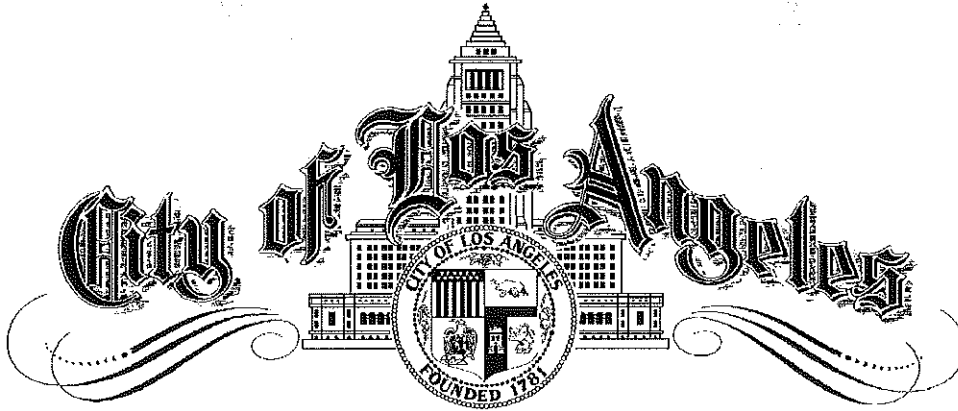


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CARMEN A. TRUTANICH
City Attorney

REPORT NO. R 10 - 0264

JUL 30 2010

REPORT RE:

BUDGET RELATED DRAFT ORDINANCE TO ESTABLISH AN ADMINISTRATIVE CITATION ENFORCEMENT PROGRAM BY AMENDING SECTION 11.00 OF, AND ADDING ARTICLE 1.2 TO, THE LOS ANGELES MUNICIPAL CODE, AND ADDING ARTICLE 11 TO CHAPTER 6 OF DIVISION 5 OF THE LOS ANGELES ADMINISTRATIVE CODE TO ESTABLISH A SPECIAL FUND TITLED THE CODE COMPLIANCE FUND

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council Files Nos. 10-0085 and 10-0600

Honorable Members:

Pursuant to your requests as reflected in the referenced Council Files, this Office has prepared and transmits for your consideration the enclosed draft ordinance, approved as to form and legality. Among other things, the draft ordinance addresses the request for penalty fees for the issuance of "after the fact" permits, administrative penalties for planning and zoning code violations, and a penalty structure severe enough to deter future violations of City code enforcement regulations. The ordinance would accomplish this by establishing an Administrative Citation Enforcement Program.

1010-02-5 10/10/10

Background

The existing code enforcement system in the City of Los Angeles involves a complex and extended multi-step process that can drag out for weeks or months, with little hope for a prompt resolution of the underlying violation or abatement of the potentially harmful conditions. City enforcement officers struggle to keep up with the backlog of cases. Moreover, the few cases that warrant criminal prosecution by this Office are often times criticized by the courts as mere nuisances that unnecessarily clog the dockets. This proposed administrative citation enforcement program is therefore designed to specifically handle, in a cost-effective manner, low-level violations that would otherwise not be prosecuted, as well as relieve already congested and over-burdened courts, and allow them to handle more serious violations and civil actions.

Faced with similar problems, some cities and counties around the country have successfully implemented administrative citation programs that serve as an alternative method of enforcement for less serious, local code violations. These administrative citations provide enforcement officials with greater flexibility in achieving compliance. Specifically, rather than relying on the criminal court system, code violations can be handled through an administrative citation process that incorporates both fines and abatement procedures.

The adoption of a comprehensive and uniformly applied Administrative Hearing and Enforcement Program (AHEP) would provide the City with an efficient, effective and economical means to enforce the Los Angeles Municipal Code (LAMC) in cases that do not present an immediate danger to health and safety. An AHEP would provide a viable alternative to traditional misdemeanor prosecution that is inherently lengthy, costly, and often ineffective for many less serious violations.

Sufficiency of Existing System

After analyzing the sufficiency of the existing ordinances regulating enforcement, it becomes evident that the LAMC lacks a comprehensive ordinance setting forth a Citywide administrative citation system.

The existing limited code enforcement strategy employed by several City departments has several glaring deficiencies that impede the efficient administration of justice. These deficiencies can be summarized as follows:

- The absence of a comprehensive administrative citation ordinance that can be enforced in a fair, expedient, and standardized manner.
- The failure to provide for effective administrative remedies that garner timely compliance with code requirements.

- The lack of any centralized oversight creates disparate code enforcement procedures throughout City departments and renders it more difficult to track repeat or recalcitrant code offenders.

The existing cumbersome code enforcement strategy hampers compliance and does not efficiently use limited City resources. Such inefficiencies are the result of the sheer size of the City and the number of various departments charged with monitoring and enforcing code violations. Each department has attempted to independently develop its own administrative process in order to ensure compliance. This compartmentalized approach has resulted in an inconsistent implementation and enforcement of the City's regulatory function. This lack of uniformity must be corrected in order to ensure consistent enforcement and a more efficient and effective administration of justice.

