



**CITY OF BRISBANE**  
**ADMINISTRATIVE**  
**CODE ENFORCEMENT**  
**HANDBOOK**

**ADMINISTRATIVE CODE ENFORCEMENT HANDBOOK  
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## ADMINISTRATIVE CODE ENFORCEMENT FLOW CHART

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**CITY DEPARTMENT DESIGNATIONS ON CITATION NUMBER:**

- AD-** ADMINISTRATIVE SERVICES
- CA-** CITY ATTORNEY
- CM-** CITY MANAGER
- CD-** COMMUNITY DEVELOPMENT / PLANNING
- FD-** FIRE DEPARTMENT
- M-** MARINA
- PD-** POLICE DEPARTMENT
- PW-** PUBLIC WORKS / CITY ENGINEER

## **Chapter 1 INTRODUCTION**

### **A. Methods of Code Enforcement.**

There are basically two methods of enforcing the Brisbane Municipal Code ("BMC") - judicial enforcement and administrative enforcement. Judicial enforcement involves the commencement of some form of lawsuit by the City against the responsible party, which could be either civil or criminal in nature. Types of civil actions might include a lawsuit to abate a public nuisance or a lawsuit to collect penalties for failure to obtain a required business license. Criminal enforcement is generally classified as either an infraction offense or a misdemeanor offense but both types of actions are initiated by the filing of a criminal complaint in the San Mateo County Superior Court. Infractions are punishable by fines only, ranging from \$100 to \$500 (and up to \$1,000 for violations of building and safety regulations). Misdemeanors are punishable by fines up to \$1,000 and may also include imprisonment for up to 6 months. Defendants charged with misdemeanors have a constitutional right to legal counsel and a jury trial. Regardless of whether the judicial enforcement action is civil or criminal, the matter must always be prosecuted through the court system. Delays are common and litigation, by its very nature, can be a rather costly way to get things done.

The administrative enforcement remedies provide the City with an alternative non-judicial method of dealing with code violations. Administrative enforcement begins with notices of violation and Citations or Compliance Orders issued by the City staff. Some code violations cannot be corrected and are over as soon as they are committed. In these cases, an Administrative Citation would be issued for payment of a fine, similar to a traffic ticket. Once the fine is paid, the enforcement action is completed and the file can be closed.

Where a violation is of a continuing nature and subject to correction, the goal of the administrative enforcement program is to accomplish the corrective action through voluntary compliance by the responsible person. The corrective action will be specified in either a Citation or a Compliance Order issued by the City staff. The responsible person can avoid paying a fine by simply completing the corrective action within the time set forth in the Citation or Compliance Order. If a hearing becomes necessary, it will be conducted by a Hearing Officer designated by the City Manager. The decision of the Hearing Officer will be final unless the responsible person files an appeal to the San Mateo County Superior Court to review the matter.

The judicial enforcement remedies and administrative enforcement remedies are not mutually exclusive. Since administrative citations do not represent criminal charges, a criminal infraction or misdemeanor complaint could be filed for the same code violation that may be the subject of an Administrative Citation. However, it is anticipated that the City will rely primarily upon the administrative enforcement remedies except in extreme cases where criminal penalties or judicial intervention may be appropriate.

The general code enforcement provisions of the Municipal Code are contained in BMC Chapter 1.14. The administrative enforcement provisions are contained in BMC Chapter 1.16, pertaining to Administrative Citations, and BMC Chapter 1.18, pertaining to Administrative Compliance Orders. Copies of these Chapters are included in this Handbook as Appendix B.

#### **B. Administrative Code Enforcement Forms.**

All of the administrative code enforcement forms referred to in this Handbook are included in Appendix A. The code enforcement forms can also be downloaded from the City's website in both Word and PDF formats as follows:

Go to the Brisbane Home Page at: <http://www.brisbaneca.org>. At the bottom of the Home Page, in the "Tools" column, click on "Staff Login". Ignore the "Access denied" message and in the User login section, type the user name "staff" (*not* the name you normally use to access your City email account). Then type the password "Starcity50" (again, *not* the password you normally use to access your City email account). At the top of the column on the right-hand side, click on the link "Administrative Code Enforcement Forms." This will take you to the same list of forms as Appendix A of this Handbook, one column being in Word format and the other column in PDF format.

The Word documents are intended to be loaded on your computer and can be edited by inserting the appropriate data. Use attachments if the description of the violation or the corrective action will require more space than is provided on the first page.

The PDF documents can only be downloaded and printed as-is, with blank lines to be completed by hand. PDF files are intended for use "in the field" where you do not have access to a computer and printer or, in some cases, for use by the public.

**C. What constitutes a "violation" of the Municipal Code?**

The term "code enforcement" is not limited to violations of particular sections of the Municipal Code. For purposes of administrative enforcement, a "violation" would include any of the following [see BMC Sections 1.16.010.A and 1.18.010.A]:

- Any violation of the Municipal Code;
- A violation of any other (uncodified) ordinance of the City;
- A violation of any rule, regulation or order promulgated or issued pursuant to the Municipal Code;
- A violation of any code adopted by reference by the Municipal Code; or
- A violation of any condition of an approval, permit, or license granted pursuant to the Municipal Code.

