

TITLE II - ADMINISTRATION

DIVISION 13

ADMINISTRATIVE PENALTIES

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TITLE II - ADMINISTRATION

DIVISION 13

ADMINISTRATIVE PENALTIES

2131-1. PURPOSE AND INTENT.

(a) The purpose of this chapter relating to administrative penalties is to provide alternative remedies to address acts or omissions set forth in section 2131-2 below. Violations may be corrected, abated, or addressed in a number of ways. It is the intent of this chapter to provide the County with additional remedies to correct violations and, where necessary, to penalize violators for failure to comply with County codes and ordinances. (Ord. 2138a, § 1, 12/03/1996)

(b) The Humboldt County Board of Supervisors hereby finds and determines that enforcement of the County code, other ordinances adopted by the County, and conditions on entitlement in terms of County permits and agreements, are matters of local concern and serve important public purposes. Under the authority of and consistent with Government Code section 53069.4, the County of Humboldt adopts this administrative penalty provision in order to achieve the following goals: (Ord. 2138a, § 1, 12/03/1996)

(1) To protect the public health, safety and welfare of the communities and citizens in the County of Humboldt; (Ord. 2138a, § 1, 12/03/1996)

(2) To provide for an administrative process that has objective criteria for the imposition of penalties and provides for a process to appeal the imposition of administrative penalties; (Ord. 2138a, § 1, 12/03/1996)

(3) To provide a method to penalize responsible parties who fail or refuse to comply with provision of County Code, ordinances, or conditions on entitlement in the County of Humboldt; and (Ord. 2138a, § 1, 12/03/1996)

(4) To minimize the expense and delay where the alternative remedy is to pursue responsible parties in the civil or criminal justice system. (Ord. 2138a, § 1, 12/03/1996)

(c) The County Board of Supervisors hereby establishes an administrative penalty procedure provided in this chapter. All final administrative orders made pursuant to the procedures set forth in this chapter shall be subject to review only as provided in Government Code section 53069.4. (Ord. 2138a, § 1, 12/03/1996)

2131-2. IMPOSITION OF ADMINISTRATIVE PENALTIES.

(a) In addition to criminal prosecutions, civil actions, abatement proceedings before the Board of Supervisors or any other remedy set forth in Humboldt County Code, the County may make any act or omission in violation of County Code subject to an administrative fine or penalty. Administrative penalties shall be imposed, enforced, collected and reviewed in compliance with the provisions of this chapter by the Code Enforcement Unit of the County of Humboldt. Administrative penalties may be imposed for any of the following acts or omissions: (Ord. 2138a, § 1, 12/03/1996; Ord. No. 2272, 04/23/2002)

(1) All violations of Humboldt County Codes; (Ord. 2138a, § 1, 12/03/1996)

(2) All violations of other codes or ordinances adopted by the County of Humboldt, including but not limited to the building and zoning ordinances; (Ord. 2138a, § 1, 12/03/1996)

(3) All violations of any Uniform Code adopted by the County of Humboldt; (Ord. 2138a, § 1, 12/03/1996)

(4) Failing to comply with any order issued by the Board of Supervisors, a board, hearing officer, or examiner or other body appointed by the Board of Supervisors and authorized to issue orders, including but not limited to the Planning and Building Director, the Health Director, the Planning Commission, and the Code Enforcement Unit; and (Ord. 2138a, § 1, 12/03/1996; Ord. No. 2272, 04/23/2002)

(5) Failing to comply with any condition imposed by any entitlement, permit, contract or environmental document issued or approved by the County of Humboldt. (Ord. 2138a, § 1, 12/03/1996)

(b) Nothing in this chapter shall prevent the County from using one or more other remedies to address violations, either in lieu of or in addition to administrative penalties. (Ord. 2138a, § 1, 12/03/1996)

(c) 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 imposition of the administrative penalty, except in those cases in which there is an immediate danger to health or safety. The reasonable period for purposes of this section shall be thirty (30) days from service of any notice issued regarding the violation(s). (Ord. 2138a, § 1, 12/03/1996)

(d) For the 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 18 years, who has done any act or omission for which an administrative penalty may be imposed. (Ord. 2138a, § 1, 12/03/1996)

2131-3. NOTICE OF IMPOSITION OF ADMINISTRATIVE PENALTIES.

