



CITY OF
LEMON GROVE

Administrative Citation
Procedures Manual

Administrative Citation Procedures Manual

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SECTION I – INTRODUCTION

Lemon Grove Municipal Code Section 1.12.012 provides the authority to issue administrative citations for violations of the City Municipal Code (hereafter “City Code or “Code”). The City Code provides for escalating fines for noncompliance. The Code also defines the service procedures for issuing a citation, addresses hardship waivers, and identifies the process for appeals. The purpose of this Code section is to induce compliance by applying a monetary penalty for continuing violations.

The purpose of this Procedures Manual is to establish the process by which Municipal Code Section 1.12.012 is implemented by the City. The operational policies and procedures identified in this Procedures Manual are compliant with applicable Municipal Code sections.

SECTION II – VIOLATIONS APPROPRIATE FOR ADMINISTRATIVE CITATION

The Code allows for the use of various tools to encourage or require abatement of Code violations. The issuance of an administrative citation for a Code violation serves as a tool for those violations that do not impose immediate health and safety risk. The issuance of a citation should be used for violations that are clear-cut, relatively un-complex and easily correctable. As with any enforcement tool, the decision to use administrative citations should include assessment of how effective it is likely to be in gaining compliance and whether or not it is appropriate to the situation.

SECTION III – ADMINISTRATIVE CITATION ISSUANCE POLICY

A. To Whom Citations Can Be Issued

An administrative citation may be issued to the party responsible for the violation. In general, the Responsible Person as defined in the Municipal Code Section 1.12.012 will be one or more of the following:

1. The owner, tenant, or occupant of real property;
2. The holder or the agent of the holder of any permit, entitlement, or review;
3. The party or the agent of a party to an agreement covered by Chapter 1 of the Municipal Code;
4. The owner or the authorized agent of any business, company, or entity subject to Chapter 1 of the Municipal Code; or

5. The parent or legal guardian of any such person under the age of 18 years and who violates any ordinance, regulation, permit, entitlement, review, or agreement described in the Municipal Code.

Any or all of these persons or entities may be cited for the violation when a citation is justified.

B. Service of Citation Procedures

The issuance of an administrative citation should be on the appropriate City form (Exhibit A). The form should be completed in full and should be delivered to the Responsible Person in the following manner:

1. Personal Issuance – the enforcement officer shall attempt to personally serve the Responsible Person with the citation and, if possible, obtain the signature of the Responsible Person on the administrative citation form. If the Responsible Person refuses to sign the administrative citation form, the citation will remain valid.
2. Service by Mail – if the enforcement officer is unable to locate the Responsible Person, the administrative citation shall be mailed to the Responsible Person by certified mail with a requested return receipt. The administrative citation shall also be sent by first class mail. If the administrative citation sent by certified mail is returned unsigned, the letter mailed first class shall be deemed effective noticing of the violation.
3. Service by Posting Notice – if the enforcement officer does not succeed in personally delivering the administrative citation and certified mail and first class mail fails to reach the Responsible Person, the enforcement officer shall post the administrative citation on the property in violation.

After the administrative citation has been served to the Responsible Person by any of the means listed above, the enforcement officer shall complete a declaration of service.

C. Form of Citation

The administrative citation form should include the following information:

1. Date, approximate time, and address or definite description of the location or property where the violation(s) was observed.
2. The name of the Responsible Person(s) and, if possible, the signature of the Responsible Person(s).
3. The Code sections or conditions violated and a description of the violation(s).

4. An order to the Responsible Person(s) to correct the violation(s) within a specified time period.
5. The amount of the fine for the violation(s).
6. An explanation of how the fine is to be paid and the deadline for making payment of the fine.
7. A notification that the payment of the fine does not excuse or discharge the failure to correct the violation.
8. A notice of the right and process to appeal the administrative citation.
9. The name and signature of the enforcement officer.

D. Fine Schedule

The administrative citation form should indicate whether the administrative citation is a warning or the amount of the fine. If the violation is not a critical health and safety risk, the enforcement officer shall first allow the Responsible Person(s) to abate the violation(s) within a 15-day warning period.

In the event the violation(s) are not corrected within the warning period, fines shall be assessed in the following amounts:

1. \$100 for the first administrative citation fine if the violation(s) are not corrected within the specified time and/or if the same violation occurs within the next 18-month period.
2. \$200 for the second administrative citation fine if the violation(s) are not corrected within the specified time and/or if the same violation occurs within the next 18-month period.
3. \$500 for the third administrative citation fine if the violation(s) are not corrected within the specified time and/or if the same violation occurs within the next 18-month period.
4. \$1,000 for the fourth administrative citation fine if the violation(s) are not corrected within the specified time and/or if the same violation occurs within the next 18-month period.