**D. Who has authority to enforce the Code?**

In the absence of a specific delegation, assignment, or restriction of enforcement authority to a particular officer, employee or agent of the City, all of the following City officers, and their respective authorized representatives, have enforcement authority: the City Manager, City Attorney, Chief of Police, Director of Administrative Services, Director of Public Works/City Engineer, Director of Community Development, Fire Chief, Harbor Master, Director of Parks and Recreation, Animal Control Officer, Building Official, and any Code Enforcement or Community Service Officer.

Despite this general delegation of authority, certain provisions of the Code will normally be enforced only by a particular department head and his or her representatives. For example, traffic regulations by the Police Chief, fire regulations by the Fire Chief, zoning regulations by the Planning Director, and building regulations by the Building Official. If the Code section refers to enforcement actions that may be taken by a specific officer of the City, then the authority to perform such actions should normally be limited to that officer or his or her designated representatives.

**E. Limits on administrative enforcement actions.**

Although Administrative Citations and Administrative Compliance Orders provide additional remedies to deal with code violations, they do not expand the investigative powers of the City. For example, if a code violation is suspected to exist upon a certain property and the owner refuses to voluntarily grant access to inspect the premises, it would still be necessary to obtain an inspection warrant from the court to enter upon the property. Contact the City

Attorney in such cases. Administrative Citations also do not confer upon the Enforcement Officer the authority to enter upon private property, without the owner's consent, to correct a code violation if the owner fails to do so. Again, a court order will normally be required unless there is an emergency that creates an immediate threat to the public safety that would justify a summary abatement of the hazardous condition.

Where a property owner does consent to entry upon the owner's property by the City, such consent should be in writing to avoid later denials by the owner that a consent was granted. There is no particular form for this consent. If you have a form you have used in the past, it can continue to be used. Some suggested language is included in Appendix A

#### **F. Enforcement of Administrative Citations and Compliance Orders.**

When a Citation is issued for payment of a fine, the fine becomes a debt owed to the City. If not paid within 30 days, a late charge of 1% per month will be added to the fine amount. Where the code violation involves real property, the City can place a lien on the property for the amount of the fine, plus late charges and administrative costs. The City can also bring a small claims action against the responsible person to collect the fine.

If the Citation or Compliance Order requires that certain corrective work be performed and the responsible person fails to correct the violation within the prescribed time, a Notice of Violation can be recorded against the property. Because this notice adversely affects the legal title, it usually is an effective means of achieving compliance. However, if the responsible person still refuses to correct the violation, it may be necessary to bring a legal action to obtain a court order that could subject the responsible person to being held in contempt of court if such order is ignored. At this point in the process, the existence of the violation would already have been established through the administrative proceedings conducted by the City and the purpose of the lawsuit would be to enforce the Administrative Citation or Compliance Order issued at the conclusion of such proceedings. However, as noted above, the objective of the administrative code enforcement program is to obtain voluntary compliance and avoid lawsuits, except as a last resort.

**Please contact the City Attorney's Office if you have any questions concerning the administrative code enforcement program or if you need any legal assistance. We would also appreciate your comments if you find that any existing City ordinances should be amended or any of the administrative code enforcement forms should be revised.**



**Chapter 2**  
**NOTICE OF VIOLATION**  
**Form CE-1**

**A. When Notice of Violation is used.**

Where a code violation involves unlawful actions or conditions that can be corrected, the enforcement process usually starts with the issuance of a warning notice and a request for corrective action to be taken. This can be done by sending the responsible person an informal letter on City letterhead, or a more formal Notice of Violation (Form CE-1), or both. Form CE-1 is preliminary to the actual administrative code enforcement procedure and is *not* required to be given before issuance of an Administrative Citation (Form CE-2) or an Administrative Compliance Order (Form CE-8). The Notice of Violation can be used to encourage voluntary compliance at an early stage and to help identify those persons who wish to work cooperatively with the City to resolve the violation and those persons who do not. If lack of cooperation is expected from the start, then the enforcement official may simply dispense with the Notice of Violation and initiate the administrative proceedings by issuing a Citation or Compliance Order.

**B. Completion of Form CE-1.**

If the violation is a condition existing on real property, the address of the property should be inserted along with a general description of the property, such as single family residence, retail store, office building, or vacant land. The Assessor's Parcel Number (APN) can be inserted, if known, but at this stage of the process, the APN is not critical and the Notice can be given without it.

The Notice should set forth a general description of the violation, the particular Section of the BMC that is being violated (or the particular condition of approval, if that is the violation), and the action required to correct the violation. Separate violations should be separately described. Use the Attachment if additional space is needed or if other documents will be delivered with the Notice. For example, if the violation is a condition of a use permit, a copy of the use permit condition could be set forth on the Attachment. It is not necessary to attach a copy of any BMC Code sections that have been violated since the Municipal Code is available to the public on-line at the City's website. However, the description of the violation should have sufficient detail to inform the responsible person of the actions or conditions that constitute the violation.

