

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTION 1.13.150 OF CHAPTER 1.13 OF TITLE 1 AND SECTION 1.14.090 OF CHAPTER 1.14 OF TITLE 1 OF THE SAN JOSE MUNICIPAL CODE TO INCREASE THE PER DAY MAXIMUM ADMINISTRATIVE PENALTY AMOUNT FROM TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) TO ~~TEN~~ TWENTY THOUSAND DOLLARS (\$~~2~~40,000) FOR EACH ONGOING VIOLATION; AND INCREASE THE MAXIMUM ADMINISTRATIVE PENALTY FROM ONE HUNDRED THOUSAND DOLLARS (\$100,000) TO FIVE HUNDRED THOUSAND DOLLARS (\$500,000) EXCLUSIVE OF ADMINISTRATIVE COSTS, INTEREST AND RESTITUTION FOR COMPLIANCE REINSPECTIONS, FOR ANY RELATED SERIES OF VIOLATIONS

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure and Policy Making resulting in no changes to the physical environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 1.13.150 of Chapter 1.13 of Title 1 of the San José Municipal Code is amended to read as follows:

1.13.150 Administrative Penalties

- A. The Board may impose penalties upon persons responsible for creating, maintaining or fostering a public nuisance in an amount not to exceed a maximum of ~~Ten~~ Twenty Thousand Dollars (\$~~24~~20,000) per day for each day that the public nuisance occurs, except that the total administrative penalty imposed pursuant to this Chapter shall not exceed Five Hundred Thousand Dollars (\$500,000), exclusive of administrative costs and interest.
- B. In determining the amount of the penalty, the Board may take any or all of the following factors into consideration:
1. The period of time during which the public nuisance occurred;
 2. The nature, frequency and recurrence of the public nuisance;
 3. The ease with which the public nuisance could have been abated;
 4. The good faith efforts made to deter the public nuisance or ameliorate its effects;
 5. The economic impact of the penalty upon persons responsible for payment;
 6. The impact of the public nuisance on the community; and/or

7. Such other factors as justice may require.
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- C. Penalties imposed by the Board may accrue from a date no earlier than the compliance date specified in the Nuisance Abatement Cease and Desist Order and shall cease to accrue on the date the Nuisance Abatement Order has been complied with as determined by the City Attorney or the Board.
 - D. Penalties assessed by the Board shall be due by the date specified in the Nuisance Abatement Order.
 - E. Penalties assessed by the Board are a debt owed to the City and, in addition to all other means of enforcement, where the person against whom the penalties are assessed is an owner of the subject real property, may be enforced and collected through the placement of a lien against the subject real property.
 - F. Penalties shall continue to accrue on a daily basis until the Nuisance Abatement Order has been complied with, subject to the maximum amount set forth in this Section.
 - G. If a person subject to the Nuisance Abatement Order gives written notice to the City Attorney that the Nuisance Abatement Order has been complied with and if the City Attorney finds that compliance has been achieved, the date that the written notice was postmarked or personally delivered to the City Attorney or the date of the City's final inspection, whichever first occurred, shall be deemed to be the date of compliance with the Nuisance Abatement Order.

SECTION 2. Section 1.14.090 of Chapter 1.14 of Title 1 of the San José Municipal Code is amended to read as follows:

1.14.090 Administrative Penalties

- A. The Appeals Hearing Board may impose administrative penalties for the violation of any provision of this Code in an amount not to exceed a maximum of ~~Ten~~ Twenty Thousand Dollars (~~\$24~~0,000) per day for each ongoing violation, except that the total administrative penalty shall not exceed Five Hundred Thousand Dollars (\$500,000) exclusive of administrative costs, interest and restitution for compliance reinspections, for any related series of violations.
- B. In determining the amount of the administrative penalty, the Board may take any or all of the following factors into consideration:
1. The duration of the violation;
 2. The frequency, recurrence and number of violations, related or unrelated, by the same violator;
 3. The seriousness of the violation;
 4. The good faith efforts of the violator to come into compliance;
 5. The economic impact of the penalty on the violator;
 6. The impact of the violation on the community;
 7. Such other factors as justice may require.

- C. Administrative penalties imposed by the Board shall accrue from the date specified in the compliance order and shall cease to accrue on the date the violation is corrected as determined by the director or the Board.
- D. The Board, in its discretion, may suspend the imposition of applicable penalties for any or all of the periods of time during which:
 - 1. The violator has filed for necessary permits which are both:
 - a. Required to achieve compliance; and
 - b. Actively pending before the City, state or other appropriate governmental agency.
 - 2. The violator has pursued a good faith dispute of the validity of the compliance order through a hearing before the Director.
- E. Administrative penalties assessed by the Board shall be due by the date specified in the administrative order.
- F. Administrative penalties assessed by the Board are a debt owed to the City and, in addition to all other means of enforcement, if the violation is located on real property, may be enforced by means of a lien against the real property on which the violation occurred.
- G. If the violation is not corrected as specified in the Board's order to correct, administrative penalties shall continue to accrue on a daily basis until the violation is corrected, subject to the maximum amount set forth in Section 1.14.090.A. above.

- H. If the violator gives written notice to the Director that the violation has been corrected and if the Director finds that compliance has been achieved, the Director shall deem the date the written notice was postmarked or personally delivered to the Director or the date of the final inspection, whichever first occurred, to be the date the violation was corrected. If no written notice is provided to the Director, the violation will be deemed corrected on the date of the final inspection.

PASSED FOR PUBLICATION of title this ____ day of _____, 2025, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, MMC
City Clerk