. The hearing examiner's decision shall be deemed served two (2) days after the date it is mailed to the address provided by the appellant.
 - (iv) Any judicial action taken to set aside, annul or vacate the decision of the hearing examiner shall be filed in the manner and within the time provided in California Code of Civil Procedure Sections 1094.5 and 1094.6.
- g) Payment and collection of the administrative penalty.
- (i) Any responsible party upon whom an administrative penalty has been imposed shall pay the administrative penalty within twenty-five (25) days after service of a final order or decision of a hearing examiner. The City may take the actions set forth in this subparagraph g) to collect the unpaid penalty.
 - (ii) Attorney's fees and costs. In the event a civil action is commenced to collect the administrative penalty, the City shall be entitled to recover reasonable attorney's fees and all costs

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associated with collection of the penalty. Costs include, but are not limited to, staff time incurred in the collection of the penalty and those costs set forth in Code of Civil Procedure Section 1033.5.

- (iii) Interest on administrative penalties. An administrative penalty shall accrue interest at the same annual rate as any civil judgment. Interest shall accrue commencing on the 26th day following service of a final order or the hearing officer's decision.
- (iv) Liens. The amount of the unpaid administrative penalty, plus interest, plus any other costs as provided in this section, may be made a lien on the real property on which the violation occurred.
 - a. Notice shall be given to the responsible party prior to the recordation of the lien, and shall be served in the same manner as a summons in a civil action pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure.
 - b. The lien shall attach when the city manager or his/her designee records a lien listing delinquent unpaid administrative penalties with the Sacramento County recorder's office. The lien shall specify the amount of the lien, the date of the final administrative decision, the street address, legal description, and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the record owner of the parcel.
 - c. In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in b. above shall be recorded by the city clerk.
- (v) Special assessments. The amount of the unpaid administrative penalty, plus interest, plus any other costs as provided in this section, may be made a special assessment against the real property on which the violation occurred. The

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procedure established by the City Council to specially assess delinquent utility billings shall be used to specially assess unpaid administrative penalties.

- (vi) Other enforcement procedures. The City may take such other actions as are allowed for enforcement of a civil judgment as provided for pursuant to the Enforcement of Judgments Law, California Code of Civil Procedure Sections 680.010 et seq. (Ord. No. 83-153, §1; Ord. No. 85-079, §1; Ord. No. 86-017, §1; Ord. No. 96-042, §1; Ord. No. 97-065, §1)

DATE PASSED FOR PUBLICATION:
DATE ENACTED:
DATE EFFECTIVE:

MAYOR

ATTEST:

CITY CLERK

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