



City Clerk

CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk
200 East Santa Clara Street
San José, California 95113
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STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSÉ)

I, Dennis D. Hawkins, City Clerk & Ex-Officio Clerk of the Council of and for the City of San José, in said County of Santa Clara, and State of California, do hereby certify that **Ordinance No. 29043**, the original copy of which is attached hereto, was passed for publication of title on the **6th day of March, 2012**, was published in accordance with the provisions of the Charter of the City of San José, and was given final reading and adopted on the **20th day of March, 2012** by the following vote:

AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA, LICCARDO,
NGUYEN, OLIVERIO, PYLE, ROCHA; REED.

NOES: NONE.

ABSENT: NONE.

ABSTAINED: NONE.

VACANT: NONE.

Said ordinance is effective as of **April 20, 2012**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San José, this **28th of March 2012**.

(SEAL)

DENNIS D. HAWKINS
CITY CLERK & EX-OFFICIO
CLERK OF THE CITY COUNCIL

ORDINANCE NO. 29043

**AN ORDINANCE OF THE CITY OF SAN JOSE
AMENDING SECTION 1.08.010 CHAPTER 1.08 OF TITLE
1 OF THE SAN JOSE MUNICIPAL CODE CLARIFYING
THE DEFINITION OF NUISANCE AND AMENDING
SECTIONS 1.14.030, 1.14.050, 1.14.060, 1.14.070 AND
1.14.090 OF CHAPTER 1.14 AND ADDING SECTIONS
1.14.045 AND 1.14.048 TO CREATE ADDITIONAL
ADMINISTRATIVE REVIEW FOR COMPLIANCE ORDERS**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 1.08.010 of Chapter 1.08 of Title 1 of the San José Municipal Code is hereby amended to read as follows:

1.08.010 Violations and Remedies

- A. No person shall violate any provision or fail to comply with any of the requirements of this Code or of any other ordinance of the City. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Code or of any City ordinance, other than administrative provisions thereof, shall be guilty of a misdemeanor, unless the violation of such provision is designated as an infraction or is a parking violation. The Code provisions for which a violation is an infraction are set forth in Section 1.08.020. The Code provisions for which a violation is a parking violation are set forth in Section 1.08.025.

- B. Any person convicted of a misdemeanor under the provisions of this Code or other City ordinance shall be punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the city or county jail for a period not exceeding six (6) months, or by both such fine and imprisonment.

- C. Any person convicted of an infraction under the provisions of this Code or other City ordinance shall be punishable by:
1. A fine not exceeding one hundred dollars (\$100) for a first violation;
 2. A fine not exceeding two hundred dollars (\$200) for a second violation, within one year, of the same provision of this Code or of the same ordinance;
 3. A fine not exceeding five hundred dollars (\$500) for a third violation, within one year, of the same provisions of this Code or of the same ordinance; and
 4. Any person violating the same provision of this Code or other City ordinance that is designated as an infraction, for the fourth time within one year, shall be guilty of a misdemeanor.
- D. Any person determined to have committed a parking violation under the provisions of this Code or other City ordinance shall be subject to parking penalties and late payment penalties as set forth by resolution of the City Council.
- E. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Code or of any other City ordinance is committed, continued or permitted by such person, and shall be punishable accordingly.
- F. Any condition existing in violation of any of the provisions of any state or federal law or regulation or of this Code or any other City ordinance shall be deemed a public nuisance and may be abated by the City. Nuisance shall include, but is not limited to, the factors in Section 1.13.050.

- G. The remedies specified in this Section are in addition to, and do not supersede or limit, any other remedies, civil, administrative or criminal.

SECTION 2. Section 1.14.030 of Chapter 1.14 of Title 1 of the San José Municipal Code is hereby amended to read as follows:

1.14.030 Compliance Order

- A. Whenever the Director determines that a violation of any provision of this Code within the Director's responsibility is occurring or exists, the Director may issue a written compliance order to any person responsible for the violation.
- B. A compliance order issued pursuant to this Chapter shall contain the following information:
1. The date and location of the violation;
 2. The section of this Code violated and a description of the violation;
 3. The actions required to correct the violation;
 4. The time period after which administrative penalties will begin to accrue if compliance with the order has not been achieved;
 5. Either a copy of this Chapter or an explanation of the consequences of noncompliance with this Chapter and a description of the hearing procedure and appeal process;

6. A warning that the compliance order shall become final unless a written request for hearing before the Director is received within the time as set forth in Section 1.14.045 below.