E. Satisfaction of Citation

If a warning administrative citation is issued and the violation(s) is corrected within the specified warning period, the case shall be closed. However, if fines are levied,

in order to satisfy the administrative citation, the Responsible Person shall correct the violation within the specified time and pay the fine within thirty (30) days from the correction date listed on the administrative citation. Fines shall be made payable to the City of Lemon Grove's Treasurer.

SECTION IV – APPEAL OF ADMINISTRATIVE CITATION

A. Process of Appeal

A recipient of an administrative citation may contest the violation or whether he or she is the Responsible Person for the violation. To contest the administrative citation, the recipient must complete a Request for an Appeal Hearing form (Exhibit B). The form should be completed in full and returned to the City within thirty (30) days from the correction date identified on the administrative citation.

The request for an appeal hearing must be accompanied by either an advance deposit of the fine or a Request for a Hardship Waiver (Exhibit C). If the hardship waiver is denied, the Responsible Person shall deposit the fine amount within ten (10) days of receiving the notice of denial.

In the event the administrative citation is excused by the Hearing Officer, the City shall refund the deposited fine within three (3) business days.

B. Hardship Waiver

A person filing a request for an appeal hearing may also request a hardship waiver of the fine deposit by checking a box on the appeal form. To allow time for the review of the hardship waiver request, the request for the appeal hearing shall be submitted to the City within fifteen (15) days from the correction date on the administrative citation.

The hardship waiver request must include a sworn affidavit, together with any supporting documents or materials demonstrating the person's actual financial inability to deposit the amount of the fine. The hardship waiver will be considered by the City Manager, or by his or her appointee. The City Manager will inform the Responsible Person in writing of whether the waiver was approved. The City Manager's determination is final and is not subject to appeal or judicial review.

If the hardship waiver is denied, the Responsible Person shall deposit the fine within ten (10) calendar days of the City Manager's notice. Failure to deposit the fine shall cancel the request for the appeal hearing and renders the fine delinquent.

C. Selection of Hearing Officer

The Hearing Officer will be selected from a panel of Hearing Officers appointed by the City Council (see Section VI for policies related to the Council appointment of Hearing Officers). The Hearing Officer shall be selected randomly by the City Manager, or by his or her appointee, prior to setting the date of the appeal hearing.

Any Hearing Officer residing or owning property within 500 feet of the subject property of the appeal shall be excluded from the selection process for that specific appeal hearing.

D. Request for Rescheduling a Hearing

The City will accommodate requests made by the person requesting an appeal hearing, provided that the request is made at least five (5) days prior to the scheduled hearing. Requests for rescheduling within five (5) days of the hearing may be considered for good cause (illness, death, emergency situation, etc.) and must be substantiated. The City Manager will consider whether to reschedule the hearing. This determination is final and not subject to judicial review.

E. Hearing Procedure

The following describes the rules and procedures for conducting an appeal hearing:

1. The appeal hearing cannot occur until the following have been completed:
 - a. An appeal hearing has been appropriately requested by the responsible person by submitting a Request for an Appeal Hearing form.
 - b. The Responsible Person has deposited the administrative citation fine in advance or a hardship waiver has been issued.
 - c. A hearing has been established not less than fifteen (15) days and not more than sixty (60) days from the date of the request for the appeal hearing. The Responsible Person shall be notified of the date, time and place of the hearing, and the Hearing Officer's name at least ten (10) days prior to the hearing date.
 - d. At least ten (10) days prior to the hearing, the City shall provide the Responsible Person with copies of the citations, reports and other documents that will be submitted to the Hearing Officer at the time of the hearing.
2. City staff should not have contact with the Hearing Officer regarding the hearing subject so as the Hearing Officer can maintain an attitude of neutrality and objectivity at all times.