The time to be inserted for correction of the violation is within the discretion of the enforcement officer. Since the Notice of Violation is not required by the Municipal Code, the enforcement officer can insert any period of time he or she deems appropriate, depending upon the nature of the violation and the amount of prior contact with the responsible person. The time initially specified can always be extended if it appears that reasonable efforts are being made to accomplish the corrective action. Unlike the Administrative Citation discussed later, no fines or penalties will be imposed if the responsible person fails to correct the violation within the time specified in the Notice. However, the Notice does contain the threat that such failure may result in further code enforcement proceedings, including issuance of administrative citations and commencement of lawsuits.

**Chapter 3**  
**ISSUANCE OF CITATIONS AND COMPLIANCE ORDERS**

**A. Who are "responsible persons" who may be cited?**

The term "responsible person" is defined in BMC Sections 1.16.020.D and 1.18.020.D as "any person who is in immediate control of the premises or activity which constitutes a violation of an applicable law, the business owner, the property owner, and any person engaging in prohibited conduct." Any of these persons may be cited for a code violation and citations may be issued to more than one person for the same violation. For example, a landlord would be held responsible as a property owner for violations occurring on the owner's property that may have been committed by the tenant, who is also a responsible person.

**B. Service of Citation or Compliance Order.**

An Administrative Citation or an Administrative Compliance Order may be served in one of the following ways described in BMC Sections 1.16.040.A and 1.18.040.A:

- Personal delivery to the responsible person.
- Mailing a copy by certified mail, return receipt requested, to a location reasonably calculated to give notice to the responsible person, as determined by the enforcement officer. If the violation involves real property, the Citation or Compliance Order can be mailed to the owner of the property as shown on the assessment roll of the County, which is available at the front counter of the Community Development Department.
- If a Citation or Compliance Order sent by certified mail is returned by the U.S. Postal Service for inability to deliver, the Citation or Compliance Order may then be sent to the responsible person by regular mail.
- Where personal delivery or service by mail upon a property owner cannot be accomplished despite diligent efforts, a copy of the Citation or Compliance Order may be posted at a conspicuous location on the real property that is the subject of the Citation or Compliance Order.

**C. Declaration of service.**

After the Citation or Compliance Order has been served on the responsible person, the enforcement officer must complete and sign the Declaration of Service (Form CE-13) and put the signed Declaration in the file or other location where it can easily be retrieved. *Should legal proceedings later become necessary, the proof of service is critical evidence to establish that the responsible person has been duly notified of the enforcement action. Without such*

*evidence, a lawsuit by the City against the responsible person could be dismissed for lack of due process.*

**D. Fine schedule.**

The Citation Forms (CE-2 and CE-3) contain check boxes to indicate the amount of the administrative fine. The amount of the fine is established in BMC Section 1.16.060.A as \$100 for the first citation, \$200 for a second citation for the same violation issued within 12 months from the first citation, and \$500 for each additional citation for the same violation issued within 12 months from the first citation.

Although most of the administrative fines will be based upon BMC Section 1.16.060.A, there are several violations in the Municipal Code for which a different amount is specified – usually lower. For example, the fines for violation of the skateboard park regulations are \$5, \$10, and \$20 [BMC 8.48.030], and the fines for engaging in certain recreational activities on the public street are \$50, \$75, and \$100 [BMC 12.28.040]. Consequently, before indicating a penalty amount on the Citation form, the Municipal Code should be checked to make sure that a different fine has not been specified.

There is a discrepancy in the State law with regard to fine amounts that should be noted because it is reflected in the City's Municipal Code. BMC Section 1.14.030 specifies fines for infraction offenses that are *not* enforced through administrative proceedings – i.e. judicial enforcement would be used. For infraction offenses that do not involve violation of building and safety regulations, the fines are the same as the administrative fines set forth in BMC 1.16.060.A (\$100, \$200 and \$500), but fines for violation of the building and safety regulations listed in BMC 1.14.030.C will be \$100, \$500, and \$1,000. Unfortunately, the state law authorizing use of administrative enforcement does not make this distinction and only allows administrative fines of \$100, \$200 and \$500, regardless of the nature of the violation. Consequently, if the administrative remedies in BMC Chapter 1.16 or 1.18 are used to enforce any violation of building or safety regulations, the higher penalties in Section 1.14.030.C should be ignored.

**Chapter 4**  
**ADMINISTRATIVE CITATION – FINE ONLY**  
**Form CE-2**

**A. When is Form CE-2 used?**

Some violations of the Municipal Code cannot be corrected after they are committed. These violations are similar to traffic offenses – once you are stopped for speeding, you can't go back up the street and slow down. All you can do is plead for mercy from the enforcement officer. Form CE-2 is intended to be used for this kind of violation. The Citation only requires payment of a fine, in the amount specified in the Form, and no corrective action is available or required. Form CE-2 is basically the same as a traffic ticket, except that the Citation and fines are processed through the City and not the County. However, this form is not intended as a substitute for traffic citations and parking tickets currently issued by the Brisbane Police Department (so pleading for mercy will still be necessary).

