COUNCIL AGENDA: 8/26/25
FILE: 25-890
ITEM: 2.19

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Chris Burton

SUBJECT: **Amendment of the San José Municipal Code to Increase the Maximum Administrative Penalties**

DATE: August 4, 2025

Approved

Date: 8/13/25

COUNCIL DISTRICT: Citywide

RECOMMENDATION

Approve an ordinance of the City of San José amending Title 1 General Provisions, Section 1.13.150 of Chapter 1.13 and Section 1.14.090 of Chapter 1.14 of the San José Municipal Code to increase the per day maximum administrative penalty amount from $2,500 to $10,000 for each ongoing violation; and increase the maximum administrative penalty from $100,000 to $500,000 exclusive of administrative costs, interest and restitution for compliance re-inspections, for any related series of violations.

OUTCOME

Approval of the ordinance amendments will implement City Council Rules and Open Government Committee's direction on August 30, 2023 and subsequent direction as part of City Council's approval of the Code Enforcement Operational Assessment Report on May 13, 2025 relating to increasing the maximum administrative penalty from $100,000 to $500,000 to deter violations, encourage compliance, protect properties and the community, and hold negligent property owners accountable.

BACKGROUND

On August 30, 2023, the Rules and Open Government Committee approved a memorandum, *Holding Negligent Property Owners Accountable and Protecting and Preserving the Former First Church of Christ Scientist Building,*[1] authored by Mayor Mahan, Vice Mayor Kamei, and Councilmembers Foley and Torres, and staff's Early

[1] https://sanjose.legistar.com/LegislationDetail.aspx?ID=6324863&GUID=E406C8DE-FE3B-4940-8B7B-988A27AFBBAE

Consideration Form, and directed the City Manager, or her designee, to coordinate with the City Attorney's Office to increase the maximum administrative penalty that can be applied to property owners responsible for chronic code violations involving designated city, state, or federal landmarks from $100,000 to $500,000 and consider increasing the maximum daily fine from $2,500 to $10,000.

As part of the Code Enforcement Operational Assessment Report to the City Council on May 13, 2025, staff informed the City Council of its plans to bring forward for consideration an increase to the maximum administrative penalty for violations involving prominent historic properties to $500,000 in summer 2025. The Code Enforcement Operational Assessment Report was approved by City Council, including returning to Council with the ordinance amendment in summer 2025 and broadening the amendment to apply the increase in penalties to all properties, not just prominent historic properties.

The Department of Planning, Building, and Code Enforcement and the City Attorney's Office have evaluated and recommends increasing the maximum administrative penalty from $100,000 to $500,000 and increasing the per day maximum administrative penalty from $2,500 to $10,000, as directed.

ANALYSIS

San José Municipal Code Process for Assessment of Administrative Penalties

Chapter 1.14 *Administrative Remedies* of the San José Municipal Code establishes a discretionary administrative process the City may use to address Municipal Code violations, in addition to any civil or criminal legal actions it may pursue. When an authorized Department Director determines a violation of the Municipal Code has occurred, the City may issue a compliance order to the property owner explaining the violation, how to correct it, a deadline to comply, potential penalties, and the right to appeal. Once issued, the property owner has 14 days to request a hearing with the Director of Planning, Building and Code Enforcement (the "Director"); otherwise, the compliance order becomes final. If a director hearing is held, the Director may uphold, modify, or cancel the compliance order. The Director's written decision can be appealed to the Appeals Hearing Board (the "Board") within 10 days. If the decision is appealed, the Board conducts a new hearing on the matter. If the property owner does not request a hearing with the Director and does not comply with the order, the basis for the issuance of the compliance order is deemed admitted, and the Board's role is to determine whether compliance with the compliance order has been achieved and to assess penalties for any noncompliance. In both instances, the Board may issue an Administrative Order confirming the violation, setting a correction deadline, assessing penalties (up to $2,500 per ongoing violation per day, up to a maximum penalty of

$100,000), and charging administrative costs. Once the violations are corrected and the property is confirmed to be in compliance, the per day penalties stop accruing; if not, the per day penalties continue up to the $100,000 maximum. If the penalties are not paid, the City may place an administrative remedy lien on the property, which the owner can protest at a public hearing. Once paid, the lien is removed. At any point after the Board's final decision, the owner may seek judicial review.

