

## **Administrative v. Criminal Citations**

Gary J. McCarthy  
Deputy City Attorney  
Escondido, CA  
GMcCarthy@Escondido.org



## **Code Enforcement**

- Collect Data
- Evaluate Facts
- Compliance



## Customer Service

- Who are your customers?
  - 
  - 
  - 
  -
- Limits???



## **Criminal v. Admin**

- Investigation
- Arrest
- Formal Charges
- Court Hearings
- Jury Trial
- Post Conviction
- Investigation
- Notice of Violation
- Citation
- Hearing
- Court Appeal



## Case Preparation

- Violation
  - Complaint / Pro-active
  - Often must research property history
- Responsible Party
  - Not always easy to pin down
- Gather Evidence
- Create Case File



## **Criminal Offenses**

- “It shall be unlawful...”
- “Misdemeanor”
- Not
  - “Shall be considered substandard”



## Continuing Offense

Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of this code is committed, continued or permitted by such person; and he or she shall be punished accordingly. (**Code 1957**, §§ 0041, 0044)



## Elements

- It shall be unlawful for an owner of any building or use
- to discontinue or dispense with the required vehicle parking facilities
- without providing some other vehicle parking area which meets the requirements of this article.

F7C 33-762



## Elements cont.

- It shall be unlawful for any landowner or person
- leasing, occupying, or having charge or possession of any property
- in the city
- to keep, maintain, or deposit on such property any of the following:

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## Responsible Party

- Check your statutory authority
- Property Owner???
- Tenant???
- Bank?



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## EMC § 1A-4

- **Responsible Person** shall mean an owner of any property, a **person** who is **responsible** for control of the property or the condition of the property, or a **person** who is **responsible** for repair or maintenance of the property.



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## EMC § 482

- **Responsible person** shall mean a property owner, a tenant, a person occupying or having control or possession of any property, any person with a legal interest in real property (including banks or mortgage holders), and any person who directly manages a business or property or who demonstrates responsibility for the maintenance and repair of the property, or any agents thereof. (Ord. No. 2008-24, § 1, 10-22-08)



## Law & Order

- Adversarial Process
- Documented
  - Recorded
  - Admitted Evidence
- Decision
- Appeal



## Testifying

- Record keeping
- Preparation
- Recollection



## Privileges

- Self
- Marital
- Lawyers



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## Hearsay

- Evidence of a statement that was made other than by a witness while testifying at the hearing and
- That is offered to prove the truth of the matter stated.

– Cal. Ev. Code §1200



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## Photographs

- Familiar with the object or scene
- How
- Witness recognizes the object or scene
- The photograph is a fair and accurate



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## Enforcement

- Administrative Citations



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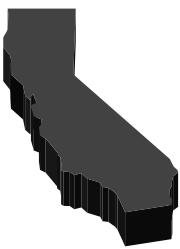
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## Statutory Authority

- Govt. Code § 53069.4.  
Violation of ordinance of local agency subject to administrative fine or penalty; Appeal of order



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## Govt. Code § 53069.4(a)(1)

- The legislative body of a local agency, as the term "local agency" is defined in Section 54951, **may by ordinance** make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. ...



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**Govt. Code § 53069.4(a)(1) cont.**

- The local agency **shall set forth** by ordinance the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties. ....



## Govt. Code § 53069.4(a)(2)

- The administrative procedures set forth by ordinance adopted by the local agency pursuant to paragraph (1) **shall provide for a reasonable period of time**, as specified in the ordinance, for a person responsible for a continuing violation to **correct** or otherwise remedy the violation



**Govt. Code § 53069.4(a)(2) cont.**

- ... **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.



## Govt. Code § 53069.4(b)(1)

- ... a person contesting that final administrative order or decision may seek review by filing an appeal to be heard by the superior court, where the same shall be heard de novo, except that the contents of the **local agency's file** in the case shall be received in evidence....

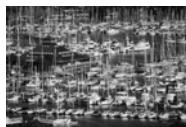


**Govt. Code § 53069.4(b)(1) cont.**

- A proceeding under this subdivision is a limited civil case. A copy of the document or instrument of the local agency providing notice of the violation and imposition of the administrative fine or penalty shall be admitted into evidence as **prima facie** evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the local agency by the contestant.