3. City staff will arrange for the hearing, provide a hearing room and ensure that a tape recorder is in place.
4. The Hearing Officer shall conduct the appeal hearing and is responsible for ensuring that order is maintained and that due process is provided.
5. The person issued the administrative citation is entitled to bring legal representation to the hearing.
6. The Hearing Officer shall take testimony first from the Responsible Person. At this time the Responsible Person will have the opportunity to present evidence regarding the administrative citation's issuance.
7. Each party shall have an opportunity to question the other party's witnesses, if witnesses are included in the testimony.
8. Each party shall have an opportunity to present rebuttal evidence.
9. The Hearing Officer shall consider the evidence that is relative to whether the violation(s) occurred and whether the Responsible Person has caused or maintained the violation(s).
10. Formal rules of evidence shall not apply.
11. The Hearing Officer may continue the hearing to request additional information from the enforcement officer or the recipient of the administrative citation.
12. The Hearing Officer may or may not issue a decision orally at the conclusion of the hearing. Within ten (10) days of the hearing, the Hearing Officer shall provide the City and the recipient of the administrative citation with a written decision. The decision shall briefly state the reasons for the conclusion of the Hearing Officer.
13. The City is not required to provide transcripts of the hearing, but is required to provide copies of the tapes of the hearing at a cost determined by the City's Master Fee Schedule.
14. If the Responsible Person, or his or her representative, fails to appear at the hearing, the deposited fines shall be forfeited, the administrative citation(s) at issue shall be deemed valid, and judicial review shall be precluded for failure to exhaust administrative remedies.

F. Administrative Enforcement by Stipulation.

Occasionally, the City and the Responsible Person will reach agreement prior to a scheduled hearing. When such an agreement is approved and executed prior to the hearing, the hearing may be cancelled at the discretion of the City Manager and shall be entitled to an Administrative Enforcement Order by Stipulation. When such an agreement is presented at the hearing, the Hearing Officer may issue a finding which incorporates the agreement. Such a finding shall authorize or approve the terms of the agreement to ensure its validity and shall be entitled to an Administrative Enforcement Order by Stipulation.

G. Hearing Officer Authority

After conducting an appeal hearing and weighing the testimony and evidence presented, the Hearing Officer can make one of two decisions: 1) affirm the issuance of the administrative citation, or 2) excuse the administrative citation. The Hearing Officer's decision shall be final.

The Hearing Officer may impose conditions and deadlines to correct any violations or require payment of outstanding penalties. The Hearing Officer may also assess reasonable administrative costs for scheduling and processing of the hearing and subsequent actions. The Hearing Officer does not have authority to reduce the fine.

H. Judicial Review

Either the City or the person in receipt of an administrative citation may request review of the appeal hearing decision with the San Diego Superior Court. Judicial review of a citation may not occur without first exhausting all available administrative remedies.

SECTION V – CITATION FINES (WAIVERS AND PENALTIES)

A. Failure to Pay Fines

If the Responsible Person fails to pay the fines imposed through the administrative citation within the time specified on the citation, the City may file a claim with the Small Claims Court or the Superior Court for recovery of the fine. In the event the courts are used to recover fines, the City may also recover the costs associated with the Hearing Officer, court fees, and collection costs.

The City may also or in addition to court action, impose a code enforcement lien in the amount of the fine plus interest and late charges, on the real property upon which the violation occurs. Any lien imposed shall be recorded in the Office of the San Diego County Recorder.

B. Late Payment Penalty

Any Responsible Person that fails to pay a fine on or before the date payment is due shall be liable for payment of a late charge in the amount of 25 percent of the fine. Delinquent fines shall also accrue interest at the rate of 10 percent per month, excluding late payment penalties.

C. Reduction of Cumulative Fines

If the violation is corrected within a reasonable time after the decision of the Hearing Officer, the City Manager shall have the discretion to reduce cumulative fines that exceed \$1,000. The City Manager may not reduce the fine amount to less than \$1,000. The determination of the City Manager shall be final and shall not be subject to appeal or judicial review.

SECTION VI – HEARING OFFICER POLICY

A. Purpose

The purpose of this section is to establish policies regarding the requirements, the City Council selection procedures, the term, and the rate of compensation for Hearing Officers.

B. Requirements of a Hearing Officer

The following criteria are established as requirements to be considered for the position of Hearing Officer:

1. A candidate is not required to be a resident of Lemon Grove. However, the distance in which the candidate resides may be a consideration factor in determining his or her ability to attend appeal hearings.
2. A Hearing Officer candidate must be able to conduct a hearing, analyze the City's Municipal Code, weigh evidence and make unbiased judgments based on evidence and testimony presented.
3. A Hearing Officer must possess effective communication skills—both verbal and written.
4. A Hearing Officer candidate may not have been issued a code enforcement citation with a fine for a period of 18 months from the time of applying for a Hearing Officer position.
5. In the event a Hearing Officer is issued an administrative citation with a fine while serving a term, he or she shall be disqualified as a Hearing Officer.

6. A Hearing Officer may not be a full or part-time employee of the City of Lemon Grove (including paid committee or commission members).

