

ORDINANCE NO. 16-0018

**AN ORDINANCE OF THE CITY OF MANHATTAN BEACH
ADDING CHAPTER 1.06 (ADMINISTRATIVE CITATIONS)
TO TITLE 1 (GENERAL PROVISIONS) OF THE
MUNICIPAL CODE TO PROVIDE AN ALTERNATE
METHOD OF CODE ENFORCEMENT COMPLIANCE**

THE MANHATTAN BEACH CITY COUNCIL HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Title 1 (General Provisions) is hereby amended to add a new Chapter 1.06 (Administrative Citations) as follows:

**“Chapter 1.06
ADMINISTRATIVE CITATIONS**

- 1.06.010 Definitions
- 1.06.020 Code Enforcement Authority
- 1.06.030 Administrative Citations
- 1.06.040 Fines and Penalties
- 1.06.050 Request for Administrative Citation Appeals Hearing
- 1.06.060 Procedures for Administrative Citation Appeals Hearings
- 1.06.070 Written Decision of the Hearing Officer
- 1.06.080 Late Payment Charges and Collection of Administrative Fines and Costs;
Lien Procedure
- 1.06.090 Right to Judicial Review

1.06.010 Definitions

The following definitions shall govern construction of this Chapter, unless the context clearly requires otherwise:

A. “Administrative citation”: the written notice provided to a responsible party that a violation of the Code has occurred, and is subject to assessment of a civil fine as issued by a Code Enforcement Officer as defined herein.

B. “Code”: the Manhattan Beach Municipal Code, the Manhattan Beach Local Coastal Program, any City ordinance, and any code adopted by reference.

C. “Code Enforcement Officer”: each enforcement personnel identified in Section 2.22.010.

D. “Compliance order”: the written notice provided to a responsible party that a continuing violation of the Code pertaining to building, plumbing, electrical, or other similar structural or zoning issues exists that does not create an immediate danger to health or safety.

E. “Hearing Officer”: the impartial person appointed by the City Manager or other appointed authority designated under the Code to preside over administrative citation appeal hearings under this Chapter.

F. “Legal interest”: any ownership interest of any person as hereafter defined in real or personal property as evidenced by title or ownership documents or instruments recorded with the Los Angeles County Recorder’s Office or on file with, or in possession of, any other governmental entity. “Legal interest” shall also include the property interest of lessees or tenants of real property, as well as all sublessors thereof.

G. “Responsible party”: any person responsible, as determined by the Code Enforcement Officer issuing the administrative citation, for committing a violation of the Code, or any person causing or permitting a condition on a parcel of real property located within the City to be in violation of the Code, including each person who has a legal interest in that real property, or otherwise allows, causes, creates, maintains, suffers or permits any violation of the Code or County or State law, or regulation thereof, to exist or continue, by any act or the omission of any act or duty. A responsible party shall also include employees, principals, joint venturers, officers, agents, property managers, and/or other persons acting in concert with, or at the direction of, and/or with the knowledge and/or consent of the owner and/or occupant of the real property subject to a violation of the Code. In the event the person who commits the violation or causes the violating condition is a minor, then the minor’s parents or legal guardians shall be deemed the responsible party. In the event the violation is most reasonably attributable to a business and not to an employee, then that business, to the extent it is a legal entity such that it can sue and be sued in its own name, and each person who is an owner or officer of that business, shall each be deemed a responsible party.

1.06.020 Code Enforcement Authority

A. This Chapter provides for an administrative remedy for any violation of the Code. This remedy may be exercised in place of, or in addition to, any administrative, criminal, civil, or equitable remedy allowed by law. The City Attorney or City Prosecutor shall have sole discretion to determine whether a violation will be prosecuted criminally.

B. Code Enforcement Officers are vested with the authority to gain compliance with the provisions of the Code. These powers include, but are not limited to, the power to use all judicial and administrative remedies available, including issuance of administrative citations.