SECTION 3. Chapter 1.14 of Title 1 of the San José Municipal Code is hereby amended to add the following section, to be numbered, entitled and to read as follows:

1.14.045 Director's Hearing

- A. If a person subject to a compliance order disputes the basis for the issuance of the compliance order, the person must file a request for hearing before the Director within fourteen (14) calendar days of the date that the compliance order was mailed or personally delivered to him or her.
- B. Upon the receipt of a timely request for hearing, the Director shall schedule a hearing as soon as reasonably practicable and provide a notice of hearing.
- C. The notice of hearing before the Director shall be mailed or delivered personally to the person subject to the compliance order not later than seven (7) calendar days prior to the scheduled date of the hearing.
- D. At the hearing before the Director, the person subject to a compliance order may provide any relevant evidence or testimony. The hearing will be conducted informally and the technical rules of evidence shall not apply. The Director shall have the ability to control the conduct of the proceeding, including the ability to limit testimony and the admissibility of evidence that is unduly repetitious or make other rulings or place other limitations on the hearing that the Director deems to be in the interests of judicial economy.
- E. The person subject to a compliance order may be represented by another person at that hearing before the Director.

SECTION 4. Chapter 1.14 of Title 1 of the San José Municipal Code is hereby amended to add the following section, to be numbered, entitled and to read as follows:

1.14.048 Decision of Director

- A. After closing the hearing, the Director shall render a decision sustaining, reversing or modifying the compliance order.
- B. A written decision shall be mailed or delivered personally to the person subject to the compliance order.
- C. If the person subject to the compliance order disputes the decision of the Director, he or she may file a request for hearing with the Secretary of the Appeals Hearing Board within ten (10) days of the date of the written decision of the Director.
- D. If there is no timely request for appeal, the decision of the Director shall become final.

SECTION 5. Section 1.14.050 of Chapter 1.14 of Title 1 of the San José Municipal Code is hereby amended to read as follows:

1.14.050 Appeals Hearing Board Review

- A. If the Director determines that all violations have been corrected within the time specified in the compliance order, and there has been no request for a hearing before the Director, no further action shall be taken.
- B. If full compliance is not achieved within the time specified in the compliance order, or the person subject to the compliance order has filed a timely request for

hearing from the decision of the Director, the Director shall advise the Secretary to the Appeals Board to set a hearing before the Board.

- C. The Secretary to the Appeals Hearing Board shall cause a written notice of hearing to be served on the violator and, where real property is involved, a notice of hearing shall be served on the property owner at the address as it appears on the last equalized county assessment roll available on the date the notice is prepared.

SECTION 6. Section 1.14.060 of Chapter 1.14 of Title 1 of the San José Municipal Code is hereby amended to read as follows:

1.14.060 Appeals Hearing Board - Notice of Hearing

- A. Every notice of hearing on a compliance order shall contain the date, time and place at which the hearing shall be conducted by the Appeals Hearing Board.
- B. Each hearing shall be set for a date not less than fifteen (15) days nor more than sixty (60) days from the date of the notice of hearing unless the Director determines that the matter is urgent or that good cause exists for an extension of time.
- C. Upon a timely appeal from a decision of the Director, the Appeals Hearing Board shall conduct a new hearing and shall exercise original jurisdiction over the matter.
- D. At the hearing before the Appeals Hearing Board, after a Director's hearing, the person subject to a compliance order may object to the determination that a violation has occurred and/or that the violation has continued to exist. The failure of any person subject to a compliance order, pursuant to this Chapter, to appear at the hearing shall constitute a failure to exhaust administrative remedies.

- E. If the person subject to the compliance order fails to request a Director's hearing, or fails to file an appeal after the decision of the Director, the basis for the issuance of a compliance order will be deemed admitted, and the hearing shall be limited to whether or not compliance has been achieved and the assessment of penalties.

SECTION 7. Section 1.14.070 of Chapter 1.14 of Title 1 of the San José Municipal Code is hereby amended to read as follows:

1.14.070 Appeals Hearing Board - Findings and Order

- A. At the place and time set forth in the notice of hearing, the Appeals Hearing Board shall conduct a hearing on the compliance order issued pursuant to Section 1.14.030.
- B. The Board shall consider any written or oral evidence consistent with its rules and procedures regarding the violation and compliance by the violator, or if the violation is in connection with real property, or by the owner of the property upon which the violation has occurred or is occurring.
- C. Within a reasonable time following the conclusion of the hearing, the Board shall make findings and issue its determination regarding:
 - 1. The existence of the violation or that the existence of the violation was deemed admitted under 1.14.060(E);
 - 2. The failure of the violator or property owner, if applicable, to take required corrective action within the required time period.

- D. The Board shall issue written findings on each violation. The findings shall be supported by evidence received at the hearing.

- E. If a violation has been deemed admitted, or upon appeal from a decision of the Director and the Board finds by a preponderance of the evidence that a violation has occurred, if the violation was not corrected within the time period specified in the compliance order, the Board shall issue an administrative order.