Proposed Ordinance

In addition to the authority provided by the City Charter, state law authorizes municipalities to subject any violation of any ordinance enacted by the local agency to an administrative fine or penalty, provided that administrative procedures are created to "govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties." Government Code § 53069.4. However, when there is a "continuing violation," the municipality must provide a "reasonable period of time in which" to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties, "when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues," that do not create an immediate danger to health or safety. *Id.*

In accordance with California law, the proposed administrative citation program would provide a standardized, efficient, and effective alternative to the existing code compliance regulations. The proposed comprehensive administrative citation ordinance would address the aforementioned deficiencies in the existing code enforcement strategy as follows:

- Create an alternative method of code enforcement that fosters a fair and effective administration of justice.
- Create a practical enforcement mechanism that encourages code compliance, while minimizing government costs.
- Create centralized oversight to facilitate uniformity and efficiencies among the various City departments.

The proposed administrative citation program would authorize City enforcement officers assigned to various departments (such as Housing, Building and Safety, Fire) to issue administrative citations in the course of their normal duties and responsibilities.

Under this process, code enforcement officers would be trained to prepare citations and the accompanying reports that summarize the relevant observations, inspections, and other pertinent facts of a case. The enforcement officer would also be trained to generate a proper basis for recommending a specific administrative penalty amount, together with the reasons supporting that recommendation.

In order to comply with Due Process requirements, the use of administrative remedies and fines requires that the local enforcement entity provide the offender adequate notice of the violation and the proposed penalty and corrective action, a right to an impartial hearing and the right to appeal.

Generally, notices of administrative fines (citations) must be received by the responsible party through personal delivery, certified mail, or the posting of a notice on the affected property. Responsible parties would be granted the right to appeal any administrative fines. Once an appeal has been filed and accepted, a hearing would be scheduled before an independent hearing officer.

The final ordinance provides for testimony and other evidence to be submitted at the hearing. The hearing officers would be given the authority to subpoena witnesses, documents or other necessary evidence. At the conclusion of the hearing, the officer would issue an administrative enforcement order within a certain number of days established by the ordinance. The administrative enforcement order would affirm, dismiss or modify the citation issued by the City. If the person receiving the citation disputes the hearing officer's ruling, the ordinance would provide a right to appeal the enforcement orders to the Los Angeles Superior Court, as required by Government Code § 53069.4.

CEQA Determination

Regarding a finding to satisfy the requirements of the California Environmental Quality Act (CEQA), we believe that adoption of this ordinance is an exempt action under State CEQA Guidelines sections 15060(c)(2) and (3) and City CEQA Guidelines Article II, Section 1 (General Exemption) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment and it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. If you concur, you should adopt this finding prior to or concurrent with taking action on the ordinance.

RULE 38 Compliance

Pursuant to Council Rule 38, we have transmitted copies of this report and draft ordinance to the affected departments and requested that they provide any comments they have directly to Council or the appropriate Committees when this matter is considered.

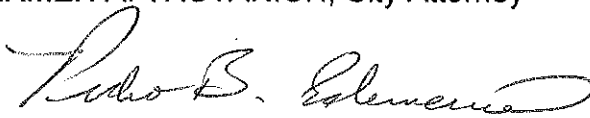
Conclusion

The impact of the proposed ordinance would be to create an administrative citation enforcement program in order to maximize code compliance, deter code violations and protect public safety in a more timely, efficient and cost-effective manner. This proposed ordinance would create a uniform, efficient, and effective alternative to the existing code enforcement strategies that unnecessarily burden already congested courts that should be handling more serious violations.

If you have any questions regarding this matter, please contact Chief Deputy William W. Carter at (213) 978-8347. He or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By 

PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

PBE:ac
Attachments

cc: Office of the Mayor
Office of the City Administrative Officer
Chief Legislative Analyst
Department of Animal Services
Department of Building and Safety
Fire Department
Department of Planning
Police Department

ORDINANCE NO. _____

An ordinance amending Section 11.00 and adding a new Article 1.2 to Chapter I of the Los Angeles Municipal Code to establish the Administrative Citation Enforcement Program and adding a new Article 11 to Chapter 6 of Division 5 of the Los Angeles Administrative Code to create a special fund titled the Code Compliance Fund.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Subsection (m) of Section 11.00, Article 1, Chapter I of the Los Angeles Municipal Code is amended by adding a new fourth unnumbered paragraph, to be placed between the current third and fourth unnumbered paragraphs, to read as follows:

As an alternative enforcement method that may be used in the sole discretion of the City, violations of this Code may be addressed through the use of an Administrative Citation as set forth in Article 1.2 of this Code. The administrative fines prescribed by Article 1.2 may be sought in addition to, and not in lieu of, any other remedy, including, but not limited to, criminal remedies, injunctive relief, specific performance, and any other remedy provided by law. The remedies provided by Article 1.2 of this Code are cumulative to those prescribed by this Code or other applicable law and are not exclusive.

Sec. 2. Chapter I of the Los Angeles Municipal Code is amended by adding a new Article 1.2 to read as follows:

**ARTICLE 1.2
ADMINISTRATIVE CITATIONS**

SEC. 11.2.01. PURPOSE AND INTENT.