**B. Assignment of Citation number.**

At the top of Form CE-2 is a blank line for insertion of a Citation Number. Each City Department can determine its own numbering system and if you already have a system in place for identifying enforcement actions, there is no need to modify that system. The only requirement is that your own number be preceded by the initials identifying the City Department that issued the Citation. This identifier will be used by the Finance Department to classify and track the status of Citations. The City Department initials are as follows:

- AD-** Administrative Services
- CA-** City Attorney
- CD-** Community Development / Planning
- CM-** City Manager
- FD-** Fire Department
- M-** Marina
- PD-** Police Department
- PW-** Public Works / City Engineer

**C. Completion of Form CE-2.**

Because Citations could be issued for unlawful conduct of individuals rather than unlawful conditions on real property, Form CE-2 contains additional information not included on

the other Citation forms – such as driver's license number, personal data, and motor vehicle information. Part A of Form CE-2 should be completed only to the extent the information is relevant to the violation being cited. For example, if such violation does not involve use of a motor vehicle, then that portion of Part A can be left blank. But even if a motor vehicle is not involved, it is still recommended that personal information, such as driver's license number, birth date and sex, be completed on Form CE-2 for the purpose of clearly establishing the identity of the cited person.

As in the case of the Notice of Violation, the Citation should include a sufficient description of the violation and reference to the Code section to inform the cited person of the unlawful conduct. If a Citation is being issued for multiple violations, each should be separately described. If more space is needed, check the attachment box and use the Attachment Form CE-4.

With regard to the fine amount, see the discussion of this subject in Chapter 3, Part D of this Handbook. The due day for payment of the fine must be inserted in the bolded blank line on the front of the form. THIS DATE MUST BE 30 DAYS FROM THE DATE THE CITATION IS SERVED UPON THE RESPONSIBLE PERSON. If that date is a Saturday, Sunday or holiday when City Hall offices will be closed, then insert the next regular business day.

Please note that Form CE-2 is a two-page document, with the second page containing instructions on how the fine can be paid and also the process for filing an appeal if the cited person desires to contest the Citation before a hearing officer. If you are making a copy of Form CE-2 for service upon a responsible person, please be sure to copy both pages (preferably as a double-sided document).

**D. Processing after service of Citation on responsible person.**

After the Citation has been served on the responsible person by one of the methods described in Chapter 3, Part B of this Handbook, a copy of the completed Form CE-2 should be sent to the City Finance Department and a copy retained in the files of the issuing Department. Since no corrective action is required, the issuing Department is basically finished with the Citation and collection of the fine or the processing of an appeal will be handled by either the Finance Department or the City Clerk. The Enforcement Officer should complete the Declaration of Service (Form CE-13) and attach it to the Department's copy of the Citation.

The Finance Department will be responsible for collection of the fine and should notify the issuing Department when it has been paid. If an appeal is filed, the City Clerk should notify the issuing Department of that fact. No records of the issuing Department relating to the Citation should be destroyed until either (i) 12 months after the date of the Citation when the fine for that Citation has been paid in full; or (ii) 12 months after all appeal and enforcement proceedings on that Citation have been completed.

**Chapter 5**  
**ADMINISTRATIVE CITATION – CORRECTIVE ACTION**  
**Form CE-3**

**A. What is the difference between Form CE-2 and Form CE-3?**

As indicated in Chapter 4, Form CE-2 does not require that any corrective action be taken and a fine will always be payable, whereas corrective action is the main objective of a Form CE-3 Citation. But unlike the Notice of Violation discussed in Chapter 2 that has no immediate consequence if it is ignored, in the case of an Administrative Citation using Form CE-3, there will *automatically* be a fine imposed if the corrective action is not completed within the time specified in the Citation and such fine will be immediately due and payable. On the other hand, if the corrective action is completed to the satisfaction of the Enforcement Officer, then no fine whatsoever will be imposed and the Department's file on this violation can be closed.

Where a responsible person fails to complete the corrective action and thereby becomes obligated to pay a fine, the responsible person is not relieved from the continuing requirement to complete the corrective action. If necessary, further code enforcement proceedings can be conducted. The Municipal Code provides that each day a violation continues shall constitute a separate offense [BMC 1.14.020.B]. Consequently, a second Citation can be issued for the same violation, with the increased fine amount, if the corrective action is not completed within the time specified in the first Citation. Likewise, a third Citation can be issued if the corrective action is not completed within the time specified in the second Citation, with a further increase in the fine amount. If multiple citations still do not result in an appropriate response from the responsible person, the matter should probably be referred to the City Attorney for commencement of civil and/or criminal code enforcement proceedings.

