

**CITY OF SAN MATEO
DRAFT ORDINANCE**

An Ordinance Amending San Mateo Municipal Code Section 1.10.060, "Appeal of Administrative Citation," of Title 1, "General Provisions," and Amending San Mateo Municipal Code Chapter 2.21, "Community Relations Commission," of Title 2 "Administration and Personnel," to Form an Administrative Citation Appeal Procedure Before an Impartial Hearing Office for Administration Citations Related to Technical Building Codes and Health & Safety Codes

WHEREAS, California Government Code Section 53069.4 authorizes local agencies to make any violation of the San Mateo Municipal Code subject to administrative fines or penalties, including violations of technical building codes and health and safety codes by ordinance; and

WHEREAS, the ordinance must set forth the procedures for the imposition, enforcement, collection, and administrative review of a violation; and

WHEREAS, San Mateo Municipal Code Chapter 1.10 governs the City's procedures for the imposition, enforcement, collection, and review of administrative citations; and

WHEREAS, Pursuant to San Mateo Municipal Code Section 1.10.060 and Chapter 2.21, the review of administrative citations is currently heard by the Community Relations Commission; and

WHEREAS, the Community Relations Commission does not possess the technical expertise related to violations of building codes and health and safety codes; and

WHEREAS, the City desires to establish an administrative review procedure for administrative citations related to violations of technical building codes and health and safety codes before an impartial hearing officer with a final appeal to City Council.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF SAN MATEO ORDAINS AS FOLLOWS:

Section 1. Section 1.10.060 of the San Mateo Municipal Code is amended as follows:

1.10.060 APPEAL OF ADMINISTRATIVE CITATION.

(a) Persons receiving an administrative citation may appeal it within 10 working days from the date the administrative citation is served. The notice of appeal must be in writing, and accompanied by the nuisance abatement fee, and must specify the basis for the appeal. It must be received by the Director of the Community Development Department within 10 working days. If the deadline falls on a weekend or City holiday, then the deadline shall be extended until the next regular business day.

(b) The Community Relations Commission will hear and decide administrative citation appeals, except for administrative citation appeals relating to violations of Chapter 7.14, Chapters 23.06 through 23.56, Chapter 23.70, and Chapter 23.72 of this Code.

A hearing officer will hear and decide administrative citation appeals relating to violations of Chapter 7.14, Chapters 23.06 through 23.56, Chapter 23.70, and Chapter 23.72 of this Code. The City Manager, or his or her designee, shall appoint a hearing officer for administrative citation hearings under this section who shall not

be the citing enforcement officer. The evaluation, compensation, and/or other benefits of the hearing officer shall not be directly or indirectly conditioned upon the amount of the administrative fees or penalties, or the rulings upheld, revised, or otherwise issued by the hearing officer.

(c) As soon as practicable after receiving the written notice of appeal, the Director of the Community Development Department shall review it for sufficiency. If found to be complete and in conformance with this section, the City shall set the appeal hearing for the next available Community Relations Commission meeting, or for administrative citation appeals held pursuant to subsection (b) above, a hearing before a hearing officer. Written notice of the time and place for the hearing may be served by personal service, or first class mail to the address provided by the responsible party on the notice of appeal.

(d) The failure of any person with an interest in the property to receive such properly addressed notice of the hearing shall not affect the validity of any proceedings under this chapter. Service by first class mail shall be effective on the date of mailing.

(e) Failure of any person to file an appeal in accordance with the provisions of this section shall constitute a waiver of that person's rights to contest the merits of the citation and the imposition of the nuisance abatement fee.

(f) The Community Relations Commission or hearing officer shall conduct an orderly fair hearing and accept evidence on which persons commonly would rely in the conduct of their business affairs as follows:

(1) A valid citation and any additional report submitted on behalf of the City shall constitute presumptive evidence of the facts contained in those documents and prima facie evidence of the violation;

(2) The Community Relations Commission or hearing officer may conduct the hearing informally, both as to the rules of procedure and admission of evidence, and in any manner which will provide a fair hearing to obtain additional evidence;

(3) The owner, agent, responsible party, or any other interested person may present testimony or evidence concerning the violation and the means and time frame for correction; and

(4) The failure of any alleged violator to appear at the hearing after proper notice or, in the alternative, to present written or other evidence shall constitute an admission of the violation and an exhaustion of administrative remedies that will bar judicial review.

(g) The City shall establish all appropriate administrative regulations for conducting hearings and rendering decisions pursuant to this section.

