



## **CITY OF CARMEL-BY-THE-SEA**

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### **ADMINISTRATIVE HEARING RULES AND PROCEDURES**

The City of Carmel-by-the-Sea has established a streamlined enforcement process in order to enforce the Municipal Code and Municipal Ordinances. Chapter 18.04 of the Municipal Code was enacted to that end. The purposes of administrative enforcement are to facilitate improved and consistent code compliance, reduce obstacles and time delays that result from criminal or civil enforcement, and result in more uniform application of the City's rules and procedures.

Municipal Code Chapter 18.04 sets forth a variety of enforcement options to effectively and timely address enforcement matters. Although that Chapter allows traditional criminal prosecution, civil action and nuisance abatement as enforcement options, it further establishes several administrative enforcement procedures.

#### **1.0 Citation Overview**

Citations, referenced in Municipal Code Sections 18.04.010 through 18.04.080, generally address violations that are minor or transient in nature. For example, and not by exclusion, Citations may be used to enforce provisions regulating signs, yard waste, false alarms, noise issues, vehicle parking, minor or non-recurring of violations of Title 15 (Building and Construction), Title 17 (Zoning) or similar matters.

An Enforcement Officer issues a Citation listing the violation and the fine amount and describes how to pay the fine or request a Hearing to contest the Citation through an Administrative Hearing. The fine must be deposited in advance of the Hearing, but a procedure to waive the deposit is allowed for hardship. If not set forth in the Code, the amount of the fine is set by resolution. Penalties and interest apply for late payment of fines.

The term "Enforcement Officer" refers to any authorized employee or agent of the City.

## **2.0 Compliance Order Overview**

Compliance Orders, referenced in Municipal Code Section 18.04.160, generally address violations not suitable for the Citation process referenced above. For example, and not by exclusion, Compliance Orders are used for serious, continuing or recurring violations or similar matters.

A Compliance Order is issued by an Enforcement Officer and sets forth a description of the observed violation(s), a description of what the responsible party is required to do to bring the property into compliance, and the date by which compliance must be achieved. The Compliance Order provides notice as to penalties that shall accrue if compliance is not achieved. The Compliance Order may be contested through an Administrative Hearing process. The decision may contain an order to correct any violations determined to exist, together with an order to pay penalties, interest and costs.

## **3.0 Form and Service of Citations or Compliance Orders**

3.1 Each Administrative Citation shall contain the following information (CMC Section 18.04.070):

- i. The date of the violation;
- ii. The address or a definite description of the location where the violation occurred;
- iii. Reference to the provision of the Charter, Municipal Code or ordinance that was violated and a description of the circumstances pertaining to the violation;
- iv. The amount of the fine related to the violation determined in accord with Section 18.04.080 or 18.04.200 of the Municipal Code;
- v. A description of the fine payment process, including a statement of the time within which and the place to which the fine shall be paid;
- vi. An order prohibiting continuation or repeated occurrence of the violation described in the Administrative Citation;
- vii. A description of the Administrative Citation review process, including the time within which the Administrative Citation may be contested and the place from which a Request for Hearing form to contest the Administrative Citation may be obtained; and
- viii. The name and signature of the citing Enforcement Officer.

3.2 Each Compliance Order shall contain the following information:

- i. The date of the violation;
- ii. The address or description of the location where the violation occurred;

- iii. Reference to the provision of the Charter, Municipal Code or ordinance that was violated and a description of the circumstances pertaining to the violation;
- iv. The actions required to correct the violations;
- v. The time period after which administrative penalties will begin to accrue if compliance with the Order has not been achieved;
- vi. The penalty related to the violation, if compliance is not achieved;
- vii. The name and signature of the citing Enforcement Officer; and
- viii. Either a copy of the Code section or an explanation of the consequences of noncompliance with the Municipal Code and a description of the Hearing Procedure and Appeal Process.

3.3 Each Citation and Compliance Order shall be served as follows: [Ord. \_\_\_\_\_ § \_\_\_\_\_].

- i. By personal delivery to the person to be notified or by deposit in the United States Mail, in a sealed envelope postage prepaid, addressed to such person to be notified at the last-known business or residence address as the same appears in the public records or other records pertaining to the matter to which such notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in the post office.
- ii. Where real property is involved, written notice shall be mailed to the property owner at the address as shown on the last equalized county assessment roll.
- iii. Where personal service or service by mail upon the property owner is unsuccessful, a copy of the order shall be conspicuously posted at the property which is the subject of the order.
- iv. The failure of any person to receive any notice required under the Code section shall not affect the validity of any proceedings taken under the Municipal Code.