Currently, the Department of Planning, Building and Code Enforcement is the primary department utilizing the administrative remedies process to address violations on private property. In most instances, property owners comply voluntarily before a compliance order is issued. For example, in fiscal year 2024–2025, the General Code Program closed 3,292 cases, with 94% resolved through voluntary compliance. The remaining 6% required formal enforcement actions, such as the issuance of a citation or compliance order before reaching compliance. During that same fiscal year, the General Code Program issued 249 compliance orders, held 12 appeal hearings, and brought 14 cases before the Board for continued noncompliance, resulting in the assessment of administrative costs and daily penalties of up to $100,000.

Code Enforcement cases brought before the Board typically involve single-family residential properties that are out of compliance with the Building Code, Zoning Ordinance, Community Preservation Ordinance, or Solid Waste regulations. Businesses operating without the required zoning or building permits are also common. More recently, with the launch of the Enhanced Vacant Building and Storefronts Program—designed to address chronically vacant and problem properties—the Board has also heard cases related to violations of ongoing vacancy and neglect under the Neglected Vacant Building Ordinance.

Once a property moves through the administrative remedies process and begins accruing daily penalties, any unpaid penalties are collected by the Finance Department. The Finance Department brings outstanding administrative penalties to the Appeals Hearing Board for lien placement about twice a year. According to the most recent report from the Finance Department, the Code Enforcement Division issued $563,112 in administrative penalties in fiscal year 2024-2025 with approximately 18% of those penalties (or $54,571) collected by the Finance Department thus far.

When staff and/or the Appeals Hearing Board is determining the per day penalty, the Municipal Code requires the following be considered:

1. The duration of the violation.
2. The nature, frequency, and recurrence of the violation.
3. The feasibility of correcting or abating the violation.
4. Any good faith efforts made by the responsible party to prevent or mitigate the violation.
5. The financial impact of the proposed penalty on the responsible party.

6. The level of impact or disruption the violation had on the surrounding community.
7. Any additional factors that may be relevant to ensure a fair and just outcome.

Code Enforcement staff recommends a penalty amount to the Board based on the criteria outlined above. The Board then makes the final decision, also using these same criteria. Under the current maximum of $2,500 per day, typical recommendations range from $250 to $500 per day for more routine violations, and up to the full $2,500 per day for the more serious, impactful, repeated, and egregious public nuisance violations. Raising the maximum daily penalty from $2,500 to $10,000 would significantly increase the City's leverage, especially for the most problematic properties that continue to accrue daily fines without resolving violations.

Once a property has reached the maximum administrative penalty of $100,000 staff reviews the status of the case, severity of the outstanding violations, and the ongoing impact of the violations on the community for referral to the City Attorney's Office for legal action—such as filing a lawsuit, seeking a court injunction, obtaining a receiver, or pursuing collections. It is important to note that staff can refer a property to the City Attorney's Office at any stage of the enforcement process for legal action if the violations and condition of the property justify it.

Increasing the Maximum Administrative Penalty from $100,000 to $500,000

There are no specific monetary limits on the amount of a civil statutory fine. California Government Code Section 53069.4 gives authority to local agencies to make any violation of any ordinance subject to an administrative penalty if there is an administrative process to govern the enforcement and review of those penalties. The City has a well-established administrative process before imposition of penalties under Chapter 1.14 of the San José Municipal Code as described above. Although a civil fine is subject to the federal and state constitutional prohibitions against excessive fines, increasing the maximum penalty from $100,000 to $500,000 for chronic code violations should survive constitutional challenge. Some jurisdictions such as Oakland, San Diego, and San Francisco have imposed similar maximum penalty.[2] Courts have allowed local agencies to impose penalties greater than $500,000 for chronic violators in certain situations.

Increasing the Maximum Daily Administrative Penalty from $2,500 To $10,000

The City has the authority to adopt ordinances that impose penalties, provided those penalties do not exceed limits set by the City Charter. Under Article VI, Section 609 of

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[2] See Oakland Municipal Code Section 1.08.060 (maximum penalty of $365,000); San Diego Municipal Code Section 12.0803 (maximum penalty of $400,000 per parcel or structure for any related series of violations); San Francisco Planning Code Article 1.7, Section 176(c) (maximum penalty of $500,000 for alteration or damage to or demolition of historic property)

the Charter, the City may "prescribe punishment for each violation by a fine in an amount not to exceed that set by State law." Challenges to such penalties often center on whether they violate the federal or state constitutional prohibition against excessive fines.