(a) The City Council of the City of Los Angeles finds that there is a need for an alternative method of enforcement for violations of this Code, applicable statutory provisions, ordinances, uniform codes adopted by the City, orders issued by a commission, board, hearing officer, or other body authorized to issue orders, and any conditions or requirements imposed on or by any entitlement, permit, or environmental document issued or approved by the City.

(b) The City Council finds and determines that an administrative citation program is an effective alternative method of enforcement for these violations is an administrative citation program.

(c) The purpose and intent of the City Council, through the adoption of this Article, is to create an alternative method of enforcement that fosters both timely

compliance with the law in order to protect public health and safety and provides a fair and effective administration of justice.

(d) The purpose and intent of the City Council, through the adoption of this Article, is to deter the use of dilatory and frivolous challenges to Administrative Violations and facilitate the prompt collection of fines.

(e) The procedures established in this Article shall be in addition to criminal, civil and any other legal remedy established by law which may be pursued to address Administrative Violations. Issuance of an Administrative Citation shall not be deemed a waiver of any other enforcement remedies provided in this Code. The selection of the appropriate remedies lies within the sole discretion of the Issuing Department and, as applicable, by the City Attorney, and shall be consistent with the purpose and intent of this Article.

SEC. 11.2.02. DEFINITIONS.

(a) For purposes of this Article, the following words and phrases are defined:

(1) **“Administrative Citation”** means a notice of Administrative Violation issued by an Enforcement Officer.

(2) **“Administrative Costs”** means all direct and indirect costs incurred as a result of an Administrative Citation hearing, including, but not limited to, reasonable attorney fees, and costs relating to the initial review, scheduling, and processing of the administrative hearing.

(3) **“Administrative Fine”** means the fine or penalty imposed on the Responsible Person for an Administrative Violation.

(4) **“Administrative Violation”** means any violation of this Code, applicable statutory provisions, ordinances, uniform codes adopted by the City, orders issued by a commission, board, hearing officer, or other body authorized to issue orders, or any conditions or requirements imposed on or by any entitlement, permit, or environmental document issued or approved by the City.

(5) **“Continuing Violation”** means any Administrative Violation pertaining to building, plumbing, electrical, or other structural or zoning matter, that does not create an imminent hazard to health or safety. A Continuing Violation does not include an Administrative Violation that can be corrected by the Responsible Person through the immediate cessation or discontinuation of any prohibited activity or by the immediate implementation of a required activity as determined by the Issuing Department.

(6) **“Enforcement Costs”** means all direct and indirect costs incurred by the Issuing Department in investigating, inspecting, or abating any

Administrative Violation, including, but not limited to, noncompliance fees as specified in Section 98.0411 and costs incurred in preparing for and attending an Administrative Citation hearing.

(7) **"Enforcement Officer"** means any police officer, inspector assigned to the Bureau of Investigation of the City Attorney's Office, or city employee or agent of the City having the power to enforce any Administrative Violation.

(8) **"Issuing Department"** means the City department or office that has authority and responsibility for enforcing Administrative Violations subject to an Administrative Citation.

(9) **"Minor"** means any person under the age of eighteen years.

(10) **"Responsible Person"** means any person, as defined in Section 11.01(a), who is any of the following:

(a) A person who causes or materially contributes to the causation of an Administrative Violation;

(b) A person who maintains or allows an Administrative Violation to continue by his or her action or inaction;

(c) A person whose agent, employee, or independent contractor causes or materially contributes to the causation of an Administrative Violation;

(d) An on-site manager of a business who is responsible for the activities occurring at the premises where an Administrative Violation occurs;

(e) A trustee or other person who is given the legal authority to manage property on behalf of someone else where an Administrative Violation occurs;

(f) A person who is a parent or guardian having custody and control of a Minor who contributes to the causation of an Administrative Violation;

(g) A person who is the owner of, or who exercises control over, or any lessee or sub lessee with the current right of possession of, real property where a property related Administrative Violation occurs.

SEC. 11.2.03. ISSUANCE OF ADMINISTRATIVE CITATION.

(A) Except as provided in Subsection (B) of this Section, whenever an Enforcement Officer determines that an Administrative Violation has occurred, the Enforcement Officer is authorized to issue an Administrative Citation to the Responsible Person(s). If the Responsible Person is a Minor, the Enforcement Officer is authorized to issue an Administrative Citation to the parent(s) or guardian(s) having custody and control of the Minor. Notification of the Administrative Violation to the holder of any lease, mortgage, deed of trust, or other encumbrance of record shall conform to the policies and procedures established by the City Attorney's Office.

(B) When the Administrative Violation pertains to a Continuing Violation, a reasonable period of time to correct the Administrative Violation must be afforded to the Responsible Person prior to imposing an Administrative Fine. If the Administrative Violation is remedied prior to the expiration of the correction period, no Administrative Fine shall be imposed. However, the Responsible Person shall remain liable for and shall pay the Enforcement Costs associated with the Administrative Violation.

(C) Each Administrative Violation shall constitute a separate and distinct offense subject to an Administrative Fine, as provided for in this Article. Each and every day an Administrative Violation exists shall constitute a separate and distinct offense subject to an Administrative Fine, as provided for in this Article.