### **3.0 Procedure**

4.1 When a Citation or Notice of Violation is issued, the person who receives it may respond in one of the following two ways.

- i. The person may pay the fine as stated on the Citation or Notice of Violation. No further action is then required; or
- ii. The person may pay the fine as stated on the Citation or Notice of Violation and request a Hearing on the matter to contest his or her obligation to pay the fine.

4.2 When a Compliance Order is issued the person who receives it may respond in one of the following two ways:

- i. The person may correct each violation within the time and as specified in the Compliance Order. No further action is then required; or
- ii. The person may appear at a Hearing conducted by a City Hearing Officer at City Hall on the date and time specified.

## **5.0 Hearing Request**

### **5.1 Citations**

The recipient of a citation may, within twenty-one (21) days from the date set forth on the citation, contest that there was a violation, or that he or she is the responsible party.

The person requesting the Hearing shall complete a Request for Hearing form and return it to the City together with an advance deposit of the fine or notice that a request for an advance deposit Hardship Waiver has been filed with the City Clerk in accord with Section 18.04.100. The Request for Hearing form and advance deposit Hardship Waiver application may each be obtained from the Office of the City Clerk.

No Hearing shall be held unless the fine has been deposited in advance in accordance with Section 18.04.090, or an advance deposit Hardship Waiver has been issued in accordance with Section 18.04.100.

### **5.2 Compliance Orders**

If full compliance as to each violation is not achieved within the time specified in the Compliance Order, the Enforcement Officer shall advise the Presiding Officer who shall cause a Hearing to be convened.

## **6.0 Hearing Officer Selection**

The Presiding Officer of the Hearing Officer Panel shall designate the Hearing Officer for the Hearing. The designated Hearing Officer may be disqualified only for cause. (CMC § 18.04.170(b)).

## **7.0 Role of City Attorney**

The City Attorney or Assistant City Attorney, or his or her deputy, may provide general advice and consultation to City staff, members of the public, and/or the Hearing Officer as to the City, Municipal Code, Council Policies, or the Administrative Citation and Compliance Order process.

The City Attorney or Assistant City Attorney, however, shall not act as City Prosecutor or as Defense Counsel for any Hearing, but shall instead assist and advise the Hearing Officer. The City Attorney, Assistant City Attorney, or Deputy City Attorney, upon request of the Hearing Officer, may prepare a tentative decision, including proposed findings and order. The Hearing Officer shall have sole authority to accept, reject or modify any tentative decision, findings or order.

The City Attorney, Assistant City Attorney, or Deputy City Attorney, shall represent the City in any court-proceeding to review the Administrative Hearing, including but not limited to proceedings convened pursuant to Carmel-by-the-Sea Municipal Code Section 18.04.120.

## **8.0 Notice of Hearing**

A Hearing before the Hearing Officer shall be set for a date that is not less than fifteen (15) days and not more than sixty (60) days from the date the Request for Hearing is filed in accordance with the provisions of the Municipal Code.

The person requesting the Hearing shall be notified of the time and place set for the Hearing at least ten (10) days prior to the date of the Hearing. If the Enforcement Officer submits an additional written report concerning the Citation or Compliance Order for consideration at the Hearing, a copy of this report also shall be served on the person requesting the Hearing at least five (5) days prior to the date of the Hearing.

## **9.0 Continuances, Postponement or Absence**

The purpose of Administrative Hearings is to provide a prompt resolution of alleged code violations, and accordingly, the request for and the grant of, continuances shall be granted only for good cause shown.

Continuances or postponement of a Hearing are not allowed unless the Hearing Officer finds good cause for the request due to illness or other unforeseen circumstance preventing the appearance of a party, or a material witness. Mere inconvenience or difficulty in appearing shall not constitute "good

cause.” Requests for a continuance must be made in writing with supporting documentation attached and received by the Administrative Hearing Officer prior to the Hearing. The person requesting a postponement should notify all other participants of the request and provide them with any supporting documentation.

In the event the cited individual or entity representative fails to appear at the Hearing, a party may request a new Hearing by filing a written “Motion to Set Aside Order” within ten (10) calendar days of the Hearing. The Motion may be granted only upon proof of good cause for the non-attendance. The Administrative Hearing Officer may grant a continuance or postponement of a Hearing only for good cause and in the interest of justice.

## **10.0 Hearing Overview**

The Administrative Hearing is a Civil Hearing. The Hearing may result in the imposition of fines, costs, liens, or orders to clean, repair or demolish property.

At the Hearing, the burden of proof to establish a violation of a city ordinance is to be established by substantial (reasonable) evidence tipping in favor (by a preponderance) that it is more likely than not the violation occurred. This differs from a criminal proceeding in which the burden of proof required to prove guilt is beyond a reasonable doubt.