(a) Where the County has determined that a responsible party has violated this code or any provision set forth in section 2131-2(a) above, the County may commence an administrative proceeding to impose administrative penalties. To commence such proceedings, the Code Enforcement Unit shall issue an order imposing administrative penalties. The order shall contain:(Ord. 2138a, § 1, 12/03/1996; Ord. No. 2272, 04/23/2002)

(1) The name and address of the responsible party in violation. If the administrative penalty results from offense occurring on, or the status or condition of, property, the order shall also contain the address of the property; (Ord. 2138a, § 1, 12/03/1996)

(2) A statement of the acts or conditions which violate County Code and the specific code or provision which have been violated; (Ord. 2138a, § 1, 12/03/1996)

(3) The amount of the administrative penalty the County imposes for the violation; (Ord. 2138a, § 1, 12/03/1996)

(4) A statement that the responsible party in violation may appeal the imposition of the administrative penalty within thirty (30) days of the date the order is served; (Ord. 2138a, § 1, 12/03/1996)

(5) 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; (Ord. 2138a, § 1, 12/03/1996)

(6) A statement that any responsible party upon who an administrative penalty has been imposed may seek judicial review of the order imposing the penalty pursuant to Government Code section 53069.4. (Ord. 2138a, § 1, 12/03/1996)

(b) The administrative penalty order shall be served upon the responsible party in violation. The failure of the Code Enforcement Unit to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person(s) duly served or relieve any such person(s) from any duty or obligation imposed on him/her. If the County proposes to impose a lien on the property, one copy thereof shall also be served on each of the following if known to the Code Enforcement Unit or disclosed from official public records: (Ord. 2138a, § 1, 12/03/1996; Ord. No. 2272, 04/23/2002)

(1) The holder of any mortgage or deed of trust of other lien or encumbrance of record; and (Ord. 2138a, § 1, 12/03/1996)

(2) The owner or holder of any lease of record. (Ord. 2138a, § 1, 12/03/1996)

(c) 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. Certified mail will be addressed to the owner at the address shown on the last equalized assessment roll of Humboldt County or as otherwise known to the Code Enforcement Unit. Service by certified mail shall be effected on the date of mailing. (Ord. 2458, § 1, 08/23/2011)

(d) The failure of any such person to receive such administrative penalty order shall not effect the validity of any proceedings taken under this section against any other responsible party. (Ord. 2138a, § 1, 12/03/1996; Ord. 2458, § 1, 08/23/2011)

2131-4. AMOUNT OF ADMINISTRATIVE PENALTIES.

(a) The amount of the administrative penalty to be imposed shall be set by the Code Enforcement Unit which is responsible for issuing the administrative penalty order. Each day a violation continues or occurs constitute a separate violation. Administrative penalties may be imposed in any amount not less than two hundred fifty dollars (\$250.00) nor more than ten thousand dollars (\$10,000.00) per violation. (Ord. 2138a, § 1, 12/03/1996; Ord. No. 2272, 04/23/2002; Ord. 2333, § 1, 11/02/2004)

(b) In determining the amount of the administrative penalty to be imposed, the Code Enforcement Unit shall consider factors including but not limited to:(Ord. 2138a, § 1, 12/03/1996; Ord. No. 2272, 04/23/2002)

(1) the seriousness of the violation; (Ord. 2138a, § 1, 12/03/1996)

(2) the number of complaints received; (Ord. 2138a, § 1, 12/03/1996)

(3) the wilfulness of the responsible party and their efforts to correct the violation; (Ord. 2138a, § 1, 12/03/1996)

(4) the injury/damage, if any, suffered by any member of the public; (Ord. 2138a, § 1, 12/03/1996)

(5) any instances in which the responsible party has been in violation of the same or similar code provisions in the previous three years; (Ord. 2138a, § 1, 12/03/1996)

(6) the amount of administrative staff time which was expended in investigating or addressing the violation; and (Ord. 2138a, § 1, 12/03/1996)

(7) the amount of administrative penalties which have been imposed in similar situations. (Ord. 2138a, § 1, 12/03/1996)

(c) There are four violation categories reflecting penalty amounts corresponding to the seriousness of the violation. These are: (Ord. 2138a, § 1, 12/03/1996)

(1) Category 1: "Category 1 Violations" are those which are primarily procedural, have a negligible impact, and which are committed through neglect or oversight. (Ord. 2138a, § 1, 12/03/1996)

(2) Category 2: "Category 2 Violations" include those which are committed unintentionally through neglect or oversight, but which have significant and/or substantial impact. (Ord. 2138a, § 1, 12/03/1996)

(3) Category 3: "Category 3 Violations" include those having significant impact and which are committed intentionally or through inexcusable neglect; (Ord. 2138a, § 1, 12/03/1996)

(4) Category 4: "Category 4 Violations" are blatant violations involving intentional wrongdoing, with substantial impact. (Ord. 2138a, § 1, 12/03/1996)