SEC. 11.2.04. ADMINISTRATIVE FINES.

(A) The amount of the Administrative Fine shall be ascertained by the Enforcement Officer, in accordance with the Administrative Fine schedule set forth in Subsection (B) of this Section, subject to the following limitations:

(1) Where the Administrative Violation is designated as an infraction, the Administrative Fine shall not exceed the maximum fine or penalty set forth in this Code for that infraction. If the amount of the fine or penalty for infractions is not specified in this Code, the amount of the Administrative Fine shall not exceed the maximum fine or penalty provided for in Subdivisions (b) and (c) of Section 36900 of the California Government Code.

(2) For Administrative Violations involving improvements to, or the use of, buildings, structures, or land for which permits or approval are required but were not obtained, the Administrative Fine levied shall be in the following amounts. For Administrative Violations involving improvements to, or the use of, buildings, structures, or land for which no permit could have been obtained, as determined by the Los Angeles Department of Building and Safety, and no variance was sought, the Administrative Fine levied shall be at four times (4x) the following amounts.

SQUARE FOOTAGE OF THE IMPROVEMENT OR USE IN VIOLATION	ADMINISTRATIVE FINE PER DAY OF VIOLATION		
	First Violation	Second Violation	Third Violation and All Subsequent Violations
250 to less than 500	\$1,000	\$2,000	\$4,000
500 to less than 2,500	\$2,000	\$4,000	\$8,000
2,500 to less than 5,000	\$3,000	\$6,000	\$12,000
5,000 to less than 10,000	\$4,000	\$8,000	\$16,000
10,000 to less than 25,000	\$8,000	\$16,000	\$32,000
25,000 or more	\$16,000	\$32,000	\$64,000

Administrative Violations involving improvements of less than 250 square feet shall be cited in accordance with Subsection (B) of this Section

(3) For Administrative Violations involving sign regulations, the Administrative Fine levied shall be in the following amounts:

SQUARE FOOTAGE OF THE SIGN IN VIOLATION	ADMINISTRATIVE FINE PER DAY OF VIOLATION		
	First Violation	Second Violation	Third Violation and All Subsequent Violations
Less than 150 square feet	\$2,000	\$4,000	\$8,000
150 to less than 300 square feet	\$4,000	\$8,000	\$16,000
300 to less than 450 square feet	\$6,000	\$12,000	\$24,000
450 to less than 600 square feet	\$8,000	\$16,000	\$32,000
600 to less than 750 square feet	\$10,000	\$20,000	\$40,000
750 or more square feet	\$12,000	\$24,000	\$48,000

(B) For all other Administrative Violations, the Administrative Fine imposed shall be in the following amounts:

- (1) Two hundred and fifty dollars (\$250) for a first violation;
- (2) Five hundred dollars (\$500) for a second violation of the same code provision, statute, ordinance, order, condition or requirement;
- (3) One thousand dollars (\$1,000) for a third or any subsequent violation of the same code provision, statute, ordinance, order, condition or requirement.

(4) Nothing in this Section shall preclude or limit the Administrative Hearing Officer's authority to impose a greater Administrative Fine, not to exceed one thousand dollars (\$1,000), in accordance with Subsection (B) of Section 11.2.08.

SEC. 11.2.05. SERVICE PROCEDURES.

(A) An Administrative Citation in a form developed by the Issuing Department and subject to the approval of the City Attorney may be issued to the Responsible Person(s) by an Enforcement Officer for Administrative Violations in the following manner:

(1) Personal Service. In any case where an Administrative Citation is issued to an individual, the Enforcement Officer shall:

(a) Locate the individual and serve the Administrative Citation on the Responsible Person(s). If the Responsible Person is a Minor, the Enforcement Officer shall also attempt to serve the Administrative Citation on the parent(s) or guardian(s) having custody and control of the Minor.

(b) Obtain on the Administrative Citation the signature of the Responsible Person. If the Responsible Person refuses or fails to sign the Administrative Citation, the failure or refusal to sign shall not affect the validity of the Administrative Citation and subsequent proceedings.

(2) Service by Mail. If the Enforcement Officer is unable to locate the Responsible Person for the Administrative Violation, the Administrative Citation may be mailed to the Responsible Person by first class mail. If the Responsible Person is known to be a Minor, the Administrative Citation shall be mailed to the parent(s) or guardian(s) having custody and control of the Minor by first class mail.

(a) If the Responsible Person is the property owner where a property related Administrative Violation occurs, the Administrative Citation shall be sent to the mailing address shown on the County's last equalized property tax assessment rolls (if any), and the last known address of the Responsible Person.

(b) If the Responsible Person is the tenant or other possessor of property where a property related Administrative Violation occurs, the Administrative Citation shall be sent to the property address.

(B) Service pursuant to Subdivision (1) of Subsection (A) of this Section, shall be deemed effective at the time of personal delivery. Service pursuant to Subdivision (2) of Subsection (A) of this Section, above, shall be deemed effective five (5) calendar days following the date of mailing.

SEC. 11.2.06. CONTENTS OF ADMINISTRATIVE CITATION.