- F. If upon the appeal from a decision of the Director the Board finds that no violation has occurred or, in all cases, that the violation was corrected within the time period specified in the compliance order, the Board shall issue a finding of those facts.

SECTION 8. Section 1.14.090 of Chapter 1.14 of Title 1 of the San José Municipal Code is hereby amended to read as follows:

1.14.090 Administrative Penalties

- A. The Appeals Hearing Board may impose administrative penalties for the violation of any provision of this Code in an amount not to exceed a maximum of two thousand five hundred dollars (\$500) per day for each ongoing violation, except that the total administrative penalty shall not exceed one hundred thousand dollars (\$100,000) exclusive of administrative costs, interest and restitution for compliance reinspections, for any related series of violations.

- B. In determining the amount of the administrative penalty, the Board may take any or all of the following factors into consideration:
 - 1. The duration of the violation;

2. The frequency, recurrence and number of violations, related or unrelated, by the same violator;
 3. The seriousness of the violation;
 4. The good faith efforts of the violator to come into compliance;
 5. The economic impact of the penalty on the violator;
 6. The impact of the violation on the community;
 7. Such other factors as justice may require.
- C. Administrative penalties imposed by the Board shall accrue from the date specified in the compliance order and shall cease to accrue on the date the violation is corrected as determined by the director or the Board.
- D. The Board, in its discretion, may suspend the imposition of applicable penalties for any or all of the periods of time during which:
1. The violator has filed for necessary permits which are both:
 - a. Required to achieve compliance; and
 - b. Actively pending before the City, state or other appropriate governmental agency.
 2. The violator has pursued a good faith dispute of the validity of the compliance order through a hearing before the Director.
- E. Administrative penalties assessed by the Board shall be due by the date specified in the administrative order.

- F. Administrative penalties assessed by the Board are a debt owed to the City and, in addition to all other means of enforcement, if the violation is located on real property, may be enforced by means of a lien against the real property on which the violation occurred.

- G. If the violation is not corrected as specified in the Board's order to correct, administrative penalties shall continue to accrue on a daily basis until the violation is corrected, subject to the maximum amount set forth in Section 1.14.090.A. above.

- H. If the violator gives written notice to the Director that the violation has been corrected and if the Director finds that compliance has been achieved, the Director shall deem the date the written notice was postmarked or personally delivered to the Director or the date of the final inspection, whichever first occurred, to be the date the violation was corrected. If no written notice is provided to the Director, the violation will be deemed corrected on the date of the final inspection.

PASSED FOR PUBLICATION of title this 6th day of March, 2012, by the following vote:

AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA,
LICCARDO, NGUYEN, OLIVERIO, PYLE, ROCHA; REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:



DENNIS D. HAWKINS, CMC
City Clerk

SAN JOSE POST-RECORD

95 S. Market St., Ste. 535, SAN JOSE, CA 95113
Telephone (408) 287-4866 / Fax (408) 287-2544

SUZANNE GUZZETTA
SAN JOSE CITY CLERK
200 E. SANTA CLARA ST.
SAN JOSE, CA - 95113

PROOF OF PUBLICATION

(2015.5 C.C.P.)

State of California)
County of SANTA CLARA) ss

Notice Type: GORSJ - SAN JOSE ORDINANCE (1 PUB)

Ad Description:
ORDINANCE #29043

I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of the printer and publisher of the SAN JOSE POST-RECORD, a newspaper published in the English language in the city of SAN JOSE, county of SANTA CLARA, and adjudged a newspaper of general circulation as defined by the laws of the State of California by the Superior Court of the County of SANTA CLARA, State of California, under date 02/03/1922, Case No. 27844. That the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

03/13/2012

Executed on: 03/13/2012
At Los Angeles, California

I certify (or declare) under penalty of perjury that the foregoing is true and correct.



Signature


RECEIVED

San Jose City Clerk

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SJ#: 2276300



CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

ORDINANCE NO. 29043

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTION 1.08.010 CHAPTER 1.08 OF TITLE 1 OF THE SAN JOSE MUNICIPAL CODE CLARIFYING THE DEFINITION OF NUISANCE AND AMENDING SECTIONS 1.14.030, 1.14.050, 1.14.060, 1.14.070 AND 1.14.080 OF CHAPTER 1.14 AND ADDING SECTIONS 1.14.045 AND 1.14.048 TO CREATE ADDITIONAL ADMINISTRATIVE REVIEW FOR COMPLIANCE ORDERS PASSED FOR PUBLICATION of title this 6th day of March, 2012, by the following vote:
AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE, REED, ROCHA.
NOES: NONE.
ABSENT: NONE.
DISQUALIFIED: NONE.

CHUCK REED
Mayor
ATTEST:
DENNIS HAWKINS, CMC
City Clerk
3/13/12

SJ-2276300#