(d) The amount of the administrative penalty shall be set according to the following schedule: (Ord. 2138a, § 1, 12/03/1996)

(1) Category 1 violations shall be subject to an administrative penalty of \$250.00 to \$2,500.00; (Ord. 2138a, § 1, 12/03/1996; Ord. No. 2272, 04/23/2002; Ord. 2333, § 1, 11/02/2004)

(2) Category 2 violations shall be subject to an administrative penalty of \$1,000.00 to \$5,000.00; (Ord. 2138a, § 1, 12/03/1996; Ord. No. 2272, 04/23/2002; Ord. 2333, § 1, 11/02/2004)

(3) Category 3 violations shall be subject to an administrative penalty of \$2,500.00 to \$7,500.00; (Ord. 2138a, § 1, 12/03/1996; Ord. No. 2272, 04/23/2002; Ord. 2333, § 1, 11/02/2004)

(4) Category 4 violations shall be subject to an administrative penalty of \$5,000.00 to \$10,000.00; (Ord. 2138a, § 1, 12/03/1996; Ord. No. 2272, 04/23/2002; Ord. 2333, § 1, 11/02/2004)

(e) The factors of willfulness and severity of impact are considered together in assigning a particular violation its violation category. A violation involving little impact, for example, could be assigned a category 2 or 3, depending on the degree of willful violation. Similarly, an unintentional violation could be assigned a category 1 or 2, depending on the degree of impact involved. (Ord. 2138a, § 1, 12/03/1996)

(f) In assessing the degree of willfulness and/or negligence, all of the following points should be considered in most cases: (Ord. 2138a, § 1, 12/03/1996)

(1) How much control the responsible party had over the events constituting the violation; (Ord. 2138a, § 1, 12/03/1996)

(2) Whether the responsible party took reasonable precautions against the events constituting the violation; (Ord. 2138a, § 1, 12/03/1996)

(3) Whether the responsible party knew, or should have known, the impacts associated with the conduct; (Ord. 2138a, § 1, 12/03/1996)

(4) The level of sophistication of the responsible party in dealing with compliance issues; (Ord. 2138a, § 1, 12/03/1996)

(5) Whether the responsible party in fact knew of the legal requirements which were violated. Lack of knowledge of the legal requirements should never be used as a basis to reduce a penalty. To do so would encourage ignorance of the law. Rather, knowledge of the law should serve only to enhance the penalty. (Ord. 2138a, § 1, 12/03/1996)

(g) Another factor in determining the amount of penalty is the number of prior violations of the same or related type as involved in the case in question, which have been committed by the responsible party within a prior thirty six (36) month period. Repeat or successive violations are defined as violations of the same or related ordinances or permit conditions regarding the subject premises. (Ord. 2138a, § 1, 12/03/1996)

(h) To ease the financial burden of administrative penalty payments and to provide an incentive for future compliance, a penalty payment suspension may be granted by the Code Enforcement Unit in lieu of full payment. Rather than requiring a person found in violation to pay the entire penalty at the time the violation is discovered, a suspension of a percentage of their payment may be offered. The payment suspension will be in effect for not more than one year from the penalty date. If additional violations occur within the payment suspension period or the responsible party does not comply with the terms and conditions of the payment suspension, the suspended portion of the penalty shall be immediately due and owing from the responsible party. In addition a penalty for the new violation may be assessed against the responsible party. However, if there are no further violations within the payment suspension period and the responsible party has complied with the terms and conditions of the payment suspension, the responsible party will no longer be liable for the suspended amount. Penalty payment suspensions can be offered when the responsible party has taken immediate steps to remedy the violation and to prevent future recurrences, and the impact did not result in a threat to public health. (Ord. 2138a, § 1, 12/03/1996; Ord. No. 2272, 04/23/2002; Ord. 2458, § 1, 08/23/2011)

2131-5. ADMINISTRATIVE HEARING APPEAL.

(a) Any responsible party against whom an administrative penalty has been imposed may appeal the imposition of the administrative penalty by filing with the Code Enforcement Unit a written notice of appeal within thirty (30) calendar days of service of the administrative penalty order. The written appeal request shall contain: (Ord. 2138a, § 1, 12/03/1996; Ord. No. 2272, 04/23/2002)

(1) a brief statement setting forth the interest the appealing party has in the matter relating to the imposition of the penalty; (Ord. 2138a, § 1, 12/03/1996)

(2) a brief statement, in ordinary and concise language, of the material facts which the appellant claims support his/her/it's contention that no administrative penalty should be imposed or that an administrative penalty of a different amount is warranted; and (Ord. 2138a, § 1, 12/03/1996)

(3) an address at which the appellant agrees notice of any additional proceedings or an order relating to imposition of the administrative penalty may be received by first class mail. (Ord. 2138a, § 1, 12/03/1996)

(b) The administrative penalty appeal shall be heard by a hearing examiner who has not otherwise been previously involved in the investigation or processing of the matter. (Ord. 2138a, § 1, 12/03/1996; Ord. No. 2272, 04/23/2002; Ord. 2458, § 1, 08/23/2011)

2131-6. ADMINISTRATIVE PENALTY APPEAL HEARING.