(A) The City Attorney shall develop policies and procedures to ensure that the contents of the Administrative Citation provide the Responsible Person with adequate notice regarding the Administrative Violation(s), potential liability, and all rights of appeal.

(B) Where an Administrative Violation can be corrected, the Administrative Citation shall require the Responsible Person to immediately correct the Administrative Violations and shall explain the consequences of failure to correct the Administrative Violations.

(C) If the Administrative Violation pertains to a Continuing Violation, a reasonable period of time to correct the Administrative Violation must be specified on the citation in addition to an explanation of the consequences for failing to correct the Administrative Violation.

SEC. 11.2.07. SATISFACTION OF THE ADMINISTRATIVE CITATION.

Upon receipt of an Administrative Citation, the Responsible Person shall either:

(A) Pay the Fine. Pay the Administrative Fine within fifteen (15) calendar days after service of the Administrative Citation.

(1) Payment of the Administrative Fine waives the Responsible Person's right to the administrative hearing and appeal process as outlined in Section 11.2.07, below.

(2) Payment of an Administrative Fine shall not excuse or discharge a failure to correct an Administrative Violation, as defined in Subsection (B) of Section 11.2.02, nor shall it bar the Enforcement Officer or Issuing Department from taking any other enforcement action in response to an Administrative Violation; or

(B) Remedy the Administrative Violation. If a specified amount of time was provided to correct an Administrative Violation, as defined in Subsection (B) of Section 11.2.02, and the Responsible Person remedies the Administrative Violation within the time granted, no Administrative Fine shall be imposed. The Administrative Citation shall not be deemed to have been satisfied until the Responsible Person provides proof to the Issuing Department that, within the time allotted by the Administrative Citation, the Administrative Violation was satisfactorily remedied. In addition, the Issuing Department may also demand to inspect the condition that gave rise to the issuance of the Administrative Citation to determine whether the Administrative Violation has been satisfactorily remedied.

The Responsible Person who remedies the Administrative Violation shall remain liable for and shall pay the Enforcement Costs associated with the Administrative Violation. Timely correction of the Administrative Violation does not absolve the Responsible Person of this liability. Collection of Enforcement Costs of violations remedied in this manner shall be the responsibility of the Issuing Department.

SEC. 11.2.08. APPEAL OF THE ADMINISTRATIVE CITATION.

(A) Request for Initial Review and Administrative Hearing. If the Responsible Person chooses to contest the Administrative Citation, the Responsible Person shall submit to the City Attorney a request to do so on an official form provided by the City no later than fifteen (15) calendar days after service of the Administrative Citation. Said form, hereinafter referred to as a Request for Initial Review, shall notify the Responsible Person that an initial review regarding the validity of the Administrative Citation will be conducted prior to scheduling an administrative hearing and shall comply with the policy and procedures established by the City Attorney.

(1) Initial Review of Administrative Citation. Upon receipt of the Request for Initial Review, as provided in Subsection (A) of this Section, the City Attorney will conduct an initial review to determine the validity of the Administrative Citation and the appropriate remedy. The available remedies include, but are not limited to, criminal remedies, civil action, injunctive relief, specific performance, and any other remedies provided by law.

(a) If, following the initial review, the City Attorney determines that the Administrative Violation did not occur, or that extenuating circumstances make dismissal of the Administrative Citation appropriate in the interest of justice, the Administrative Citation shall be dismissed and the Responsible Person notified by mail.

(b) If, following the initial review, the City Attorney does not dismiss the Administrative Citation and determines that the administrative remedy being sought is appropriate, the Responsible Person shall be notified by mail and informed of his or her obligation to pay the Administrative Fine within fifteen (15) days of the mailing, or of his or her right to request an administrative hearing pursuant to Subdivision (2) of this Subsection.

(2) Contest the Initial Review. If the Responsible Person chooses to contest the outcome of the initial review, within fifteen (15) days of the mailing of the results of the initial review, the Responsible Person shall submit a written request, on an official form provided by the City, requesting an administrative hearing. Said form, hereinafter referred to as a Request for Administrative Hearing, shall include an advance deposit in the full amount of the Administrative Fine or one-thousand dollars (\$1,000), whichever is less, or written proof of

financial hardship as specified in Paragraph (a) of this Subsection. A hearing shall be scheduled when the aforementioned conditions are met. A Responsible Party who fails to submit a Request for Administrative Hearing within fifteen (15) days, or who fails to make the required deposit or provide written proof of financial hardship, will have waived the right to contest the Initial Review.

(a) In lieu of the advance deposit required pursuant to Subdivision (2) of this Subsection, written proof of financial hardship, which shall be in the form of a declaration signed by the Responsible Person under penalty of perjury and notarized, shall be filed with the City Attorney. The declaration shall state that the Responsible Person earned less than 50% of the median income for the Los Angeles area during the previous tax year, as reported on the Responsible Person's federal income tax return filed with the Internal Revenue Service. The median income for the applicable year shall be as determined by the United States Department of Housing and Urban Development.

(3) Code Compliance Fund. All monies derived from the advance deposits identified in Subdivision (2) of this Subsection shall be deposited into the Code Compliance Fund, established pursuant to Article 11 of Chapter 6 of Division 5, Sections 5.121.11 and following, of the Los Angeles Administrative Code, and held until the conclusion of the administrative hearing process at which time the monies will either be transferred to the General Fund or refunded to the Responsible Person.

