

Administrative v. Criminal Citations

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Code Enforcement

- Collect Data
- Evaluate Facts
- Compliance



Customer Service

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



Criminal v. Admin

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

EZC 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:

Responsible Party

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



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.



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



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



Photographs

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



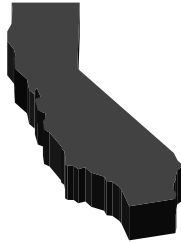
Enforcement

- Administrative Citations



Statutory Authority

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



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. ...



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....

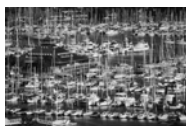


Govt. Code § 53069.4(b)(1) cont.

- 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. ...



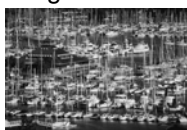
EMC §1A-6. (b) cont.

- 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

	CITY OF ESCONDIDO	AC# 10-17
	Cable Enforcement Division	
	201 North Broadway	
	Escondido, CA 92025-5708 (760) 839-4680	CASE # _____

ADMINISTRATIVE CITATION
(PLEASE SEE INSTRUCTIONS ON BACK OF CITATION)

DATE OF VIOLATION _____	FINE <input type="checkbox"/> Civil <input checked="" type="checkbox"/> Traffic _____	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 _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____	
CORRECTIVE ACTION REQUIRED _____ _____ _____		
I ACKNOWLEDGE RECEIPT OF THIS NOTICE PRINTED NAME _____ SIGNATURE _____		
SERVED BY U.S. MAIL <input type="checkbox"/> PERSONAL SERVICE <input type="checkbox"/> POSTED ON PROPERTY <input type="checkbox"/>		
ISSUED BY _____ CODE ENFORCEMENT OFFICER _____		ISSUE DATE _____
UNPAID FINES DOUBLE IN 30 DAYS		

(c)1997 (Rev. 2/95)

Make checks payable to: CITY OF ESCONCIDO
payments to: **CITY OF ESCONCIDO**
CITATION PROCESSING CENTER
201 NORTH BROADWAY
ESCONCIDO, CA 92029-2798

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, must 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(g)
(City of Escondido Municipal Code Section 1A-11(e),(f) 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 shall be 100 percent of the total amount of the administrative penalty owed, 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, impound a special 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



Hearing Preparation

- Investigation
 - Case File
- Information Exchange
- Hearing Report



Case Presentation

- Who
- What
- When
- Where
- Why



Case Analysis

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



Burden of Proof

- Preponderance of the Evidence



Appeal

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



Enforcement

- Criminal Citations



Criminal Process

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





Criminal Options

- Infractions
- Misdemeanors
- Felonies



Misdemeanors & Infractions

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

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)

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)

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



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



Criminal Citations or Complaints

[illegible]

IMPORTANT - READ CAREFULLY			
<p>PLEASE PRINT OR TYPE (Do not use cursive or stylized handwriting.)</p> <p>1. My name is and I am years old.</p> <p>2. My Social Security Number is </p> <p>3. My date of birth is / / </p> <p>4. My current address is </p> <p>5. My current telephone number is </p> <p>6. My current e-mail address is </p> <p>7. My current employer is </p> <p>8. My current occupation is </p> <p>9. My current salary is </p> <p>10. My current marital status is </p> <p>11. My current number of dependents is </p> <p>12. My current number of children is </p> <p>13. My current number of siblings is </p> <p>14. My current number of pets is </p> <p>15. My current number of vehicles is </p> <p>16. My current number of credit cards is </p> <p>17. My current number of bank accounts is </p> <p>18. My current number of other accounts is </p> <p>19. My current number of other assets is </p> <p>20. My current number of other liabilities is </p> <p>21. My current number of other debts is </p> <p>22. My current number of other obligations is </p> <p>23. My current number of other responsibilities is </p> <p>24. My current number of other commitments is </p> <p>25. My current number of other interests is </p> <p>26. My current number of other hobbies is </p> <p>27. My current number of other activities is </p> <p>28. My current number of other pursuits is </p> <p>29. My current number of other passions is </p> <p>30. My current number of other dreams is </p> <p>31. My current number of other aspirations is </p> <p>32. My current number of other goals is </p> <p>33. My current number of other dreams is </p> <p>34. My current number of other aspirations is </p> <p>35. My current number of other goals is </p> <p>36. My current number of other dreams is </p> <p>37. My current number of other aspirations is </p> <p>38. My current number of other goals is </p> <p>39. My current number of other dreams is </p> <p>40. My current number of other aspirations is </p> <p>41. My current number of other goals is </p> <p>42. My current number of other dreams is </p> <p>43. My current number of other aspirations is </p> <p>44. My current number of other goals is </p> <p>45. My current number of other dreams is </p> <p>46. My current number of other aspirations is </p> <p>47. My current number of other goals is </p> <p>48. My current number of other dreams is </p> <p>49. My current number of other aspirations is </p> <p>50. My current number of other goals is </p> <p>51. My current number of other dreams is </p> <p>52. My current number of other aspirations is </p> <p>53. My current number of other goals is </p> <p>54. My current number of other dreams is </p> <p>55. My current number of other aspirations is </p> <p>56. My current number of other goals is </p> <p>57. My current number of other dreams is </p> <p>58. My current number of other aspirations is </p> <p>59. My current number of other goals is </p> <p>60. My current number of other dreams is </p> <p>61. My current number of other aspirations is </p> <p>62. My current number of other goals is </p> <p>63. My current number of other dreams is </p> <p>64. My current number of other aspirations is </p> <p>65. My current number of other goals is </p> <p>66. My current number of other dreams is </p> <p>67. My current number of other aspirations is </p> <p>68. My current number of other goals is </p> <p>69. My current number of other dreams is </p> <p>70. My current number of other aspirations is </p> <p>71. My current number of other goals is </p> <p>72. My current number of other dreams is </p> <p>73. My current number of other aspirations is </p> <p>74. My current number of other goals is </p> <p>75. My current number of other dreams is </p> <p>76. My current number of other aspirations is </p> <p>77. My current number of other goals is </p> <p>78. My current number of other dreams is </p> <p>79. My current number of other aspirations is </p> <p>80. My current number of other goals is </p> <p>81. My current number of other dreams is </p> <p>82. My current number of other aspirations is </p> <p>83. My current number of other goals is </p> <p>84. My current number of other dreams is </p> <p>85. My current number of other aspirations is </p> <p>86. My current number of other goals is </p> <p>87. My current number of other dreams is </p> <p>88. My current number of other aspirations is </p> <p>89. My current number of other goals is </p> <p>90. My current number of other dreams is </p> <p>91. My current number of other aspirations is </p> <p>92. My current number of other goals is </p> <p>93. My current number of other dreams is </</p>			

Notify Warrants

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

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



Criminal Discovery

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

Cal. Penal Code § 1054



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
33 U.S. 83 (1983)

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



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



Burden of Proof

- Beyond Reasonable Doubt



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. Djeich, 229 Cal. App. 3d 1213

Probation

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



Enforcement Approaches

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



Keys to Success

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