(a) The administrative penalty appeal hearing shall be set by the hearing examiner. The administrative penalty hearing shall be set for hearing no sooner than twenty (20) days and no later than forty-five (45) days following a request for an appeal hearing. The hearing examiner shall send notice of the appeal hearing by first class mail to the Code Enforcement Unit and to appellant at the address provided with the written appeal request. Notice of the appeal hearing shall be mailed at least fifteen (15) days before the day set for the hearing. (Ord. 2138a, § 1, 12/03/1996; Ord. 2458, § 1, 08/23/2011)

(b) At the time set for the administrative penalty appeal hearing, the hearing examiner shall proceed to hear testimony from County staff, the appellant, and any other competent persons with respect to imposition of an administrative penalty. (Ord. 2138a, § 1, 12/03/1996)

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(c) The proceeding 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. (Ord. 2138a, § 1, 12/03/1996)

(d) The hearing examiner may, upon request of the responsible party against whom a penalty is to be imposed, or upon request of County staff, grant continuances from time to time for good cause shown, or upon its own motion. (Ord. 2138a, § 1, 12/03/1996)

(e) The hearing examiner or certified shorthand reporter shall administer the oath or affirmation. (Ord. 2138a, § 1, 12/03/1996)

(f) Government Code section 11513, as it exists on the effective date of the ordinance adopting these provisions, or as hereafter amended, shall apply to all administrative penalty hearings. (Ord. 2138a, § 1, 12/03/1996; Ord. 2458, § 1, 08/23/2011)

(g) Parties may represent themselves or be represented by any person of their choice. 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 that party, but an interpreter shall not have had any personal involvement in the issues of the case prior to the hearing. (Ord. 2138a, § 1, 12/03/1996)

(h) 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 County, or any of their departments. (Ord. 2138a, § 1, 12/03/1996)

(I) In case of violation related to property, the hearing examiner may inspect the building and premises involved in the hearing prior to, during, or after the hearing, provided that: (Ord. 2138a, § 1, 12/03/1996)

(1) Notice of such inspection shall be given to the parties before the inspection being made; (Ord. 2138a, § 1, 12/03/1996)

(2) The parties consent and are given an opportunity to be present during the inspection; (Ord. 2138a, § 1, 12/03/1996)

(3) 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, upon completion of the inspection, the material facts observed and the conclusion drawn therefrom. Each party then shall have the right to rebut or examine the matter so stated by the hearing examiner either for the record during the hearing or by filing a written statement after the hearing for inclusion in the hearing record. (Ord. 2138a, § 1, 12/03/1996)

(j) Notice to the parties, or the owner's consent to inspect the building and surrounding properties is not required if the property can be inspected from areas in which the general public has access to or with permission of other persons authorized to provide access to the property on which the building is located. (Ord. 2138a, § 1, 12/03/1996)

(k) The hearing examiner shall have the authority to issue subpoenas for orders to appear and produce testimony or subpoenas duce tecum for orders to produce documents. The hearing examiner shall only issue a subpoena upon the showing of reasonable necessity by the requesting party. Failure to comply with any subpoena may be considered by the hearing examiner in making its decision regarding the imposition of administrative penalties. (Ord. 2138a, § 1, 12/03/1996)

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2131-7. FORM AND CONTENTS OF DECISION; FINALITY OF DECISION.