The Hearing Officer presides over the cases, just as a judge would in a courtroom. The Hearing Officer is not a City employee and receives no salary or benefits from the City. The Hearing Officer is required by law to remain neutral.

The Hearing Officer shall conduct the Hearing in an orderly manner and insist upon proper decorum by all persons present at the Hearings. The intent of the Hearing is to allow full and fair review of the issues. The Hearing Officer will make an opening statement identifying him or herself, expectations for the Hearing and, if more than one matter is pending, the order in which cases will be called. When a case is called, both sides shall be given the opportunity to present their cases with testimony and evidence.

## **11.0 Hearing Process**

Persons appearing at the Hearing must be prepared to proceed, and should bring any witnesses, documents or other evidence intended to be used at the Hearing.

The Hearing Officer may determine that any Person who fails to appear at the Hearing shall be in default, or the Hearing Officer may, as appropriate: continue the case, decide the case on the record in accordance with these rules; dismiss the case with prejudice; or proceed to a Hearing on the merits. The failure of any recipient of a Citation or Compliance Order to appear at the Hearing shall constitute a forfeiture of the fine and a failure to exhaust administrative remedies.

At the Hearing, the City shall submit its report on the alleged violation and make a recommendation as to relevant findings and conclusions of law. The City may present recommended decision. The Citation or Compliance Order and any additional report submitted by the City shall constitute prima facie evidence of the respective facts contained in those documents. This means that the Citation, Compliance Order may be enough evidence, by itself, to prove the City's case. The person who issued the Citation or Compliance Order is not normally required to appear at the Hearing.

Individuals may represent themselves or hire an attorney to represent them at their own expense. Each person has the right to explain to the Hearing Officer his or her side of the story, and support it with witnesses and physical evidence, such as documents or photos. Each presentation must deal specifically with the violation before the Hearing.

All documents presented as evidence may be retained by the Hearing Officer. There are no public defenders and no right to a jury in these Administrative Hearings.

The Administrative Hearing Officer shall have all powers necessary to conduct fair and impartial Hearings including, but not limited to, the power to:

1. Hold conferences for settlement or to simplify the issues;
2. Administer oaths and affirmations;
3. Hear testimony; hearsay testimony may be admitted by the Hearing Officer in making his/her determination. The Hearing Officer shall determine the weight, if any, to be given to the testimony. The Hearing Officer may question witnesses and/or request additional information prior to closing the Hearing;

4. Rule upon motions, objections, and the admissibility of evidence; The technical rules of evidence shall not apply. Relevant documents may be received into evidence without formal proof of authenticity. The Hearing Officer shall determine the weight, if any, to be afforded documents received into evidence;
5. Preserve and authenticate the record of the Hearing and all exhibits and evidence introduced at the Hearing;
6. Regulate the course of the Hearing and take action as needed to preserve proper decorum by all persons present at the Hearings; if necessary, remove disruptive people from the Hearing room and cause cases to be determined outside of their presence;
7. Issue a final order which includes findings of fact and conclusions of law;
8. Impose penalties and fines and issue orders that are consistent with applicable code provisions and assess costs upon finding a party liable for the charged violation.

The Hearing shall be recorded. The City shall determine the manner in which the transcript of proceedings shall occur. Any Party may obtain a copy at their own cost.

Alternatively, any party may request that the proceedings be recorded and transcribed by a certified court reporter. The cost of the court reporter shall be borne by the party requesting the court reporter; a copy of any such transcript shall be provided at no charge to the Hearing Officer. The Hearing Officer shall have sole discretion whether or not to certify that transcript as an official record of the Hearing.

## **12.0 The Decision, Findings and Order**

After all parties have been heard, the Hearing Officer shall take the matter under submission and thereafter render a decision that determines, based on substantial evidence presented at the Hearing, whether to uphold or cancel the Citation or Compliance Order and shall list in the Decision the reasons for that Decision.

The Hearing Officer shall make findings and issue a Decision as to each alleged violation, regarding:

- i. The existence of the violation; and
- ii. The identity of each responsible party; and
- iii. The failure of the responsible party to take required corrective action within the required time period.



If the Hearing Officer finds by a preponderance of the evidence that a violation has occurred, and that the violation was not corrected within the time period specified in the compliance order, the Hearing Officer shall issue an Administrative Order that imposes any or all of the following:

- a) An order to correct each violation, including a schedule for correction where appropriate; and/or
- b) Penalties as provided in Section 18.04.070 and Section 18.04.200; and/or
- c) Costs as provided in Section 18.04.210.