# Municipal Code Applications



## EMC §1A-6. (b) cont.

- Not less than twenty-four (24) hours **shall** be allowed from the date of the notice of violation for the party to correct or otherwise remedy the violation.
- The enforcement officer shall assign a specific reasonable period within which to correct or otherwise remedy each violation. ...



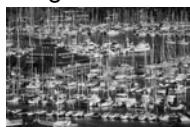
**EMC §1A-6. (b) cont.**

- The enforcement officer shall consider the cost of abatement or correction, the time required to obtain permits for correction, the time needed to obtain estimates, drawings and contracts for correction, time required for physical relocation of personal property, and the time required to review submittals in determining the reasonable warning period to be assigned for each violation.



## **SDMC §12.0904(b)**

- (b) If the Responsible Person is a business, the Enforcement Official shall attempt to locate the business owner and issue the business owner an administrative citation. If the Enforcement Official can only locate the manager of the business, the administrative citation may be given to the manager of the business. ...



## **SDMC §12.0904(b) cont.**

- ... A copy of the administrative citation shall also be mailed to the business owner or Responsible Person in the manner prescribed by Section 11.0301(a)(2) of this Chapter.



**SDMC §12.0904(e)**

- (e) If no one can be located at the property, then the administrative citation **shall be posted** in a conspicuous place on or near the property and a copy subsequently mailed to the Responsible Person in the manner prescribed by Section 11.0301(a) (2) of this Chapter.



**EMC §1A-11. (f)**

- (f) The failure of any person to pay a penalty assessed by administrative citation within the time specified on the citation constitutes a debt to the city. To enforce that debt, the city may file a civil action, impose a special assessment as set forth below, or pursue any other legal remedy to collect such money.



## EMC §1A-11(g)

- (g) The city may impose a special assessment against the property that is the subject of a citation **if** the citation has been issued to the property owner. The city shall record a notice of lien in the office of the county recorder when the special assessment procedure is used....



## EMC §1A-11.(g) cont.

- ... When so made and confirmed, the cost shall constitute a lien on that property for the amount of the assessment. After confirmation and recordation, a copy shall be turned over to the San Diego County tax collector. ...



## Administrative Process

- Investigation
- Notice of Violation
- Citation
- Administrative Review
- Hearing Officer
  - Due Process Requirement
  - Informal
  - Lower Burden of Proof
- Superior Court Review



## Issuing Citations

 <p><b>CITY OF ESCONDIDO</b> Code Enforcement Division 200 W. Main Street Escondido, CA 92025-2798 (760) 839-4660</p>		ACa_1861
		CASE # _____
<b>ADMINISTRATIVE CITATION</b> (PLEASE SEE INSTRUCTIONS ON BACK OF CITATION)		
<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		DRAFT
DATE OF VIOLATION	TIME	PENALTY AMOUNT
ADDRESS OF VIOLATION(S)		
RESPONSIBLE PERSON OR PROPERTY OWNER OR LESSEE		DATE OF BIRTH
ADDRESS	CITY	ZIP CODE
CODE SECTION	DESCRIPTION OF VIOLATION	
<hr/> <hr/> <hr/> <hr/> <hr/> <hr/>		
CORRECTIVE ACTION REQUIRED:		
I ACKNOWLEDGE RECEIPT OF THIS NOTICE		
PRINTED NAME	SIGNATURE	
SERVED BY: U.S. MAIL <input type="checkbox"/> PERSONAL SERVICE <input checked="" type="checkbox"/> POSTED ON PROPERTY <input type="checkbox"/>		
ISSUED BY	CODE ENFORCEMENT OFFICER	ISSUE DATE
LINEARD FINES DOUBLE IN 30 DAYS		

Make checks payable to **CITY OF ESCONDIDO** Mail penalty payments to:

CITY OF ESCONDIDO  
CITATION PROCESSING CENTER  
201 NORTH BROADWAY  
ESCONDIDO, CA 92025-2798

**IMPORTANT – READ CAREFULLY**

The responsible party, property owner or lessee cited for violation shall within **30 calendar days** from the issuance of this citation, pay the assessed amount by mail to the above address.