(a) The hearing examiner may affirm the administrative penalty order imposed, reduce the penalty, suspend a portion of the penalty as provided in section 2131-4(h) or find that imposition of the penalty is not warranted or is not in the interest of justice. In the event that the hearing examiner reduces the administrative penalty, it may not be reduced less than the minimum amount set forth in this ordinance for the category violation imposed. (Ord. 2138a, § 1, 12/03/1996; ord. 2458, § 1, 08/23/2011)

(b) In making a decision regarding the administrative penalty, the hearing examiner shall consider evidence presented by all witnesses, the seriousness of the violation, the number of complaints, the wilfulness of the responsible party(s) and their 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 (3) years, the amount of county staff time which was expended investigating and addressing the violation and the amount of administrative penalties which have been imposed in similar situations. (Ord. 2138a, § 1, 12/03/1996; Ord. 2458, § 1, 08/23/2011)

(c) The decision of the hearing examiner shall be issued within thirty (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 any administrative penalty to be paid within twenty-five (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 responsibility party, may also be made a lien against the property owned by the responsible person against whom the penalty was imposed, or may be collected by special assessment. The hearing examiner's decision shall also inform the responsible party against whom an administrative penalty has been imposed that any judicial review of the hearing examiner's decision must be filed with a court of competent jurisdiction within twenty (20) days. (Ord. 2138a, § 1, 12/03/1996)

(d) Upon issuance of the decision, the hearing examiner shall serve a copy of the decision on the Code Enforcement Unit and appellant. The decision shall be sent to appellant by first class mail to the address provided by appellant in the written notice of appeal. The decision shall be deemed served within two days after the date it was mailed to the address provided by the appellant. (Ord. 2138a, § 1, 12/03/1996; Ord. 2458, § 1, 08/23/2011)

2131-8. PAYMENT AND COLLECTION OF THE ADMINISTRATIVE PENALTY.

(a) Any responsible party against whom an administrative penalty has been imposed shall pay the administrative penalty within twenty-five (25) days of a final order or decision of the hearing examiner. The Code Enforcement Unit may take the actions set forth in this section to collect the unpaid penalty. (Ord. 2138a, § 1, 12/03/1996; Ord. No. 2272, 04/23/2002)

(b) In the event a civil action is commenced to collect the administrative penalty, the County shall be entitled to recover all costs associated with the collection of the penalty. Cost include, but are not limited to, staff time incurred in the collection of the penalty and those costs set forth Code of Civil Procedure section 1033.5. (Ord. 2138a, § 1, 12/03/1996)

(c) An administrative penalty shall accrue interest at the same annual rate as any civil judgement. Interest shall accrue commencing on the 26th day following service of a final order or the hearing examiner's decision. (Ord. 2138a, § 1, 12/03/1996; Ord. 2458, § 1, 08/23/2011)

(d) The amount of any unpaid administrative penalty, plus interest, plus any other costs as provided in this chapter, may be declared a lien on any real property owned by the responsible party within the County of Humboldt against whom an administrative penalty has been imposed, as follows: (Ord. 2138a, § 1, 12/03/1996)

(1) 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 the civil action pursuant to the Article 3 (commencing with section 415.10) Chapter 4 of Title 5 of Part Two of the Code of Civil Procedure; (Ord. 2138a, § 1, 12/03/1996)

(2) The lien shall attached when the Code Enforcement Unit records a lien listing delinquent unpaid administrative penalties with the County Recorder's Office. The lien shall specify the amount of the lien, the date of the code violations, 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 of address of the record owner of the parcel; and (Ord. 2138a, § 1, 12/03/1996; Ord. No. 2272, 04/23/2002)

(3) 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 subparagraph (2) above shall be recorded by the Code Enforcement Unit. (Ord. 2138a, § 1, 12/03/1996; Ord. No. 2272, 04/23/2002; Ord. 2458, § 1, 08/23/2011)

(e) The amount of the unpaid administrative penalty, plus interest, plus any other costs as provided by this chapter, may be declared a special assessment against any real property owned by the responsible party within the County of Humboldt against whom an administrative penalty has been imposed. The Board of Supervisors may impose the special assessment on one or more parcel. However, the amount of the assessment shall not exceed the penalty imposed for the administrative violation. The Code Enforcement Unit or its designee may present a resolution to the Board of Supervisors to declare a special assessment, and upon passage and adoption thereof shall cause a certified copy thereof to be recorded with the Humboldt County Recorder's Office. The assessment may then be collected at the same time and in the same manner as ordinary taxes are collected, and shall be subjected to the same penalties and the same procedure and sale in the case of delinquency as are provided for ordinary property taxes. (Ord. 2138a, § 1, 12/03/1996; Ord. No. 2272, 04/23/2002; Ord. 2458, § 1, 08/23/2011)

(f) The county may withhold issuance of licenses, permits and other entitlements to a responsible party on any project, property, or application of any kind whenever an administrative penalty remains unpaid. (Ord. 2138a, § 1, 12/03/1996)

(g) The county may take such other actions as are allowed for enforcement of a civil judgement as provided for pursuant to the Enforcement of Judgement Law, California Code of Civil Procedure section 680.010 *et. seq.* (Ord. 2138a, § 1, 12/03/1996)