**B. Completion of Form CE-3.**

It is extremely important that the exact nature of each violation be described along with the particular corrective action to be performed since the responsible person will be exposed to liability for payment of a fine if such action is not completed. Use Attachment Form CE-4 if more space is needed. Confusion on the part of the responsible person as to what is expected by the City will defeat the goal of prompt and cost-effective administrative enforcement proceedings.

There is a window of opportunity between the issuance of the CE-3 Citation and the imposition of a fine during which the Enforcement Officer can work with the responsible person



to establish a plan and time line for performance of the corrective action. This window of opportunity can be fully controlled by the Enforcement Officer. BMC Section 1.16.050 specifies a *minimum* time of 10 days (in the absence of an immediate danger to health or safety that may require a shorter period), but no deadline for completion of the corrective work is mandated by the Code. The completion deadline date to be inserted in the CE-3 Form is solely within the discretion of the Enforcement Officer and he or she may grant any number of extensions for any lengths of time as may be appropriate, depending upon the level of cooperation and compliance by the responsible person.

The amount of administrative fines to be checked in the CE-3 Form are the same as the CE-2 Form. This form is also a two page form so any service of copies should include both pages (double-sided preferred). Following service of the Citation, the Enforcement Officer should complete the Declaration of Service (Form CE-13) and attach it to the Department's copy of the Citation.

**C. Processing after service of Citation on responsible person.**

The CE-3 Citation should remain within the issuing Department for as long as efforts are continuing to accomplish the corrective action, or an appeal is being processed, and no administrative fine becomes payable. If the corrective action is completed to the satisfaction of the Enforcement Officer, the file can then be closed. But if the responsible person fails to complete the corrective action within the time required by the Enforcement Officer and a fine then becomes payable, a copy of the Citation should be sent to the City Finance Department for collection of the fine. The issuing Department would continue to be primarily responsible for monitoring the situation and the efforts being made, if any, by the responsible person to complete the corrective action.

**Chapter 6**  
**APPEAL OF ADMINISTRATIVE CITATION**

**A. Notice of Appeal (Form CE-5).**

Any person served with an Administrative Citation (either CE-2 or CE-3) has a right of appeal to contest the Citation. An appeal may dispute that the violation described in the Citation has actually occurred or that the cited person is responsible for such violation. An appeal is initiated by the cited person filing a Notice of Appeal with the City Clerk *within 10 calendar days from the date of service of the Citation*. Any notice submitted after this time limit should be rejected.

The cited person can use Form CE-5 as the Notice of Appeal. This form will be available on the City's website for download by the public or may be obtained from the City Clerk. However, the form is only intended for the convenience of the public and use of Form CE-5 is not required. The required contents of a notice of appeal are listed on page two of both Citation forms and as long as this information is provided to the City Clerk, the appellant can submit any form of written appeal.

Upon receipt of a Notice of Appeal, the City Clerk should send a copy of the notice to the issuing Department and to the City Manager. If the notice is accompanied by the advance deposit of the fine, a copy of the notice along with the fine should be forwarded to the Finance Department.

**B. Application for Advance Deposit Hardship waiver (Form CE-6).**

A notice of appeal must be accompanied by either a cash deposit for the full amount of the administrative fine, or a completed Application for Advance Deposit Hardship Waiver (Form CE-6). Form CE-6 will also be available on the City's website for download by the public or may be obtained from the City Clerk. The decision on the application will be made by the City Manager, or the Manager's designee, and may be granted if the Manager determines that the appellant is financially unable to pay the advance deposit of the fine. Financial inability can be established by the applicant showing that he or she has qualified, or would be qualified, for participation in a public or private assistance program available only to persons having low or very low income, such as subsidized housing, food stamps, SSI, Medi-Cal, or California LifeLine.

If the application for an advance deposit hardship waiver is granted by the City Manager, the appeal will be scheduled to be heard by the Hearing Officer. If the application is denied, the appellant must deposit the full amount of the fine within 10 days after service of the denial or the appeal will be dismissed. The decision by the City Manager shall be final.

**C. Selection of Hearing Officer.**

Following the timely filing of a completed notice of appeal, a Hearing Officer will be designated by the City Manager. Although this should be done within a reasonable time after receipt of the notice of appeal, no deadline for the appointment is imposed by the Municipal Code. The Hearing Officer may not be an enforcement officer or the direct supervisor of an enforcement officer and may be a non-employee of the City. (See BMC 1.16.020.C and 1.18.020.C). In order to satisfy requirements of due process, the Hearing Officer must have no prior involvement with the Citation and must be capable of exercising his or her own independent judgment on the appeal.

**D. Notice of Hearing (Form CE-7).**

After the Hearing Officer has been assigned to the appeal by the City Manager, the City Clerk must send a Notice of Hearing (Form CE-7) to the appellant, with copies to the Hearing Officer and the Enforcement Officer. The hearing must be scheduled on a date that is not less than 10 days or more than 60 days from the date the Notice of Hearing is issued by the City Clerk. This time frame may be either shortened or extended if the Hearing Officer determines that the matter is urgent and needs to be heard sooner, or that good cause exists for an extension of time.