(B) In the event the Responsible Person fails or refuses to satisfy any of the alternatives set forth in Subdivisions (1), (2), or (3) of this Subsection, then the Administrative Fine shall be immediately due and owing the City and may be collected in any manner allowed by law for collection of a debt. The Responsible Person shall also be responsible for any additional fines and costs as set forth in Section 11.2.11.

SEC. 11.2.09. ADMINISTRATIVE HEARING.

(A) Authority for the Administrative Hearing Process. The City Attorney shall create an administrative hearing and appeals process that is consistent with this Article and with due process principles. The City Attorney shall develop written policies and procedures for the hearing and appeals process in addition to developing written policies and procedures for the selection and appointment of one or more independent Administrative Hearing Officers to hear and decide administrative citation appeals. The administrative hearing shall be conducted in accordance with the procedures promulgated by the City Attorney.

(B) Powers of the Administrative Hearing Officers. The City Attorney shall develop written policies and procedures that set forth the scope of the powers of the Administrative Hearing Officer in accordance with this Section. These enumerated powers include, but are not limited to:

(1) The Administrative Hearing Officer shall determine whether the Administrative Violation specified in the Administrative Citation occurred;

(2) The Administrative Hearing Officer shall determine whether the assessed Administrative Fine is in accordance with the Administrative Fine schedules provided in Section 11.2.03;

(3) The Administrative Hearing Officer shall consider any aggravating or mitigating factors that warrant deviation from the Administrative Fine schedules, provided in Section 11.2.03, so that a greater or lesser Administrative Fine should be imposed. The factors that the Administrative Hearing Officer shall consider, include, but are not limited to:

(a) the seriousness of the Administrative Violation;

(b) the duration of the Administrative Violation;

(c) efforts, if any, to correct the Administrative Violation;

(d) the negative impacts of the Administrative Violation on the community;

(e) any instances in which the Responsible Person has been responsible for the same or similar Administrative Violations in the past; and

(f) any other factors that justice may require.

(4) The Administrative Hearing Officer shall assess all Administrative Costs associated with the appeal of the Administrative Citation;

(5) The Administrative Hearing Officer shall assess all Enforcement Costs;

(6) The Administrative Hearing Officer, at the request of a Responsible Party or of the Issuing Department, may subpoena witnesses, documents and other evidence in accordance with the policies and procedures established by the City Attorney.

(7) The Administrative Hearing Officer has the authority to require a Responsible Person to deposit an amount equal to any assessed Administrative Costs or Enforcement Costs in accordance with the policies and procedures established pursuant to the City Attorney.

(C) Time for Administrative Hearing.

(1) The City Attorney shall develop policies and procedures that ensure adequate notice and a timely administrative hearing. The Responsible Person shall be notified in writing of the date and time of the hearing by mailing the notice to the address provided by the Responsible Person in the Request for Administrative Hearing.

(2) The Responsible Person(s) or Issuing Department may request one continuance pursuant to the procedures established by the City Attorney.

(3) The Administrative Hearing Officer may, in his or her discretion, grant or deny a continuance of the hearing date upon a request by the Responsible Party or the Issuing department and a showing of good cause.

(D) Failure to Attend Administrative Hearing.

(1) If the Responsible Person or his or her representative fails to attend the scheduled hearing, he or she shall be deemed to have waived his or her right to an administrative hearing. Under these circumstances, the Administrative Hearing Officer shall find the Responsible Person in default, and shall issue a written notice to that effect. A default under this Section shall constitute a forfeiture of the Administrative Fine and a waiver of any right to challenge the assessed Enforcement Costs and Administrative Costs. A default under this Section shall also be a bar to judicial review of the hearing officer decision based upon failure to exhaust administrative remedies. A default under this provision may be set aside by the Administrative Hearing Officer at the request of the Responsible Party upon a showing of good cause for failing to appear at the Administrative Hearing.

(2) A Responsible Person who has been issued an Administrative Citation and who has requested an administrative hearing to challenge the citation as provided in this Article may request in writing that his or her challenge to the citation be withdrawn and the hearing cancelled. Upon receipt of a request to withdraw a challenge to the Administrative Citation, the City shall cancel the pending hearing, and issue a written notice to that effect. A withdrawal under this Subdivision shall constitute a forfeiture of the Administrative Fine and a waiver of any right to challenge the assessed Enforcement Costs and Administrative Costs. A withdrawal under this Subdivision shall also be a bar to judicial review of the hearing officer decision based upon failure to exhaust administrative remedies.

(3) If a financial hardship waiver was granted pursuant to Subdivision (2) of Subsection (A) of Section 11.2.07, and the Responsible Person is in default as provided in Subdivision (1) of this Subsection, or a challenge to the citation is withdrawn pursuant to Subdivision (2), of this Subsection, the Administrative Fine, Enforcement Costs, and Administrative Costs shall be due and payable by

the Responsible Person(s) to the City within twenty (20) calendar days following the date that had been set for the administrative hearing.