**OR**

If you dispute the underlying facts of this citation, you may file a written appeal within **10 calendar days** from the issuance of this citation. The appeal must be accompanied by the penalty amount, include a return address, and specify in detail the basis for the appeal.

**REPEATED VIOLATIONS**

Each and every day a violation of any provision of the Municipal Code exists constitutes a separate and distinct offense. Each section of the Code violated constitutes a separate violation for any day at issue.

**FAILURE TO ANSWER OR PAY PENALTY FOR VIOLATIONS**  
(City of Escondido Municipal Code Section 1.11(e)(1) and (g))

The failure of any person to pay a penalty assessed by administrative citation within the time specified on the citation shall result in the assessment of an additional late fee to be charged. The amount of the late fee will be determined by the amount of the original citation penalty, effectively doubling the amount shown on the reverse side. In addition, the penalty assessed will constitute a debt to the City of Escondido. To enforce that debt, the City may file a civil action, impose a specific assessment, or pursue any other legal remedy to collect such money.

## **Content on Reverse Side**

- Payable to Address
- Statutory notice
  - 30 days to pay or
  - Written appeal w/in 10 calendar days
  - Repeat violation
  - Penalty provision
  - Legal remedies



## Service

- Personal
- Mail
- Posting



## Administrative Review

- Informal Process
  - Common sense
  - *Washington Post* rule
- Completely at local authority's discretion
  - Code enforcement manager
  - City manager
- Must avoid statutory restrictions



## **Administrative Hearing**

- Procedural Variety
- Opening Statements
- Evidence
- Closing Statements



## Due Process

- Notice
- Opportunity to be heard



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## Hearing Preparation

- Investigation
  - Case File
- Information Exchange
- Hearing Report



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## Case Presentation

- Who
- What
- When
- Where
- Why



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## Case Analysis

- Issues
  - Why challenged
    - “Not a violation”
    - “Not on my watch”
    - City responsible
- Attitude
  - Cooperative
  - Professional



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## Burden of Proof

- Preponderance of the Evidence



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## Appeal

- Requires Final Administrative Order / Decision
- \$25 filing fee



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## Enforcement

- Criminal Citations



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## Criminal Process

- Investigation
- Arrest
- Formal Charges
- Court Hearings
- Trial
  - Jury Trial?
  - Highest Burden of Proof
- Post Conviction



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## Criminal Options

- Infractions
- Misdemeanors
- Felonies



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## Misdemeanors & Infractions

- Same power of peace officers
- Same court jurisdiction
- Same period to commence action
- Same burden of proof

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## Bail Forfeiture

- County wide bail schedules required  
Cal. Penal Code § 1269b.(d)
- An individual may avoid further court proceedings by paying and forfeiting the bail amount prior to the hearing date.  
Cal. Penal Code § 853.6(e)(3)

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## City Attorneys

- City Attorneys may prosecute violations of city ordinances as Misdemeanors unless the ordinance designates a violation to be an Infraction in the name of the People of the State of California.



Cal. Govt. Code § 36900(a)

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## Power of Arrest

- **Public officer or employee**, when authorized by ordinance, may arrest a person without a warrant
- Whenever the officer or employee has reasonable cause to believe that the person to be arrested has committed a misdemeanor in the presence of the officer or employee that is a violation of a statute or ordinance that the officer or employee has a duty to enforce.

