



MEMORANDUM

TO: HONORABLE MAYOR & CITY COUNCIL MEMBERS
FROM: JOEL ROJAS, AICP, DIRECTOR OF PLANNING,
BUILDING AND CODE ENFORCEMENT
DATE: JUNE 17, 2008
SUBJECT: ADMINISTRATIVE CODE ENFORCEMENT PENALTY
ORDINANCE
REVIEWED: CAROLYN LEHR, CITY MANAGER *CP for CL*
Project Manager: Daniel Pitts, CCEO, Code Enforcement Officer

RECOMMENDATION

Adopt Ordinance No. 473, an Ordinance of the City of Rancho Palos Verdes establishing procedures and administrative penalties for violations of the Rancho Palos Verdes Municipal Code and amending Rancho Palos Verdes Municipal Code.

DISCUSSION

On June 3, 2008, the City Council introduced Ordinance No. 473 to adopt the Administrative Code Enforcement Penalty Program to provide for an administrative remedy for any violation of this code, including continuing violations related to building, plumbing, electrical or other similar structural or zoning issues.

Therefore, staff is now presenting Ordinance No. 473 for the City Council's adoption. Staff recommends that the City Council adopt Ordinance No. 473.

Attachment:

- Ordinance No. 473.

ORDINANCE NO. 473

AN ORDINANCE OF THE CITY OF RANCHO PALOS VERDES ESTABLISHING PROCEDURES AND ADMINISTRATIVE PENALTIES FOR VIOLATIONS OF THE RANCHO PALOS VERDES MUNICIPAL CODE AND AMENDING THE RANCHO PALOS VERDES MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Title 1 of the Rancho Palos Verdes Municipal Code is hereby amended by adding new Chapter 1.16, entitled Administrative Penalties, thereto to read as follows:

“Chapter 1.16 Administrative Penalties

- 1.16.010 Scope**
- 1.16.020 Definitions**
- 1.16.030 Procedure for Service**
- 1.16.040 Responsibility of Cited Party**
- 1.16.050 Compliance Order**
- 1.16.060 Content of Compliance Order**
- 1.16.070 Compliance Order Satisfied**
- 1.16.080 Failure to Comply with Compliance Order**
- 1.16.090 Administrative Citation**
- 1.16.100 Content of Administrative Citation**
- 1.16.110 Administrative Fine-Citations and Compliance Orders**
- 1.16.120 Payment of Administrative Fine**
- 1.16.130 Request for Administrative Hearing**
- 1.16.140 Advance Hardship Waiver Deposit**
- 1.16.150 Time for Administrative Hearing**
- 1.16.160 Request for Continuance of Hearing**
- 1.16.170 Appointment of Administrative Hearing Officer**
- 1.16.180 Procedures at Administrative Hearing**
- 1.16.190 Failure to Attend Administrative Hearing**
- 1.16.200 Decision of Administrative Hearing Officer**
- 1.16.210 Administrative Costs**
- 1.16.220 Late Payment Charges**
- 1.16.230 Collection of Administrative Fines and Costs - Lien Procedure**
- 1.16.240 Appeal of Administrative Order**
- 1.16.250 Failure to Comply with Administrative Order.**

1.16.010 Scope.

This Chapter provides for an administrative remedy for any violation of this Code, including continuing violations related to building, plumbing, electrical, or other similar structural or zoning issues that do not create an immediate danger to health or safety.

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 or their respective assistants shall have sole discretion to determine whether a violation will be prosecuted criminally.

1.16.020 Definitions.

A. Administrative Citation or Citation – A written notice to a Responsible Person issued by the Citing Official that a violation of this Code has occurred.

B. Administrative Compliance Order or Compliance Order – A written notice to a Responsible Person issued by the Citing Official that there exists a continuing violation of this Code related to building, plumbing, electrical, or other similar structural or zoning issues.

C. Citing Official – Any City employee or any member of the Los Angeles County Sheriff's Department who is authorized to enforce provisions of this Code.

D. 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.

E. Responsible Person – Any person whom a Citing Official determines is responsible for causing, maintaining, permitting, or allowing a violation of this Code. The term "Responsible Person" includes, but is not limited to: any person who has an ownership or possessory interest in real or personal property; any agent thereof with actual or apparent authority, possession, or control of real or personal property; or any other person, who creates, maintains, permits, or allows a violation of this Code.