(4) The City may dismiss an Administrative Citation at any time if it is determined to have been issued in error.

(E) Procedures at the Administrative Hearing.

(1) Administrative hearings are informal in nature, and formal rules of evidence and discovery do not apply. The proceedings shall be audio-recorded by the City.

(2) The City bears the burden of proof at an administrative hearing to establish the existence of the Administrative Violation specified on the citation. The Administrative Hearing Officer shall use preponderance of the evidence as the standard of proof in deciding the issues.

(3) The Administrative Citation and any additional documents submitted by the Issuing Department shall be accepted by the Administrative Hearing Officer as prima facie evidence of the respective facts contained in those documents. The Enforcement Officer may attend the hearing but is not required to do so.

(4) Each party shall have the opportunity to testify, cross-examine witnesses, and present witnesses and evidence in support of his or her case. Written and oral evidence submitted at the hearing shall be submitted under penalty of perjury. Documentary and other tangible evidence must be authenticated to the satisfaction of the Administrative Hearing Officer. Nothing shall preclude the use of telephonic or other electronic means of communication if deemed appropriate by the Administrative Hearing Officer.

(F) Decision of the Administrative Hearing Officer. After considering all of the testimony and evidence submitted at the hearing, the Administrative Hearing Officer shall, within fifteen (15) days thereafter, render a decision in writing. The decision rendered by the Administrative Hearing Officer is not exclusive and does not preclude or foreclose the City Attorney's Office from pursuing any and all other remedies provided by law. The Administrative Hearing Officer shall render a decision as follows:

(1) Determine that the Administrative Violation specified in the citation is founded, and impose an Administrative Fine in the amount set forth in the citation and if the Administrative Violation has not been corrected as of the date of the hearing, order correction of the Administrative Violation; or

(2) Determine that the Administrative Violation specified in the citation is founded, but that the Administrative Fine was incorrectly assessed with the Administrative Fine schedules as provided for in Section 11.2.03, warranting

imposition of a lesser or greater Administrative Fine than that prescribed in the citation and impose a lesser or greater Administrative Fine and, if the Administrative Violation has not been corrected as of the date of the hearing, order that the Administrative Violation be corrected; or

(3) Determine that the Administrative Violation specified in the citation is founded, but that the Issuing Department has introduced credible evidence of aggravating or mitigating circumstances warranting imposition of a greater or lesser penalty than that prescribed in the Administrative Fine schedules, as provided for in Section 11.2.03, and impose a greater or lesser Administrative Fine, and if the Administrative Violation has not been corrected as of the date of the hearing, order that the Administrative Violation be corrected; or

(4) Determine that the Administrative Violation specified in the citation did not occur and cancel the Administrative Fine; and

(5) Determine the amount of the Enforcement Costs and associated Administrative Costs to be imposed, if any.

(G) The Administrative Order shall include the reasons for the decision and be served on all parties by any one of the methods listed in Section 11.2.04 of this Article or through service by first-class mail, postage prepaid on the Responsible Person(s) at the address he or she provided in the Request for Administrative Hearing. In addition to the matters set forth in Subsection (F) of this Section, the decision rendered by the Administrative Hearing Officer shall address the following:

(1) Administrative Fines

(a) If the Administrative Hearing Officer imposes an Administrative Fine, the City shall keep the funds deposited at the time of the hearing request. If the deposited funds are less than the Administrative Fine, the Responsible Person(s) shall pay the outstanding amount of the Administrative Fine to the City within twenty (20) calendar days of the Administrative Order becoming final. If the deposited funds equal more than the Administrative Fine, the City shall promptly refund the appropriate amount of the funds to the Responsible Person(s).

(b) If the Administrative Hearing Officer determines that the Administrative Violation specified in the citation did not occur and cancels the Administrative Fine, then the City shall promptly refund the amount of funds deposited by the Responsible Person at the time of the hearing request and no Enforcement Costs or Administrative Costs shall be assessed.

(2) Enforcement Costs and Administrative Costs

(a) Enforcement Costs. The Administrative Order shall assess all reasonable Enforcement Costs to be paid by the Responsible Person. The Responsible Person(s) shall pay the Enforcement Costs to the City within twenty (20) calendar days of the Administrative Order becoming final.

(b) Administrative Costs. The Administrative Order shall assess all reasonable Administrative Costs to be paid by the Responsible Person. The Responsible Person(s) shall pay the Administrative Costs to the City within twenty (20) calendar days of the Administrative Order becoming final.

(3) The Administrative Order shall become final on the date of mailing or other service, and shall notify the Responsible Person(s) of his or her right to appeal.

SEC. 11.2.10. RIGHT TO JUDICIAL REVIEW.

(A) Once an Administrative Order becomes final as provided in this Article, no further appeal may be filed pursuant to the provisions of this Code, except as provided for in this Section, or as otherwise provided by law.

(B) Once an Administrative Order becomes final, the time in which judicial review of the order must be sought shall be governed by California Code of Civil Procedure section 1094.6.

(C) Should any court of competent jurisdiction determine that the City must provide an appeal to any final Administrative Order in a manner other than set forth in California Code of Civil Procedure section 1094.6, then it is the intent of the City Council that the administrative penalty process remain as provided herein and to provide that any appeal which is timely requested follow the procedures set forth in Government Code section 53069.4.