**E. Conduct of administrative hearing.**

The administrative hearing is intended to be informal in nature. The appellant can elect to be represented by legal counsel or any other person but is not required to do so. Whether appearing personally or through a representative, the appellant has the right to give testimony, present evidence, and cross examine witnesses concerning the administrative citation. Formal rules of evidence would not be followed, but the Hearing Officer has discretion to exclude anything not considered relevant to the subject matter of the Citation.

The Hearing Officer shall have authority to continue the hearing and request additional information from the appellant or the enforcement officer prior to rendering a decision on the

appeal. All administrative hearings shall be open and public, but members of the public who are not attending the hearing as witnesses for either the appellant or the enforcement officer shall not have a right to speak at the hearing, unless allowed by the Hearing Officer. In other words, the administrative hearings are open to the public but unlike meetings of the City Council or City Commissions, they are not public hearings and no opportunity for "public comment" on the appeal will be extended.

A failure by the appellant to appear at the hearing (either personally or through a representative) after proper notice of the hearing has been given, or to present evidence for consideration at the hearing, shall result in a forfeiture of the fine and failure to exhaust administrative remedies that may be required for judicial review of the Hearing Officer's decision.

#### **F. Decision of Hearing Officer.**

The Hearing Officer must render his decision within a reasonable time after the conclusion of the administrative hearing, but no specific deadline is specified in the Code. The decision must be in writing, with copies sent to both the appellant and the enforcement officer.

If the Citation is upheld by the Hearing Officer, the City shall retain the advance deposit of the fine. Where an advance deposit waiver has been granted, the fine must be paid within 30 days after the date the Hearing Officer's decision is served on the responsible party. In addition to the amount of the fine, the Hearing Officer may assess administrative costs against the responsible person, including all costs incurred by the City for inspection and investigation of the violation and staffing costs incurred in preparation for the hearing and the costs to conduct the hearing. **Please keep a record of your time spent and description of services for each citation. This record will be presented to the Hearing Officer in support of the City's request for recovery of administrative enforcement costs.**

If the Hearing Officer finds that no violation has occurred, or that the cited person is not responsible for the violation, the Hearing Officer shall order that the Citation be cancelled and the City shall promptly refund the advance deposit of the fine to the appellant.

The decision of the Hearing Officer shall be final, subject only to a request for judicial review being filed with the San Mateo County Superior Court within 20 days from the date of the decision.

**Chapter 7**  
**ADMINISTRATIVE COMPLIANCE ORDER**  
**Form CE-8**

**A. Difference between Forms CE-3 and CE-8.**

On its face, the Administrative Compliance Order (Form CE-8) appears to be the same as the Administrative Citation – Requirement for Corrective Action (Form CE-3). Both must contain a detailed description of the violation, a detailed description of the correction action required to be taken, and a deadline date by which such corrective action must be completed. But the main difference is that upon a failure to complete the corrective action required by the Administrative Citation (Form CE-3), a fine will automatically be imposed, but upon a failure to complete the corrective action required by a Compliance Order (Form CE-8), the next step will be the scheduling of a hearing before a Hearing Officer. This hearing is initiated by the Enforcement Officer rather than being requested by the responsible person through a notice of appeal. No fines are specified in the Compliance Order but the instructions on the second page will serve to put the responsible person on notice that administrative penalties and costs may be imposed by the Hearing Officer, in this case up to \$1,000 in penalties plus costs.

In general, the Administrative Citation (Form CE-3) should be used for violations that are capable of being cured in a straight-forward manner within a limited, ascertainable period of time. The corrective action would not require extensive supervision or monitoring by the City and the fines would fall within the normal range of infraction offenses. Administrative Compliance Orders (Form CE-8) should be used for more complicated violations that may require extensive involvement by City staff over a longer or uncertain period of time, and should *always* be used for misdemeanor offenses where fines up to \$1,000 are being sought. In these cases, the Hearing Officer may need to assume a role similar to an arbitrator who is directing an on-going activity, with authority to impose penalties and costs against the violator.

Another situation that may be appropriate for use of a Compliance Order is where the responsible person and the Enforcement Officer cannot agree on the nature or extent of the corrective action that should be taken. The argument here is not about money but about conduct. This impasse can be resolved by the issuance of a Compliance Order that will operate to have the dispute referred to an impartial Hearing Officer for a final decision.

It is expected that most of the time, the Administrative Citation (Form CE-3) will be sufficient to handle violations that may be cured through corrective action. However, the forms are not intended to be mutually exclusive. An enforcement action may start with issuance of an Administrative Citation (CE-3) and upon failure of the responsible person to correct the violation or file an appeal from the Citation, the Citation could be followed with the issuance of a Compliance Order (CE-8), which will bring the matter to a Hearing Officer if the Order is ignored. The requirement to attend a hearing may have a greater impact on the responsible person. Moreover, if later judicial proceedings are required, the hearing could serve to expedite that lawsuit since the City would request the court to rely upon and enforce the decision of the Hearing Officer.