1.16.030 Procedure for Service.

Except as provided below, the Citing Official may issue an Administrative Compliance Order, Citation, or other notice to a Responsible Person on a form approved by the City Manager using either of the following methods:

A. Personal Service. The Citing Official may issue the Administrative Compliance Order, Citation, or other notice by personal delivery to a Responsible Person. The Citing Official shall attempt to obtain the signature of the Responsible Person on the Administrative Compliance Order or Citation. If the Responsible Person or person served refuses or fails to sign the Administrative Compliance Order or Citation, the failure or refusal to sign shall not affect the validity of the Compliance Order or Citation or of any subsequent proceedings.

B. Mail. The Citing Official may mail the Administrative Compliance Order, Citation, or other notice to the Responsible Person by first-class mail, postage prepaid, return receipt requested, addressed to the owner, agent of the owner, lessee, occupant,

or person in possession of the premises described at such person's last known address. Simultaneously, the same notice may be sent by regular mail and also may be posted on any real property within the City in which the City has knowledge that the responsible person has a legal interest. If no address is known or made known to the Citing Official, then the Citing Official may mail the Administrative Compliance Order, Citation, or other notice to the owner's last known address as the name appears on the latest equalized assessment roll.

Service is effective when personally served or when deposited into the United States mail. The Citing Official must complete a declaration of service, a copy of which shall be maintained in the files of the City's Department of Planning, Building and Code Enforcement ("Department"). Failure to receive any notice does not affect the validity of the proceedings conducted under this Chapter.

1.16.040 Responsibility of Cited Party.

Upon service of an Administrative Compliance Order or Citation, the Responsible Person shall do the following:

A. Pay the Administrative Fine no later than thirty (30) 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.

B. Comply with the Compliance Order to remedy the violation within the time specified on the Compliance Order.

1.16.050 Compliance Order.

Whenever the Citing Official determines that there exists a continuing violation of any provision of this Code related to building, plumbing, electrical, or other similar structural or zoning issues that does not create an immediate danger to health or safety, the Citing Official shall issue or cause to be issued a written Compliance Order to any Responsible Person.

1.16.060 Content of Compliance Order.

A Compliance Order shall contain all of the following information:

A. The date and location of the violation and the approximate time the violation occurred.

B. The City Code section violated and a description of the violation.

C. The action required to correct the violation and the date by which such action must be completed. Except as otherwise provided in this section, the date for compliance shall not be less than thirty (30) days from the date the Compliance Order is served.

D. The consequences of failing to correct the violation, including a description of the administrative hearing procedure and appeal process

E. The time period after which administrative fines will begin to accrue if there is no compliance with the order.

F. The amount of the fine that will be imposed if there is no compliance with the order.

G. The name and signature of the Citing Official.

1.16.070 Compliance Order Satisfied.

If the Citing Official 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.

1.16.080 Failure to Comply with Compliance Order.

If the Responsible Person fails to fully comply with the Compliance Order within the time specified in the Compliance Order, the Citing Official may issue an Administrative Citation as provided in this Chapter. The issuance of the Administrative Citation does not obviate the Responsible Person's obligation to fully comply with the Compliance Order. The Administrative Citation shall be served by the applicable method set forth in Section 1.16.030.

1.16.090 Administrative Citation.

Any person violating any section of this Code that is subject to this Chapter may be issued an Administrative Citation by a Citing Official as provided in this Chapter.

1.16.100 Content of Administrative Citation.

An Administrative Citation shall contain all of the following information:

A. The date and location of the violation and the approximate time the violation occurred or was detected.

B. The Code section violated and a description of the violation.

C. The amount of the fine imposed for the violation, and the time within which and the place at which the fine shall be paid.

D. An order prohibiting another occurrence of the Code violation.

E. A description of the Administrative Citation review process, including the time within which to contest the Administrative Citation and the place from which to obtain a Request for Hearing form to contest the Administrative Citation.

- F. The name and signature of the Citing Official.