SEC. 11.2.11. FAILURE TO PAY ADMINISTRATIVE FINES AND COSTS.

(A) Any Responsible Person who is issued an Administrative Citation pursuant to this Article, excluding Administrative Violations defined in Subsection (B) of Section 11.2.02, and does not pay within fifteen (15) calendar days, shall be assessed a late payment collection fee of \$50.00 which shall be charged in addition to any other assessed fines and fees. The City may use any legal remedy available to collect any unpaid Administrative Fine. These remedies include, but are not limited to, criminal remedies, civil action, injunctive relief, specific performance, and the recordation of a lien against real property pursuant to the procedures set forth in this Code and in accordance with applicable law.

(B) Any Responsible Person who is issued an Administrative Citation pursuant to this Article for an Administrative Violation defined in Subsection (B) of Section 11.2.02, and does not pay within fifteen (15) calendar days from the conclusion of the time afforded to remedy the Administrative Violation, shall be assessed a late payment collection fee of \$50.00 which shall be charged in addition to any other assessed fines and fees. The City may use any legal remedy available to collect any unpaid Administrative Fine. These remedies include, but are not limited to, criminal remedies, civil action, injunctive relief, specific performance, and the recordation of a lien against real property pursuant to the procedures set forth in this Code and in accordance with applicable law.

(C) Notwithstanding Subsections (A) and (B) of this Section, if the Responsible Person chooses to contest the Administrative Citation pursuant to Section 11.2.08 of this Article, and fails to pay the assessed Administrative Fine, Enforcement Costs, and Administrative Costs within twenty (20) calendar days of the Administrative Order becoming final, the Responsible Person shall be assessed a late payment collection fee of \$50.00 which shall be charged in addition to any other assessed fines and fees. The City may use any legal remedy available to collect any unpaid Administrative Fine or to gain compliance with the Administrative Order. These remedies include, but are not limited to, criminal remedies, civil action, injunctive relief, specific performance, and the recordation of a lien against real property pursuant to the procedures set forth in this Code and in accordance with applicable law.

(D) In the event a civil action is commenced to collect the Administrative Fine, Enforcement Costs, or Administrative Costs, the City shall be entitled to recover reasonable attorney's fees and all costs associated with the civil action. Costs include, but are not limited to, staff time incurred in the collection of the Administrative Fine, Enforcement Costs, and Administrative Costs, and those costs set forth in Code of Civil Procedure Section 1033.5.

SEC 11.2.12. DEPOSIT OF MONIES COLLECTED.

All monies collected pursuant to the provisions of this Article shall be deposited in the Code Compliance Fund, established pursuant to Article 11 of Chapter 6 of Division 5, Sections 5.121.11 and following, of the Los Angeles Administrative Code

SEC. 11.2.13. SEVERABILITY.

If any section, subsection, subdivision, sentence, clause, or phrase of this Article is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Article. The City Council hereby declares that it would have passed this Article and each section, subsection, subdivision, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, subdivisions, clauses or phrases may be declared to be invalid or unconstitutional.

Sec. 3. Division 5, Chapter 6 of the Los Angeles Administrative Code is amended by adding a new Article 11 to read as follows:

**CHAPTER 6, ARTICLE 11
CODE COMPLIANCE FUND**

SEC. 5.121.11. Creation and Administration of Fund.

(a) There is hereby created and established in the Treasury of the City of Los Angeles a special fund to be known as the **Code Compliance Fund (the "Fund")**. All monies collected pursuant to Chapter 1, Article 1.2, Sections 11.2.1 and following, of the Los Angeles Municipal Code shall be deposited into the Fund. The fund shall be administered by the City Attorney's Office who, in turn, shall be responsible for ensuring that the monies in the Fund are used for the purposes specified and required in Chapter 1, Article 1.2, Sections 11.2.1 and following, of the Los Angeles Municipal Code and, in addition, that all proposed actions with respect to the monies in the Fund comply with the following limitations:

(1) All Administrative Fines recovered shall be deposited in the General Fund.

(2) Any Enforcement Costs recovered shall be identified as being generated by the Issuing Department and, at the discretion of the City Council and Mayor through appropriate budgetary actions, be transferred to the respective Issuing department that incurred the costs.

(3) Any Administrative Costs recovered shall be identified as being generated by the respective City department or office and, at the discretion of the City Council and Mayor through appropriate budgetary actions, be transferred to the respective City department or office that incurred the costs.

(4) All monies derived from the advance deposits identified in Article 1.2 of Chapter 1, Sections 11.2.01 and following, of the Los Angeles Municipal Code shall be deposited into the Fund and held until the conclusion of the administrative hearing process at which time the monies will either be transferred to the General Fund or refunded to the Responsible Person.

(b) Monies remaining in the Fund at the end of the fiscal year shall not revert to the Reserve Fund pursuant to Charter Section 344, but shall be subject to transfer at any time as set forth herein and as authorized by the City Charter.

Sec. 4. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

JUNE LAGMAY, City Clerk


By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By 
PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

Date July 30, 2010

File No. 10-0085 and 10-0600