The Compliance Order number to be inserted at the top of Form (CE-8) can be the same system of numbers used by the City Department for Citations or, if the Department head prefers, a distinction can be made between Compliance Orders and Citations. The decision rests with the Department head. Regardless of numbering system that is used, it should be preceded by the appropriate Department designation listed at the beginning of this Handbook.

**B. Notice and conduct of hearing on Compliance Order (Form CE-10).**

The length of time between the issuance of a Compliance Order and the scheduling of a hearing is totally within the control of the Enforcement Officer. The Enforcement Officer can devote whatever time and effort he or she deems appropriate toward working with the responsible person to correct the violation. The time for completion of the corrective work set forth in the Compliance Order can be extended for whatever periods the Enforcement Officer may allow, depending upon the circumstances in each individual case.

But when it becomes clear to the Enforcement Officer that the corrective action will not be accomplished within a reasonable period of time, the Enforcement Officer should request the City Manager to appoint a Hearing Officer and request the City Clerk to communicate with that Hearing Officer and schedule a time for an administrative hearing. The City Clerk would then send a Notice of Hearing on Administrative Compliance Order (Form CE-10) to the responsible person, with copies to the Hearing Officer and the Enforcement Officer. Please note that this is a two page document so both pages should be sent (double-sided preferred).

The date of the hearing must be not less than 10 days or more than 60 days from the date the notice of hearing is issued, unless the Hearing Officer determines that the matter is

urgent and needs to be heard sooner or that good cause exists for an extension of time. [BMC 1.18.050.B]. The hearing would be conducted in the same manner as an administrative hearing on a Citation, as described in Chapter 6, Part E, of this Handbook. As in the case of an administrative hearing on a Citation, the failure by the responsible person to appear at the hearing, either personally or through a representative, or to present evidence for consideration at the hearing, shall constitute a failure to exhaust administrative remedies that may be required for judicial review of the Hearing Officer's decision. Even if judicial review is allowed, the responsible person could be barred from presenting evidence to the court that could have been presented at the administrative hearing.

**C. Decision of Hearing Officer.**

Within a reasonable time following the conclusion of the hearing, the Hearing Officer shall make findings and issue a decision on each violation specified in the Compliance Order. If the Hearing Officer determines that the violation does exist and has not been corrected, and that the person subject to the Compliance Order is responsible for such violation, the Hearing Officer shall issue an Administrative Order for: (i) correction of the violation, including a schedule for performance of the corrective work, if appropriate; (ii) payment of administrative penalties; and (iii) payment of administrative costs. The factors to be considered in establishing the amount of administrative penalties are set forth in BMC 1.18.090. As in the case of citations, the Enforcement Officer should keep a record of time spent and description of services for each Compliance Order to support a request for recovery of administrative costs.

The Administrative Order shall be final, subject only to a request for judicial review being filed with the San Mateo County Superior Court within 20 days from the date of the decision.

**Chapter 8**  
**ENFORCEMENT OF CITATIONS AND COMPLIANCE ORDERS**

**A. Failure to pay fines, penalties or administrative costs.**

Administrative fines imposed by Citations must be paid in full within 30 days from the date of the citation. Where an appeal has been filed and the Citation is upheld on appeal, the administrative fine and administrative costs established by the Hearing Officer must be paid within 30 days from the date the Hearing Officer's decision is served upon the responsible person. [BMC 1.16.130.A].

Administrative penalties and administrative costs charged to the responsible person by an Administrative Order issued by the Hearing Officer following the conduct of a hearing on a Compliance Order are payable at the time and in the manner prescribed by the Administrative Order. [BMC 1.18.090.D]. The Hearing Officer has discretion to suspend payment during period of time in which applications are being processed by the City for permits to perform the corrective work.

A late charge shall be added to any fines, penalties, or administrative costs that are not paid when due, in an amount equal to 1% per month of the delinquent payment. The fines, penalties and costs become a personal obligation owed to the City by the responsible person that may be collected through any lawful means, including a lawsuit against the responsible person for a money judgment, or the recording of a lien against real property if the violation relates to that property.

It should also be noted that BMC Section 1.14.120 provides that where an application is submitted to the City for any form of permit, approval, license, or other entitlement relating to real property on which the City has found a Code violation to exist and has initiated any enforcement action based upon such violation, the City may refuse to accept and process such application until the outstanding code violation has been corrected, or corrective action has been commenced to the satisfaction of the Enforcement Officer.