1.16.110 Administrative Fine-Citations and Compliance Orders.

- A. The fine imposed pursuant to this chapter for a particular violation shall be in the amount set forth in the administrative citation penalty schedule established by resolution of the City Council. The administrative citation penalty schedule shall specify the amount of any late payment charges imposed for failure to timely pay the fine.
- B. Pursuant to Section 1.08.010 of this Code, each day during which a violation of any provision or requirement of this Code is committed, continued, or permitted, constitutes a separate offense. Accordingly, the Citing Official may assess a fine according to the schedule referred to in paragraph (A) for each day from the date for compliance specified in the compliance order until the date the violation is fully corrected as determined by the enforcement official. The administrative citation shall specify the date by which the fine must be paid.
- C. Administrative fines assessed for failing to fully comply with a Compliance Order or Administrative Citation is a debt owed to the City.
- D. If the responsible person provides written notice to the Citing Official that the violation has been corrected, and if the Citing Official finds compliance, the Citing Official shall deem the date the written notice was postmarked or personally delivered to the Citing Official to be the date when the violation was corrected. If, however, a final inspection confirmed compliance before mailing or personal delivery of a written notice, or if no written notice is provided, the date of final inspection shall be deemed to be the date when the violation was corrected.

1.16.120 Payment of Administrative Fine.

The administrative fine shall be paid to the Department of Planning, Building and Code Enforcement within thirty (30) days from the date of service of the Administrative Citation. If, after a hearing requested pursuant to Section 1.16.130, the Hearing Officer determines that the Administrative Citation should be cancelled, the administrative fine shall be refunded promptly.

1.16.130 Request for Administrative Hearing.

- A. Any Responsible Person to whom an Administrative Citation is issued may contest the Citation by: (1) completing a Request for Hearing Form and returning it

to the Department of Planning, Building and Code Enforcement; and (2) either depositing the administrative fine with the Department of Planning, Building and Code Enforcement or providing notice that a request for an Advance Deposit Hardship Waiver has been filed pursuant to Section 1.16.140. A Request for Hearing Form may be obtained from the Department of Planning, Building and Code Enforcement.

B. The Department of Planning, Building and Code Enforcement must receive a completed Request for Hearing Form and the administrative fine or completed Hardship Waiver Form pursuant to Section 1.16.140 within thirty (30) days from the date of service of the Administrative Citation. If not, the Responsible Person waives the right to a hearing.

C. The Citing Official shall notify the person requesting the hearing by regular mail in accordance with Section 1.16.030 of the time and place of the hearing at least twenty (20) days before the date of the hearing. The Citing Official shall serve any documentation, other than the Administrative Citation, that the Citing Official has submitted or will submit to the Hearing Officer on the person requesting the hearing by regular mail in accordance with Section 1.16.030 at least ten (10) days before the date of the hearing.

1.16.140. Advance Hardship Waiver Deposit.

A. Any Responsible Person who requests a hearing to contest an Administrative Citation and who is financially unable to deposit the administrative fine required in Section 1.16.120 may file a request for an Advance Deposit Hardship Waiver. The request shall be filed with the Department of Planning, Building and Code Enforcement on an Advance Deposit Hardship Waiver application form, available from the Department of Planning, Building and Code Enforcement, no later than thirty (30) days after service of the Administrative Citation. The Department of Planning, Building and Code Enforcement's failure to receive a completed form, with all supporting documents, within thirty (30) days after service of the Administrative Citation, shall constitute a waiver of the right to receive a Hardship Waiver.

B. The Director of the Department of Planning, Building and Code Enforcement ("Director") or the Director's designee may issue an Advance Deposit Hardship Waiver only if the person requesting the waiver submits a sworn affidavit, together with any supporting documents, demonstrating to the satisfaction of the Director or the Director's designee the person's financial inability to deposit with the City the full amount of the fine in advance of the hearing. The Director or his or her designee shall issue a written decision specifying the reasons for issuing or not issuing the Waiver. The decision shall be served upon the person requesting the waiver as specified in Section 1.16.030. If the Director or the Director's designee determines that the waiver is not warranted, the person shall remit the full amount of the fine to the Department of Planning, Building and Code Enforcement within ten (10) days of receipt of the Director's written decision. The decision of the Director or the Director's designee whether to issue a Hardship Waiver shall be final.

1.16.150 Time for Administrative Hearing.

Only after a Request for Hearing Form is received by the Department of Planning, Building and Code Enforcement within the required period, and the Responsible Person requesting the hearing has either deposited the administrative fine in full or obtained an Advance Deposit Hardship Waiver (hereinafter a "Perfected Appeal"), shall the City set the date and time for the administrative hearing. The hearing shall be set for a date not less than fifteen (15) days, nor more than sixty (60) days after the filing of a Perfected Appeal.