C. Any notice required under this Chapter shall be served in the manner set forth in Section 1.08.100.

1. If the responsible party is not the owner of the property where the alleged violation occurred, written notice shall be served in the manner set forth in Section 1.08.100, and personally delivered or sent by United States mail to the property owner at the last known business or residence address as the same appears in the public records of the City or other records pertaining to the matter to which such notice is directed.

2. When personal service or service by United States mail upon any responsible party is unsuccessful, a copy of the notice shall be posted in a conspicuous place on the property where the alleged violation occurred.

3. Notice will be effective on the date of mailing. The failure of any responsible party to receive any notice served in accordance with this section shall not affect the validity of any proceedings taken under the Code.

D. The remedies provided by this Chapter are in addition to all other legal remedies, criminal or civil, which may be pursued by the City to address any violation of the Code. The use of administrative citations shall be at the sole discretion of the City.

1.06.030 Administrative Citations

A. Whenever a Code Enforcement Officer determines that a violation of the Code has occurred, the Code Enforcement Officer may issue an administrative citation to each and any responsible party.

B. To the extent the following information is reasonably available to the Code Enforcement Officer, the administrative citation shall include:

1. The date and location of the violation, and the approximate time the violation occurred;

2. The section of the Code violated, and a description of how the section was violated;

3. The amount of the fine assessed for the Code violation and a description of the fine payment process;

4. An order to correct the Code violation described in the administrative citation;

5. A description of the administrative citation appeals hearing procedure, the appeal period, and the place from which to obtain an appeal form; and

6. The name and signature of the citing Code Enforcement Officer.

C. Continuing violations that pertain to building, plumbing, electrical or other similar structural or zoning issues.

1. When a Code Enforcement Officer determines that a continuing violation of the Code exists that pertains to building, plumbing, electrical, or other similar structural or zoning issues and does not create an immediate danger to health or safety, the Code Enforcement Officer shall provide a reasonable period of time to correct or otherwise remedy the violation. The Code Enforcement Officer shall issue a compliance order that serves as a written warning of responsibility and requires the responsible party to immediately cease the violation, and abate the violation within the reasonable period of time. As used in this Section, "reasonable period of time" means ten days, or such longer period as may be authorized by the Code Enforcement Office. "Similar zoning issues," as that term is used in this Section, does not include land use regulations, including but not limited to violations of the City's Coastal Development Program.

2. In the event that the violation has not been abated within the authorized correction period, the City may issue an administrative citation.

3. The compliance order will include the same information reasonably available to the Code Enforcement Officer as required in issuance of an administrative citation, as set forth in Section 1.06.030.B.

4. If the Code Enforcement Officer determines that all violations specified in the compliance order have been corrected within the time set forth in the order, no further action shall be taken against the responsible person regarding the violations.

D. Upon service of an administrative citation, the responsible person shall pay the fine no later than 20 days from the date of service of the administrative citation. Payment of the fine shall not excuse or discharge the failure to correct the violation, nor shall it bar further enforcement action by the City.

E. Upon service of a compliance order, the responsible person shall comply with the compliance order to remedy the violation within the time specified on the compliance order.

1.06.040 Fines and Penalties

A. The amount of the fine associated with the administrative citation will be assessed according to a schedule of fines adopted by the City Council. The schedule may include escalating fine amounts for repeat violations occurring within specified periods of time, and fines may vary depending on the particular Code provision violated. Each responsible party shall be guilty of a separate offense for each and every day during any portion of which a violation of any provision or section of the Code or condition of approval is committed, continued or permitted by such person, and shall be punished accordingly.

B. The fine shall be paid to the City within 20 days from the date of service of the administrative citation. Any person who fails to pay any fine imposed by the City shall also be liable for the payment of any applicable late payment charges set forth in the schedule of fines.

C. Fine payment does not extinguish the duty to correct the violation nor does fine payment bar further enforcement action by the City.