A daily penalty of up to $10,000 per day is within range of other statutory penalties for activities that cause harm to the public or environment. For example, the Department of Fish and Game administers a daily penalty of up to $8,000 for constructing or maintaining devices in stream that impedes passing of fish. Similarly, the Health and Safety Code allows for daily penalties of up to $25,000 or $50,000 for violating hazardous waste laws. Although increasing the daily penalty to $10,000 will result in reaching the maximum penalty cap sooner (50 days compared to 200 days if the City adopts the $500,000 maximum penalty) and may provide the City more leverage in fostering compliance, it should be noted that the $10,000 daily penalty amount would be significantly greater than the daily penalty amount imposed by most jurisdictions in the Bay Area, such as Oakland and San Francisco.[3] In these jurisdictions, the maximum daily penalty amount is set at $1,000 per day. However, in other regions of the state, such as Los Angeles and San Diego, the maximum penalty per day varies based upon the use or the square footage of the improvement in violation from $1,000 per day to $16,000 per day for first violation, and up to $64,000 per day for third and subsequent violations.[4]

The current $2,500 per day penalty has shown to be effective in most instances in promoting voluntary compliance through outreach, education, and enforcement, resulting in most property owners addressing violations before penalties are assessed. While increasing the maximum daily penalty to $10,000 would better equip the City to potentially address severe or persistent violations and chronic violators, there is the possibility of disproportionately impacting disadvantaged or vulnerable populations. Maintaining the existing $2,500 per day penalty offers a balanced approach that supports effective enforcement while minimizing legal disputes and unintended hardships.

Fines and Penalties

The City should have a solid legal basis to impose significant penalties if it maintains a well-documented administrative record demonstrating a property owner's pattern of chronic code violations. Several California cities impose substantial daily fines, and certain annual and total limits, for ongoing violations, demonstrating a range of penalty

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[3] San Francisco Planning Code Article 1.7 Section 176(c)(1) ($1,000 per day); Oakland Municipal Code Section 1.08.060 ($1,000 per day)
[4] San Diego Municipal Code Chapter Section 12.0803; Los Angeles Municipal Code Article 1.2 Section 11.2.04 (penalty amount vary based on square footage of the improvement or use in violation from $1,000 per day to $16,000 per day for first violation, and up to $64,000 per day for third and subsequent violations)

structures. San Francisco charges $1,000 per day after a Notice of Violation, with additional fines up to $500,000 for unauthorized alteration, damage to, or demolition of historic properties. Oakland fines $1,000 per day, capped at $365,000 annually per parcel or structure for related series of major violations. Los Angeles calculates fines based on square footage of the improvement or use in violation, ranging from $1,000 per day for smaller infractions to $16,000 per day for large violations, with a maximum daily fine of $64,000. San Diego authorizes fines up to $10,000 per violation per day, with a total limit of $400,000 per parcel or structure for related series of violations. In addition, several state laws authorize substantial daily penalties for harmful and nuisance activities [that meet or exceed the amounts being proposed]. For example:

- Government Code §§ 66632, 66641.5(b): Up to $10,000 per day for unauthorized fill, extraction, or major land-use changes in the San Francisco Bay without a permit.
- Health & Safety Code § 25191: Up to $25,000 per day for the first violation—and up to $50,000 per day for the second—for mishandling hazardous waste.

These examples support the legal and policy precedent for strong financial penalties in cases where violations are serious, repeated, or pose significant risk to public safety or the environment.

With the City's well-established administrative remedies process, the Code Enforcement Division's consistent track record of thorough, fair, consistent, and ethical enforcement, and its close collaboration with the City Attorney's Office, the Planning, Building, and Code Enforcement Department is confident that administrative penalties will continue to be assessed fairly, appropriately, and in full compliance with the Municipal Code and applicable state and federal laws.