1.16.160 Request for Continuance of Hearing.

The Responsible Person requesting a hearing may request one continuance, and the City may continue the hearing on its own initiative, but in no event may the hearing begin later than ninety (90) days after the Request for Hearing Form is filed, and the administrative fine is deposited with the City or an Advance Deposit Hardship Waiver is issued.

1.16.170 Appointment of Administrative Hearing Officer.

The City Manager or the City Manager's designee shall establish procedures for the selection of an administrative hearing officer. Administrative hearing officers shall be selected in a manner that avoids the potential for pecuniary or other bias. In no event shall be the administrative hearing officer be the Citing Official. The compensation, if any, of the administrative hearing officer shall be paid by the City. Compensation shall not be directly or indirectly conditioned upon whether administrative citations are upheld by the administrative hearing officer.

1.16.180 Procedures at Administrative Hearing.

Administrative hearings are informal, and formal rules of evidence and discovery do not apply. Each party shall have the opportunity to present evidence in support of that party's case and to cross-examine witnesses. The City bears the burden of proof at an administrative hearing to establish a violation of the Municipal Code. The Administrative Citation and any additional reports submitted by the Citing Official shall constitute prima facie evidence of the facts contained in those documents. The administrative hearing officer must use preponderance of evidence as the standard of review in deciding the issues.

1.16.190 Failure to Attend Administrative Hearing.

If the Responsible Person fails to attend the scheduled hearing, the hearing will proceed without the Responsible Person, and the Responsible Person will be deemed to have waived the right to an administrative hearing and any further appeals as set forth in this Chapter.

1.16.200 Decision of Administrative Hearing Officer.

A. No later than thirty (30) days after the date on which the administrative hearing concludes, the administrative hearing officer shall issue a written decision. The decision shall set forth the reasons for the decision along with notice of the right to appeal pursuant to section 1.16.240 of this Chapter. The administrative hearing officer's decision shall be final. The decision shall be served by first class mail in accordance with Section 1.16.030 and shall be deemed to be served on the date the decision is deposited with the United States Postal Service. The failure of the responsible person to receive a properly addressed decision shall not invalidate the Administrative Citation, Compliance Order or the administrative hearing officer's decision.

B. Administrative Citation. The administrative hearing officer shall issue a written decision to uphold or cancel the Administrative Citation. If the administrative hearing officer upholds the Administrative Citation, the City shall retain the fine deposited by the Responsible Person. If the administrative hearing officer upholds the Administrative Citation and the fine has not been deposited pursuant to an advance deposit hardship waiver, the administrative hearing officer shall specify in the decision a payment schedule for the fine. If the administrative hearing officer cancels the Administrative Citation, any fine deposited with the City shall be promptly refunded. The administrative hearing officer's decision is final.

C. Compliance Order. With regard to a Compliance Order, the administrative hearing officer's written decision shall be entitled "Administrative Order." The administrative hearing officer shall make findings within the Administrative Order regarding the existence of the violation(s) specified in the Compliance Order, and regarding whether the Responsible Person took the required corrective action within the time period set forth in the Compliance Order. If the administrative hearing officer concludes that the violation continues to exist, the Administrative Order shall set forth a schedule for correction. In addition, the Administrative Order shall impose administrative fines as provided in Section 1-3-310, and administrative costs as provided in Section 1-3-320. The Administrative Order shall set a deadline for compliance with its terms in the event that the Responsible Person fails to file an appeal. If the administrative hearing officer determines that the violation(s) set forth in the compliance Order did not exist, or that the violation(s) was (were) timely corrected, all proceedings regarding the violation(s) shall immediately cease and the Administrative Citations shall be canceled. If the administrative hearing officer cancels the Administrative Citation, any fine deposited with the City shall be promptly refunded.

1.16.210 Administrative Costs.

The Administrative Hearing Officer shall assess against the Responsible Person administrative costs for any violation 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, and costs for all inspections necessary to enforce the Compliance Order and the Administrative Order. The Administrative Order shall specify the date by which the costs must be paid to the City.

1.16.220 Late Payment Charges.

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

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

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

1.16.230 Collection of Administrative Fines and Costs - Lien Procedure.

A. If the Responsible Person fails to satisfy in full the assessed administrative fines and costs by the time specified in the administrative hearing officer's decision or the Administrative Order, and no timely appeal of the administrative officer's decision has been filed with the Los Angeles Superior Court (Southwest District/Torrance), the City may recover the outstanding fines and costs by imposing a lien against the real property on which the violation occurred.