C. Selection of Hearing Officer Panel

The City Council may fill a panel of no less than three and no more than six Hearing Officers. Hearing Officers may apply in writing for consideration for Council selection at any time, if the panel is not full. The Council may conduct interviews with the full Council or may appoint a sub-committee of members of the Council to administer the selection process. The full Council must ratify the appointment of a Hearing Officer to the panel.

D. Term of Hearing Officer

The term of the Hearing Officer shall be no more than three years. However, the Council may re-appoint a Hearing Officer through the selection process identified in the previous section. To create appropriate conclusion of terms, the Council may decide periodically, on a case-by-case basis, to reduce the length of a term to two years to create staggered terms on the Hearing Officer panel.

E. Hearing Officer Compensation

A Hearing Officer shall be compensated \$75 per appeal hearing. For purposes of this Section, an "appeal hearing" shall include, but not be limited to, all appeals consolidated into a single hearing and any subsequent continuance or future dates until a final determination is rendered by the Hearing Officer. This amount is for travel, preparation time, conducting the hearing, and preparing the written decision. There shall be no additional payment in the event the Hearing Officer is requested to testify at a court proceeding. In the event the hearing is canceled after the Notice of Hearing has been established, the Hearing Officer shall be compensated \$40. In the event, the Hearing Officer is disqualified or recuses him/herself under Section F below, no compensation shall be paid.

F. Conflict of Interest

Hearing Officers are required to disqualify themselves from serving as the Hearing Officer for a particular case if they have a personal or business relationship or any other type of relations, with any of the involved parties which might cause them to have a conflict of interest, bias or prejudice in regard to the case to be heard.

In the event that the Hearing Officer believes that a conflict of interest does not exist but might be perceived, he or she is required to disclose to both the City and the appealing party the nature of any relationship that might cause such a perception at least eight (8) days prior to the hearing date. Either of the parties may then request

that a new Hearing Officer be selected, provided that such request is made known to the Hearing Officer within two (2) business days of such notification.

In the event that the Hearing Officer does not disqualify her/himself or does not announce a relationship that might be perceived as a potential conflict of interest and either party believes that a conflict of interest may exist, that party may request of the City Manager that a different Hearing Officer be selected, provided such request is made within five (5) days of the hearing date. The City Manager shall determine whether or not to take such action based on the evidence presented of a relationship, prejudice or bias that might impede the Hearing Officer's ability to provide a fair hearing.

Failure to disclose a conflict of interest as defined herein may result in the termination of the Hearing Officer's participation on the panel.

SECTION VII - OTHER PROCEDURES

A. Hostile Encounters

An enforcement officer shall not initiate physical force to halt, restrain or attempt to physically engage a code violator. If an enforcement officer is threatened by hostile or aggressive behavior or with bodily harm during the course of performing his or her duties, the enforcement officer shall leave the scene immediately, contact the Sheriff's Department, contact his or her immediate supervisor, and document the incident as part of the code case file.

If there is or has been past aggressiveness or hostility from a resident, the enforcement officer shall not attempt to personally deliver notices and/or citations without the presence of a Sheriff deputy. Otherwise, the enforcement officer may deliver notices and/or citations by way of mail as specified in this manual.

B. Entry Upon Private Property

No enforcement officer shall enter upon private property except in an attempt to contact the owner or occupant of the property or to post or deliver a notice and/or citation. The enforcement officer may access the property with the consent of the property owner or occupant or with a search warrant issued by the court.

C. Release of Information

In order to preserve effectiveness and not jeopardize investigative activities and to protect the privacy of residents, the following procedures apply to the release of information, once a case file is created:

1. Except in accordance with the direction of the City Attorney or to comply with a subpoena, the City shall not disclose:
 - a. That a complaint about a particular incident has been filed,
 - b. The fact that a case is pending, or
 - c. That a particular complaint is under investigation.
2. The City shall advise the complaining party that the complaint has been received and is under investigation.
3. Upon request, in accordance with the Public Records Act, the City shall disclose:
 - a. The date on which a citation has been set for court trial,
 - b. The date which has been set for a hearing before a Hearing Officer,
 - c. The fact that a civil lawsuit has been filed and served.
4. Upon the closing of a case initiated by a private party's complaint, the complainant will be advised of the result, if so requested by the complainant.
5. Any information developed during the investigation shall be released only to City personnel actively and directly involved in the enforcement action.

EXHIBIT A – Administrative Citation Form

EXHIBIT B – Request for Appeal Hearing Form

EXHIBIT C – Request for Hardship Waiver Form

EXHIBIT D – Notice of Appeal Hearing