Cal. Penal Code §853.6



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## Infractions

- No imprisonment
- No jury trial
  - Traffic Courts
  - Streamlined process



## **Criminal Citations or Complaints**

<input type="checkbox"/> S.D. SUPERIOR COURT - COUNTY DIVISION 1000 DEADERICKS DRIVE, SUITE 200 ANNE B. DAVIS TOLL FREE: 800-550-0400 FAX: 619-531-1540 TELE: 619-531-1540 FAX: 619-531-1540	<input type="checkbox"/> S.D. SUPERIOR COURT - CENTRAL DIVISION 1000 DEADERICKS DRIVE, SUITE 200 ANNE B. DAVIS TOLL FREE: 800-550-0400 FAX: 619-531-1540
<input type="checkbox"/> S.D. SUPERIOR COURT - COUNTY DIVISION 1000 DEADERICKS DRIVE, SUITE 200 ANNE B. DAVIS TOLL FREE: 800-550-0400 FAX: 619-531-1540	<input type="checkbox"/> S.D. SUPERIOR COURT - CENTRAL DIVISION 1000 DEADERICKS DRIVE, SUITE 200 ANNE B. DAVIS TOLL FREE: 800-550-0400 FAX: 619-531-1540
<input type="checkbox"/> Plaintiff PEOPLE OF THE STATE OF CALIFORNIA DEFENDANT	
NOTICE OF CORRECTION AND PROOF OF SERVICE <i>Patricia Costa, # 00000000</i>	
AMERICAN ATTORNEY NAME: <i>Patricia Costa</i> / #00000000	
TELEPHONE NUMBER: <i>619-531-1540</i>	
COURT NUMBER: <i>Case Number</i>	
<p>1. A Notice of Appeal / Notice to Correct Violation was issued to you by an officer of this department on <i>date</i>.    2. The citation issued to you contained an error as indicated by the items checked below. This notice of correction does not affect the validity of the original citation.</p> <p><input type="checkbox"/> Date / time of violation should be _____  <input type="checkbox"/> Date / time of court appearance should be changed from _____ to _____  <input type="checkbox"/> Violation section(s) should be changed from _____ to _____  <input type="checkbox"/> Location of violation should be changed from _____ to _____  <input type="checkbox"/> Other (specify): _____</p> <p>I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.</p> <p>Date: <i>_____</i> Signature: <i>Patricia Costa</i></p> <p>Form Required by California Law for all Court Actions</p> <p>DEFENDANT Print or Type in Block Letters</p>	
<p>PROOF OF SERVICE</p> <p>I declare that the Notice of Correction on the reverse side of the citation was served on <i>Patricia Costa</i> on <i>date</i> _____ at <i>address</i> _____.</p> <p>On <i>date</i> _____, I, <i>Patricia Costa</i>, Esq., served <i>Notice of Correction</i> on the State of California and the Defendants in this case at <i>address</i> _____.</p> <p>Violator's name and address of property violation: _____    Date: _____    Signature: _____    Court: _____    Form Required by California Law for all Court Actions</p>	

## Court Appearance

- Field Citation
  - Promise to Appear
- Notify Warrant
  - Complaint filed
  - Signed by a prosecutor



## Criminal Complaint

The undersigned, certifying upon information and belief complains that in the North County Judicial District, County of San Diego, State of California, the Defendants committed the following crimes.

### COUNT ONE

On or about March 1, 2007, at the property located at 439 E. 5th Avenue, in the City of Escondido, County of San Diego, State of California, the Defendants committed a misdemeanor in violation of Section 33-800(1) of the Escondido Zoning Code by failing to preserve a historic resource on the survey within the Old Escondido Historic District by failing to protect the property against deterioration and decay to wit: broken and missing front porch flooring, deteriorated exterior walls and other vertical structural supports.

## Notify Warrants

- Alternative to an Arrest Warrant
- An Invitation
- No show => Affidavit

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## Misdemeanors

- Up to 6 months in county jail, per count\*
- Up to \$1000 fine or custody or both
- Right to jury trial

Cal. Penal Code § 19



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## Criminal Discovery

- No order requiring discovery shall be made in criminal cases except as provided in this chapter

Cal. Penal Code § 1054



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## **Prosecutor's Duties**

- Names and addresses of all trial witnesses
- All Def. statements (oral, written, recorded)
- All real evidence
- **ANY exculpatory evidence**
- All written and recorded statements of trial Ws
  - Includes Expert W statements &
  - Materials related to case

Cal. Penal Code 1054.1



## **Prosecution - Do Justice**

- The prudent Prosecutor will resolve doubtful questions in favor of disclosure...Such disclosure will serve to justify trust in the prosecutor as the representative of a sovereign whose interest in a criminal prosecution is not that it shall win a case, but that justice shall be done.