B. 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 Citing Official 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 1.16.030 at least ten (10) days before the date of the hearing. If the owner of record cannot be located after a reasonable search, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days.

C. After holding the hearing and taking all evidence, oral and written, the City Council shall determine whether the lien should be imposed. If the City Council determines that the lien should be imposed, the Responsible Person will have forty-five (45) days to satisfy the assessed administrative fines and costs in full. If after that time the assessed administrative fines and costs are not paid in full, the Citing Official shall then prepare and file with the City Clerk a report stating the amount due and owing.

D. After the report is filed with the City Clerk, the Citing Official 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.

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

1.16.240 Appeal of Decision of Administrative Hearing Officer.

Within twenty (20) days after service of the administrative hearing officer's decision upon the Responsible Person, the Responsible Person may seek review of the administrative hearing officer's decision by filing a notice of appeal and paying the appeal fee required by Government Code Section 53069.4(b)(2) or its successor with the Los Angeles Superior Court (Southwest District/Torrance). The Responsible Person shall serve a copy of the notice of appeal either in person or by first class mail upon the Department of Planning, Building and Code Enforcement. If the Responsible Person fails to timely file a notice of appeal, the Administrative Order shall be deemed confirmed.

1.16.250 Failure to Comply with Administrative Order.

Failure to comply with an Administrative Order after it becomes final is a misdemeanor. Filing a criminal misdemeanor action does not preclude the City from using any other legal remedy available to gain compliance with the Administrative Order.”

Section 2. Section 1.08.010 of Chapter 1.08 of Title 1 of the Rancho Palos Verdes Municipal Code is hereby amended to read as follows:

A1.08.010. Misdemeanors B Infractions B Nuisances.

A. Misdemeanors. No person shall violate any provisions or fail to comply with any of the requirements of this Code. Any person who (1) violates any provision or fails to comply with any requirement of this Code or (2) fails to pay an administrative fine or to comply with an administrative order is guilty of a misdemeanor, unless: (1) the violation or failure to comply is expressly stated by this Code to be an infraction or is subsequently prosecuted as an infraction in the discretion of the city attorney, in which case such person is guilty of an infraction and shall be punished as provided in subsection B of this section, or (2) the violation or failure to comply is prosecuted as a civil administrative action pursuant to Chapter 1.16 of this Title. Any conviction of a misdemeanor under the provisions of this Code shall be punishable by a fine of not more than one thousand dollars, or by imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment. Each such person is guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Code is committed, continued or permitted by such person and shall be punishable accordingly.

B. Infractions. Any person violating any provision or failing to comply with any mandatory requirement of this Code expressly stated by this Code to be an infraction is guilty of an infraction unless the violation or failure to comply is prosecuted

as a civil administrative action pursuant to Chapter 1.16 of this Title. Any conviction for an infraction shall be punishable by:

1. A fine not exceeding one hundred dollars for a first violation;
2. A fine not exceeding two hundred dollars for a second violation of the same provision of this Code within one year;
3. A fine not exceeding five hundred dollars for each additional violation of the same provision of this Code within one year of the first violation.

However, notwithstanding the foregoing, any conviction for a violation of a City building and safety code shall be punishable by:

1. A fine not exceeding one hundred dollars for a first violation;
2. A fine not exceeding five hundred dollars for a second violation of the same provision of this Code within one year;
3. A fine not exceeding one thousand dollars for each additional violation of the same provision of this Code within one year of the first violation.

Each person is guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Code is committed, continued or permitted by such person and shall be punishable accordingly.

C. Nuisances. In addition to the penalties provided in subsections A and B of this section, any condition caused or permitted to exist in violation of any of the provision of this Code shall be deemed a public nuisance and may be, by this City, summarily abated as such.@

Section 3. 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 a 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 4. The City Clerk shall cause this Ordinance to be posted in three (3) public places in the City within fifteen (15) days after its passage, in accordance with the provisions of Section 36933 of the Government Code. The City Clerk shall further certify to the adoption and posting of this Ordinance, and shall cause this Ordinance and its certification to be entered in the Book of Ordinances of the Council of this City.

Section 5. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

PASSED, APPROVED and ADOPTED this 17th day of June, 2008.

Mayor

ATTEST:

City Clerk