D. If the violation is not abated, additional, subsequent administrative citations may be issued for the same violation. Fines will accrue until the violation is properly abated to the satisfaction of the City. The amount of the fine for failure to correct the violation will increase at the rate established by City Council resolution.

E. A responsible party who fails to pay any fine or other charge owed to the City under this Chapter is liable in an action brought by the City for all costs incurred in securing payment of the delinquent amount, including, but not limited to, administrative costs and attorneys' fees incurred by the City. Such collection costs are in addition to any fines and late charges accrued.

1.06.050 Request for Administrative Citation Appeals Hearing

A. The fine associated with any administrative citation must be paid within 20 days from the date of service of the administrative citation, and is not deferred if an administrative citation appeals hearing is requested pursuant to this section.

B. An appeal of an administrative citation must be filed within 20 days in the City Clerk's Office. The appeal must set forth fully the grounds upon which the appeal is based. The administrative citation shall be final unless appealed in accordance with this Section.

C. The City Manager, or a duly authorized designee, is authorized to develop and implement policies and procedures relating to the qualifications, appointment and compensation of Hearing Officers and all other matters relating to conducting administrative citation appeals hearings as provided in the Code.

D. Any person designated to serve as a Hearing Officer is subject to disqualification for bias, prejudice, interest, or for other reason or which a judge may be disqualified in a court of law. Disqualification of a Hearing Officer shall be based upon a showing of actual bias, prejudice, interest or other reason.

1.06.060 Procedures for Administrative Citation Appeals Hearings

A. A requested appeal shall be heard before a Hearing Officer within 30 days of the City's receipt of the appeal, unless both the City and recipient requesting the hearing ("Appellant") agree to a later date.

B. The Hearing Officer shall conduct the hearing in an informal manner and the formal rules of evidence and discovery shall not apply. The Hearing Officer shall

consider only evidence relevant to whether a violation of the Code occurred and whether the Appellant caused or maintained the violation of the Code on the date(s) specified. The Hearing Officer does not have the authority to issue a subpoena.

C. Neither the Code Enforcement Officer nor any other City staff shall be required to attend the hearing. The administrative citation and any additional report submitted by the City shall constitute *prima facie* evidence of the respective facts contained in those documents. If the Appellant presents evidence to the contrary, the burden of proof shall shift to the City.

D. A preponderance of the evidence shall be the standard of proof used by the Hearing Officer in deciding the issues at an administrative citation appeals hearing.

E. The Hearing Officer may grant a continuance of the hearing for good cause or request additional information from a Code Enforcement Officer or Appellant prior to issuing a written decision. Failure to appear by the Appellant constitutes a forfeiture of the right to contest the fine, as well as a failure to exhaust administrative remedies.

F. The City Manager retains the discretion to dismiss any violation of the Code at any time during the hearing process, and refund the administrative citation and any related costs and penalties.

1.06.070 Written Decision of the Hearing Officer

A. Within ten days following the administrative citation appeals hearing, the Hearing Officer shall issue a written decision to uphold or cancel the administrative citation and shall explain the reason for that decision based on all the testimony and evidence submitted at the hearing. The written decision shall also include information on the right of the Appellant to judicial review.

B. The Appellant shall be served with a copy of the Hearing Officer's written decision, which shall be served in the same manner as set forth in Section 1.08.100.

C. If the Hearing Officer determines that the administrative citation should be upheld, the fine associated with the administrative citation shall be retained by the City. If the Hearing Officer determines the administrative citation should be canceled, then the City shall promptly refund the amount of the deposited fine, together with any late fees paid for the period of time the fine was held by the City.

D. The Hearing Officer shall assess against the Appellant administrative costs incurred in connection with violation any found to exist, or for any violation which was not timely corrected. The administrative costs include any and all costs incurred by the City in connection with prosecuting the violation, including, but not limited to, investigation costs, staffing costs for preparing and conducting the administrative hearing, costs for all inspections necessary to enforce compliance, and attorneys fees incurred therewith. The decision shall specify the date by which the costs must be paid to the City.