**B. Assessment of lien against property.**

If the fines, penalties, and administrative costs are not paid in full within 90 days from the date they became due, in cases where the violation involves any real property the City may elect to collect such amounts by recording a lien against such property. The process for



assessment of such lien is set forth in BMC 1.16.140 and BMC 1.18.130, and may be summarized as follows:

- The Enforcement Officer files a report with the City Clerk showing the amounts due and owing, the address and APN for the property, name and address of the record owner, and a copy of the Hearing Officer's decision.
- The City Clerk fixes the time, date and place for the City Council to consider the report and hear any protests or objections to the proposed lien, and gives notice of such hearing, along with a copy of the report, to the property owner at least 10 days prior to the hearing.
- The City Council conducts a hearing on the proposed assessment and adopts a resolution confirming, discharging, or modifying the amount of the lien, based upon evidence presented at the hearing.
- If the lien is confirmed by the City Council, the City Clerk shall record the lien in the office of the San Mateo County Recorder.
- The lien may be foreclosed by the City in the same manner as a judgment lien.

**Chapter 9**  
**RECORDED NOTICE OF CODE VIOLATION**

**A. Use of recorded Notice of Code Violation.**

Where a code violation is a condition that exists upon any real property, the City can record of notice of such violation against the property. This can sometimes operate as a very effective means of achieving compliance because it is unlikely that any prospective buyer or lender would approve a legal title showing an outstanding code violation.

The recording of a Notice of Code Violation can be combined with other enforcement remedies, such as the issuance of a Citation or Compliance Order. But it is not required to be used with other remedies and may serve as a "stand-alone" response to the violation. The enforcement process could be implemented through a series of actions, starting with the issuance of a warning notice (Form CE-1), followed by the recording of a Notice of Code Violation (Form CE-12), and if those actions are not effective, Citations or Compliance Orders can be issued to begin the assessment of fines, penalties and administrative costs.

The recording a Notice of Code Violation is governed by BMC 1.14.140 and is described in Parts B and C of this Chapter.

**B. Notice of Intent to Record Notice of Code Violation (Form CE-11).**

The process of recording a Notice of Code Violation is commenced by sending the property owner a Notice of Intention to Record Notice of Code Violation (Form CE-11). A copy of this Notice should be sent to everyone shown as an owner of the property on the assessment role, which is kept at the front counter of the Community Development Department. A copy of the Notice of Intent must also be posted upon the property. The property should be identified by *both* street address (if any) and Assessor's Parcel Number. The nature of the code violation should be described in sufficient detail to inform the owner of the condition that has prompted the notice. This form is *not* intended to deal with corrective action or establish any time limit for the completion of such action.

Form CE-11 can be signed by any City representative listed in BMC Section 1.14.010 as having authority to enforce the Municipal Code. This would include the City Manager, City Attorney, Chief of Police, Director of Administrative Services, Director of Public Works/City Engineer, Director of Community Development, Fire Chief, Harbor Master, Director of Parks and

Recreation, Animal Control Officer, Building Official, any Code Enforcement or Community Service Officer, and their respective authorized representatives.

Upon receipt of a Notice of Intention, the property owner may elect to request a hearing before a Hearing Officer to contest the violation. The request must be submitted to the City Clerk within 20 days from the date of the Notice. If a request is received, the City Clerk should forward a copy to the City Manager and the Enforcement Officer who signed the Notice. The City Manager would appoint a hearing officer and notice of the hearing would be given by the City Clerk to the property owner and the hearing would be conducted in the same manner as the hearing on a Compliance Order. The decision of the Hearing Officer will be final, subject only to judicial review.

If no hearing is requested within the prescribed time, or if the Hearing Officer determines that the violation does in fact exist, the Enforcement Officer should proceed to sign and record the Notice of Code Violation. The Notice will remain on record until the violation has been fully corrected and no longer exists.

### **C. Completion of Notice of Code Violation (Form CE-12)**

Since the Notice of Code Violation will be recorded, it is necessary to include a legal description of the property having sufficient detail to enable identification by the County Recorder's Office. If available in the City files, the complete legal description, as it would appear on a deed or in a title report, should be used. Check to see if the property owner has applied to the City for any form of land use entitlement and submitted a title report as part of that application. For a nominal charge, a title company might be willing to provide a copy of the most recently recorded deed pertaining to the property, which should contain the complete legal description. If the complete legal description cannot be obtained, use the street address and the Assessor's Parcel Number.

The description of the violation to be inserted in the Notice of Code Violation can be very brief and need only indicate the general nature of the violation. Include the BMC sections that have been violated but there is no need to go into any great detail. The purpose of this document is only to put third parties on notice that a violation exists and if they wish more information, they should contact City Hall.

The Notice of Violation can be signed by the same Enforcement Officer who signed the Notice of Intent. The signature of the Enforcement Officer *must* be notarized and this can be done by the City Clerk.

The completed Form CE-12 should be given to the City Clerk for transmittal to the County Recorder. After the original recorded Notice of Violation is returned to City Hall by the Recorder, the City Clerk should provide a copy to the Enforcement Officer who signed the Notice.

If the violation is corrected to the satisfaction of the Enforcement Officer, upon the request of the property owner or other interested person, the Enforcement Officer shall furnish a notice of cancellation of the previously recorded Notice of Violation (Form CE-12.1).

Contact the City Attorney if you need any assistance with the preparation and recording of either the Notice of Code Violation (CE-12) or the Cancellation of Notice of Code Violation (CE-12.1).