If the Hearing Officer finds that no violation has occurred or that the violation was corrected within the time period specified in the Compliance Order, the Hearing Officer shall issue a finding as to those facts.

When the Hearing Officer determines a Citation or Compliance Order is upheld, the fine amount on deposit with the City shall be retained by the City. If the Citation or Compliance Order is upheld but the fine has not been deposited pursuant to an advance deposit Hardship Waiver, the Hearing Officer shall set forth in the decision a payment schedule for the fine.

If the Hearing Officer determines that the Citation or Compliance Order should be canceled, and the fine was deposited with the City, then the City shall promptly refund the amount of the deposited fine. If the Citation or Compliance Order is cancelled but the fine has not been deposited pursuant to an advance deposit Hardship Waiver, the Hearing Officer shall cancel the obligation to tender the fine.

The decision of the Hearing Officer shall be final.

## **13.0 Penalties**

### **13.1 Citation Fines**

A schedule of fines for each Municipal Code or ordinance violation imposed pursuant to Chapter 18.04 is set forth by resolution of the City Council pursuant to Section 18.04.080. In the absence of a designated fine, the default fine for each violation is one hundred dollars (\$100.00) per day.

The fine stated shall be paid to the City within thirty (30) days from the date of service of the Administrative Citation. An additional fine is due for late payment of any fine if not paid in full on or before the date the payment of the fine is due.

### 13.2 Administrative Penalties

Each Hearing Officer, pursuant to Section 18.04.200, is authorized to impose administrative penalties for the violation of any provision of the Municipal Code or ordinance in an amount not to exceed a maximum of two thousand five hundred dollars (\$2,500.00) per day for each continuing violation, except that the total administrative penalty shall not exceed one hundred thousand dollars (\$100,000.00) exclusive of administrative costs, interest and restitution for compliance re-inspections, for any related series of violations.

In determining the amount of the administrative penalty, the Hearing Officer may take any or all of the following factors into consideration:

- i. The duration of the violation;
- ii. The frequency, recurrence and number of violations, related or unrelated, by the same violator;
- iii. The seriousness of the violation;
- iv. The effect the violation may have upon adjoining properties;
- v. The good faith efforts of the violator to come into compliance;
- vi. The economic impact of the penalty on the violator;
- vii. The impact of the violation on the community; and/or
- viii. Such other factors as justice may require.

### 13.3 Administrative Costs for Compliance Order Hearings

Each Hearing Officer, pursuant to Section 18.04.210, shall assess reasonable and necessary administrative costs when he or she finds that a violation has occurred, or that compliance has not been achieved within the time specified in a Compliance Order.

The Hearing Officer shall assess reasonable and necessary administrative costs against the City when it finds that a violation has not occurred.

Administrative costs shall include reasonable and necessary costs incurred in connection with the matter before the Hearing Officer including, but not limited to, costs of investigation, costs incurred to prepare for the Hearing and for the Hearing itself, and costs for all re-inspections necessary to enforce a compliance order. Costs shall not include attorney's fees.

The Hearing Officer may waive the assessment of administrative costs against either party where unique circumstances are present, or in the interests of justice.

## **14.0 Post Hearing Process**

### **14.1 Hearing Officer's Decision**

A copy of the Hearing Officer's written decision shall be served upon the parties and a copy of the decision shall be forwarded to all members of the Hearing Officer Panel. The notice of decision shall inform the recipient that if he or she disagrees with the Hearing Officer's final decision, an appeal may be made within forty-five (45) days from the date of the decision in accord with Section 18.04.010 of the Carmel-by-the-Sea Municipal Code, which incorporates by reference the provisions of Section 1094.6 of the California Code of Civil Procedure.

### **14.2 Report of Compliance After Order**

If the City Administrator determines that compliance has been achieved after a compliance order has been sustained by the Hearing Officer, the City Administrator shall file a report with the Hearing Officer Panel indicating that compliance has been achieved.

### **14.3 Compliance Dispute**

Any person who believes that compliance has been achieved may request a Compliance Hearing before the Hearing Officer by filing a request for a Hearing with the Presiding Officer of the Hearing Panel, together with full payment of the Compliance Dispute Hearing Fee set by the Council.

A noticed Hearing on the compliance dispute shall be conducted in the same manner as a Hearing on a Compliance Order.

The Hearing Officer shall determine if compliance has been achieved and, if so, when it was achieved.

## **15. Judicial Review**

Any person aggrieved by a decision of a Hearing Officer may obtain review of the administrative decision by filing a petition for review with the Superior Court in Monterey County in accordance with the timelines and provisions set forth in California Government Code.