1.06.080 Late Payment Charges and Collection of Administrative Fines and Costs; Lien Procedure

A. Late Payment Charges. Any person who fails to pay to the City on or before the due date any fine imposed pursuant to the provisions of this Chapter shall be liable for the payment of late payment charges as follows:

1. For payments received within 30 days after the due date, a late fee in the amount of 50% of the fine due.

2. For payments received more than 30 days after the due date, a late fee in the amount of 50% of the fine due, plus an additional 10% of the overdue fine for each month the payment is overdue. The maximum late fee shall be 100% of the overdue fine.

B. Collection of Fines and Costs; Lien Procedure.

1. If the responsible person fails to satisfy in full the assessed fines and costs by the time specified in the Hearing Officer's decision or the administrative citation, and no timely appeal of the Hearing Officer's decision has been filed with the Los Angeles Superior Court, the City may recover the outstanding fines and costs by imposing a lien against the real property on which the violation occurred.

2. Prior to the recording of the lien with the Los Angeles County Recorder's Office, the City Council shall conduct a hearing to hear any protest or objection to the lien. The City shall serve notice of the hearing upon the owner of record of the real property, based on the last equalized assessment roll or the supplemental roll, whichever is more current. The notice of hearing shall include the time, date, and place of the hearing, and shall be served upon the owner of record by regular mail in accordance with section 1.08.100 at least ten days before the date of the hearing.

3. If the City Council determines that the lien should be imposed, the responsible person will have 45 days to satisfy the assessed fines and costs in full. If after that time the assessed fines and costs are not paid in full, a Code Enforcement Officer shall then prepare and file with the City Clerk a report stating the amount due and owing.

4. After the report is filed with the City Clerk, the City may cause the lien to be recorded with the County Recorder. Once recorded, the lien shall have the force and effect and priority of a judgment lien governed by the provisions of section 697.340 of the Code of Civil Procedure, or its successor, and may be extended as provided in sections 683.110 to 683.220, inclusive, of the Code of Civil Procedure, or their successors.

5. The remedies set forth in this section are not exclusive and may be used in addition to those set forth elsewhere in the Code or by law. The City may collect any past due fines and costs by use of any available legal means.

1.06.090 Right to Judicial Review

A. Within 20 days after service of the Hearing Officer's decision upon the Appellant, the Appellant may seek review of the decision by filing a notice of appeal with the Los Angeles Superior Court and serving the City Clerk with the notice of the appeal in accordance with Government Code Section 53069.4. If the Appellant fails to timely file a notice of appeal, the decision shall be final."

SECTION 2. CEQA. The City Council hereby finds that it can be seen with certainty that there is no possibility that the adoption of this Ordinance, and the prohibitions established hereby, may have a significant effect on the environment, because the Ordinance will only impose greater limitations on activities in the City, and will thereby serve to eliminate potentially significant adverse environmental impacts. It is therefore not subject to the California Environmental Quality Act review pursuant to Title 14, Chapter 3, Section 15061(b)(3) of the California Code of Regulations. A Notice of Exemption will be prepared.

SECTION 3. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4. Savings Clause. Neither the adoption of this Ordinance nor the repeal or amendment by this Ordinance of any ordinance or part or portion of any ordinance previously in effect in the City, or within the territory comprising the City, shall in any manner affect the prosecution for the violation of any ordinance, which violation was committed prior to the effective date of this Ordinance, nor be construed as a waiver of any license, fee or penalty or the penal provisions applicable to any violation of such ordinances.

SECTION 5. Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be published within 15 days after its passage, in accordance with Section 36933 of the Government Code.

SECTION 6. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the 31st day after its passage.

ADOPTED _____, 2016.

AYES:

NOES:

ABSENT:

ABSTAIN:

TONY D'ERRICO
Mayor

ATTEST:

LIZA TAMURA
City Clerk

APPROVED AS TO FORM:

QUINN M. BARROW
City Attorney