(h) The Community Relations Commission or hearing officer shall determine whether to affirm or dismiss the administrative citation. The Commission or hearing officer may reduce, waive or conditionally reduce the nuisance abatement fee stated in the citations or any late fees assessed based on a showing of good cause. The Commission or hearing officer may impose conditions and deadlines for correction of violations and make such direction to enforcement officers to assure compliance.

(i) The Community Relations Commission or hearing officer shall make findings based on the record of the hearing and make a written decision based on the findings. The City shall preserve all exhibits submitted by the parties for a 180-day period and shall serve the decision by first class mail on the contestant within 10 working days after the hearing. The decision of the Commission or hearing officer may be appealed to the City Council in writing within 10 working days of the day the Commission's or hearing officer's decision is served. The appeal before the City Council will follow the same procedures and requirements as the underlying appeal hearing before the Community Relations Commission or hearing officer.

Section 2. Section 2.21.010 of the San Mateo Municipal Code is amended as follows:

2.21.010 ORGANIZATION.

The Community Relations Commission of the City shall consist of no more than five members appointed by the Council. In making appointments, the Council shall insure that the persons appointed are representative of the neighborhoods and ethnic communities to be served by the Commission as hereinafter provided.

Each member of the Community Relations Commission shall serve at the pleasure of the Council and for a term of four years, or until the appointment and qualification of a successor. No member shall be eligible for reappointment after serving two consecutive four-year terms.

Section 3. Section 2.21.020 of the San Mateo Municipal Code is amended as follows:

2.21.020 MEETINGS.

The Community Relations Commission shall elect a chair and vice-chair to serve at the pleasure of the Commission. The Commission may adopt reasonable rules and regulations for the conduct of its business. A regular time and place of meetings shall be established and adhered to in the manner of holding public meetings for legislative bodies in the state. All meetings shall be open to the public unless by law otherwise provided.

Section 4. Section 2.21.030 of the San Mateo Municipal Code is amended as follows:

2.21.030 POWERS—DUTIES.

The Community Relations Commission shall have the following powers and duties:

(a) To conduct public hearings pursuant to Chapter 7.16.

(b) Reserved.

(c) To hear requests from the Director of the Community Development Department, or his or her designee, for orders to abate violations of Title 25 or Title 27, as provided in Chapter 7.16.

(d) To hear appeals for administrative citations pursuant to Section 1.10.060, except for administrative citation appeals relating to violations of Chapter 7.14, Chapters 23.06 through 23.56, Chapter 23.70, and Chapter 23.72 of this Code.

(e) To study, investigate, mediate and hold public hearings on community-wide problems arising in this City, especially those which may result in intergroup tensions or discrimination because of race, religion, color, ancestry or place of birth.

(f) To provide oversight of Federal, State or other grant programs that implement public service, housing, and community development programs, and make recommendations on those programs which may be assigned to them by the Council.

(g) To work with organizations of similar intent formulated by public agencies having jurisdiction within the City and with the Human Relations Commission of the County. To this end, a member shall be assigned as liaison to each group and shall attend the meetings thereof and report thereon to the Commission. Any person assigned as liaison from the County Commission, or other such group, to this Community Relations Commission shall be an ex officio member but shall have no vote.

(h) Such other powers and duties as maybe prescribed from time to time by ordinance or resolution of the Council.

The Community Relations Commission shall make recommendations to the Council to correct, reduce or eliminate existing inequalities and disadvantages and prepare, encourage and coordinate programs of voluntary affirmative action to insure the complete utilization of the human resources of this community for the betterment of all its inhabitants.

Section 5. Section 2.21.050 of the San Mateo Municipal Code is amended as follows:

2.21.050 APPEALS.

Decisions of the Community Relations Commission regarding violations of the San Mateo Municipal Code and public nuisances may be appealed to the City Council as set forth in this Code.

Section 6. Environmental Determination. This City Council Action is not a project subject to CEQA, because it is an organizational or administrative activity that will not result in direct or indirect physical changes to the environment. (CEQA Guidelines Section 15378(b)(5).)

Section 7. Severability. In the event any section, clause or provision of this ordinance shall be determined invalid or unconstitutional, such section, clause or provision shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

Section 8. Publication. This Ordinance shall be published in summary in a newspaper of general circulation, posted in the City Clerk's Office, and posted on the City's website, all in accord with Section 2.15 of the City Charter.

Section 9. Legislative History and Effective Date. This ordinance was introduced on Clerk to complete., and adopted on Clerk to complete., and shall be effective 30 days after its adoption.