Berger v. United States  
295 U.S. 78 (1935)

## Disclosure Duty

- The prosecutor has a due process affirmative duty to disclose to the Defendant all material evidence that is favorable and that is possessed by the prosecution team, even if the Defendant does not request it.

*Brady v. Maryland*

## Favorable

- Directly opposes Defendant's guilt
- Implicates another's guilt
- Supports Def's testimony / motion
- Impeaches / undermines Prosecution witness
- Mitigates punishment or culpability



## Impeach / Undermines

- Prior inconsistent / inaccurate statements
- False reports / reputation
- Contradicting / conflicting evidence
- Promises / inducement made to witness
- Gang member status
- Drug / alcohol abuse
- Felony / Misdemeanor = Moral Turpitude
  - Parole / Probation



## Prosecution Team

- “Our” Office = the investigating law enforcement agency / other agencies working on behalf of the prosecution
- Disclose if:
  - Actual possession OR have right to possess
  - Know or **should know** item exists



## Team Effort

- Other Govt Agency if acting on behalf of the Prosecution
- Agencies closely tied to the Prosecution
- Does NOT include unrelated government files held by non-investigatory staff
  - Finance
  - Planning Department
  - Engineering Department

## Not on the Team

- Citizens, witness and victims
- CPS / Social service agencies
- Hospitals / medical / EMS
- Courts
- Jails
- Probation departments
- DMV
  - Not a criminal investigatory agency

## Court Proceeding Stages

- Pre-trial
- Trial
- Post trial



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## Trial Preparation

- Pre-trial
  - Investigation
  - Discovery
  - Arraignment
  - Readiness



## **Trial Proceeding**

- Jury Voir dire
- Opening Statements
- Testimonial Evidence
- Closing Statements



## Court Actors

- Judge
  - Rules of Court
- Lawyers
  - Professional Code of Conduct
- Witnesses
- Court Clerks
- Jurors



## **Voir dire**

- Name
- Occupation
- Age
- Education
- Law enforcement
- Victim or Arrested (Family)
- Jury Experience



## Decision Makers

- Trier of Law
  - Always the Judge
- Trier of Fact
  - Bench trial
  - Jury



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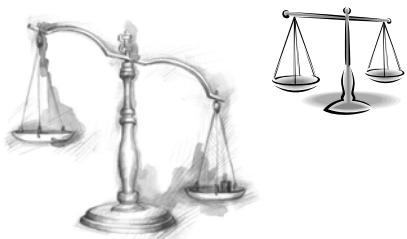
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## Burden of Proof

- Beyond Reasonable Doubt



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## Beyond Reasonable Doubt

- Proof beyond a reasonable doubt is proof that leaves you with an **abiding conviction** that the charge is true.
- The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt.

CalCrim 103



## **Mens Rea**

- Strict Liability?
- Traditional
  - Knowingly, willingly, intentionally
- Case Law
  - Civil
    - Property ownership has responsibility
  - Muni code
    - Health, Safety, Welfare



## **Sentencing**

- Statutory
- Bail Schedules
- Stipulated Agreements
  - aka: Plea Bargain
  - Defined objectives
  - Sentence bargain
- Judicial Discretion



## Double Punishment

- PC 654
  - Protects Defendant against multiple punishments based upon the same course of conduct
- “Absent legislative direction to the contrary,...”

People v. Djekich, 229 Cal. App. 3d 1213

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## Probation

- An agreement
  - Formal
  - Informal
- Revocation
  - Reinstatement
  - Custody



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## Enforcement Approaches

- Administrative
  - Procedural Simplicity
  - Financial Impact
  - Little Stigma
- Criminal
  - Formal
  - Creates a Record
  - Probation



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## Keys to Success

- Detailed Record Keeping
- Professional Preparation
  - Inspections
  - Consistency
  - Court Hearings
- Communication
- KISS