Racial Equity Impact Analysis

The proposed ordinance to increase the maximum administrative penalty from $100,000 to $500,000 is expected to strengthen the City's ability to address serious and repeat code violations, particularly those involving chronic neglect or noncompliance. While this action supports enforcement goals, it also carries equity considerations that must be considered to avoid unintended impacts on vulnerable populations.

Beneficiaries

Approval of the ordinance will likely benefit San José residents, particularly those in neighborhoods disproportionately affected by chronically blighted, unsafe, or vacant properties. Increased penalties would strengthen the City's ability to hold chronic violators accountable, protect community health and safety, and support compliance with blight, building, zoning, or other Municipal Codes. Property owners who follow the

Municipal Code may also benefit from more equitable enforcement. Preservation of historic resources may also improve due to greater monetary deterrents and penalties.

Potential Burdens

Property owners who repeatedly fail to address violations will face greater financial consequences under the proposed maximum penalty. While these tools are designed to target egregious and ongoing noncompliance, there is a risk that some small or low-income property owners may be disproportionately impacted—particularly those with limited access to legal, financial, construction, or other resources. Additionally, tenants residing in noncompliant properties may experience indirect costs if landlords attempt to pass compliance-related expenses onto renters.

Mitigation and Equity Strategies

To mitigate these potential risks, the Planning, Building, and Code Enforcement Department will continue to strengthen outreach and education efforts to encourage voluntary compliance—such as strategies used in the Focus Area Service Team (FAST) Pilot Program, which achieved a 61% compliance rate prior to formal enforcement. As part of the City Council-approved Operational Assessment Work Plan (Phase 2), staff will also work to enhance engagement with community-based organizations and other entities that support property owners through compliance assistance or repair programs, in alignment with Recommendation 3.2: *Invest in Community Education and Partnerships.*

For cases that require formal enforcement to achieve compliance, the City's administrative remedies process offers multiple opportunities for property owners to come into compliance and, if requested quickly, advances to a director hearing and right to appeal before any fines or penalties are assessed by the Appeals Hearing Board. Additionally, as previously noted, the Municipal Code requires staff and the Board to consider factors such as good faith efforts, financial hardship, and community impact when determining penalties, ensuring a balanced, fair, and ethical enforcement approach. These considerations allow for discretion, necessary to ensure penalties are applied consistently and equitably—while minimizing the risk of disproportionate or unjust outcomes.

Measuring Progress

Upon implementation of the new Code Enforcement Case Management System, CodeX, the Code Enforcement division hopes to develop more robust tracking of case outcomes by violation type, property type, enforcement tool, fine and penalty amounts, case disposition, etc. to evaluate how different enforcement strategies and processes impact the community and support compliance. Staff also plans to evaluate appeal data, compliance timelines, and the geographic distribution of cases to identify and address any unintended disparities over time.

EVALUATION AND FOLLOW-UP

As part of the Code Enforcement Operational Assessment Report presented to the City Council on May 13, 2025, the Council also directed staff to conduct a fine study. Through the 2024–2025 Annual Report, staff plans to submit a request to rebudget approximately $200,000 from fiscal year 2024–2025 to support professional consultant services for the Code Enforcement Division. If approved, staff will proceed with an agreement with Guidehouse Consulting to complete a Compliance Study. The study will include, but not be limited to, an evaluation of the current fine structure, its effectiveness in achieving compliance, and recommendations for revised or new fines, as well as potential tools and strategies to enhance enforcement. Staff anticipates returning to City Council in the third quarter of fiscal year 2025–2026 with a report on the study's findings and proposed amendments to the fine schedule.

COST SUMMARY/IMPLICATIONS

If approved, the increase in the per day maximum administrative penalty to $10,000 and maximum administrative penalty to $500,000 could result in additional General Fund revenue through the assessment and collection of higher penalties. The actual fiscal impact will depend on several factors, including the number of properties subject to administrative penalties, the daily penalty amount assessed, the duration of noncompliance, and the proportion of penalties ultimately paid. Revenue outcomes will also be influenced by the City's ability to successfully collect fines through the Finance Department's collections process and legal collection actions pursued by the City Attorney's Office.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the August 26, 2025 City Council meeting.

CEQA

Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/
Chris Burton
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For questions, please contact Rachel Roberts, Deputy Director, Planning, Building, and Code Enforcement Department, at rachel.roberts@sanJoséca.gov .