

CHAPTER 2. PENALTY PROVISIONS

Sections:

- 1-2.01 Violations, Misdemeanors or Infractions
- 1-2.02 Prohibited Acts
- 1-2.03 Imposition of Penalties
- 1-2.04 Determination of Punishment
- 1-2.05 Place of Confinement
- 1-2.06 Fees, Charges, Licenses and Taxes Made a Civil Debt
- 1-2.07 Violations of Administrative Provisions
- 1-2.08 Public Nuisance
- 1-2.09 Continuing Violations
- 1-2.10 Alternate Civil Remedies

1-2.01 Violations, Misdemeanors or Infractions.

(a) Any person convicted of a misdemeanor under the provisions of this Code shall be punishable by a fine of one thousand dollars (\$1,000.00), or by imprisonment in the County Jail for a period not exceeding six (6) months, or by both such fine and imprisonment. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Code, or the provisions of any code adopted by reference by this Code, is committed, continued, maintained, or permitted by such person and shall be punishable accordingly.

(b) Any person convicted of an infraction under the provisions of this Code shall be punishable for a first conviction by a fine of not more than one hundred dollars (\$100.00), for a second conviction within a period of one (1) year by a fine of not more than two hundred dollars (\$200.00), and for a third or any subsequent conviction within a period of one (1) year by a fine of not more than five hundred dollars (\$500.00).

(1) Pursuant to Government Code Section 36900, a violation of a building and safety code determined to be an infraction is punishable by a fine not exceeding one hundred thirty dollars (\$130.00) for the first violation, a fine not exceeding seven hundred dollars (\$700.00) for a second violation of the same ordinance within one (1) year, and a fine not exceeding one thousand three hundred dollars (\$1,300.00) for each additional violation of the same ordinance within one (1) year of the first violation; a fine not exceeding two thousand five hundred dollars (\$2,500.00) for each additional violation of the same ordinance within two (2) years of the first violation if the property is a commercial property that has an existing building at the time of the violation and the violation is due to failure by the owner to remove visible refuse or failure to prohibit unauthorized use of the property.

(2) Any infraction fines levied as result of a second or more violations of the same ordinance within one (1) year may be entitled to a hardship waiver. Any person seeking a hardship waiver must submit a written request within fifteen (15) days of issuance of the fine to the City Clerk's office to be reviewed by the City Manager. The hardship waiver request must include evidence that the responsible party has made a bona fide effort to comply with the first violation and that payment of the full amount of the fine would impose an undue financial burden on the responsible party, including evidence that the responsible party is enrolled in a State of California public assistance program, such as Medi-Cal. The City Manager shall issue a written determination on the hardship waiver request to be served by regular mail on the requesting party. The City Manager's determination on the hardship waiver is final and not subject to further appeal.

(c) In addition to the penalties provided by this section, any condition caused, maintained, or permitted to exist in violation of any of the provisions of this Code, or the provisions of any Code adopted by reference by this Code, or any subdivision, building, wiring, plumbing or other similar activity in violation of the provisions of this Code shall be deemed a public nuisance and may be summarily abated by the City in a civil action, and each day such condition continues shall be a new and separate offense.

(d) No person shall violate any provision or fail to comply with any of the requirements of this Code. In addition to any other legal remedies which may be pursued by the City, any violation of this Code may be subject to administrative citation as provided in Chapter 7 of this title.

(e) Notwithstanding any other provision of this Code, any person violating or failing to comply with only the following provisions of this Code shall be guilty of a misdemeanor:

Title	Chapter	Article/ Section	Chapter Description
4	2	Entire	Emergency Plans
4	11	Entire	Electric Personal Assistive Mobility Devices (EPAMD)
5	5	Entire	Card Rooms
5	8	Entire	Gas, Water and Electric Meters
5	9	.03 (For a subsequent violation occurring within ninety (90) days of first violation)	Intoxication; Consumption of Alcoholic Beverages on Public Streets or on Private Property Adjacent Thereto
5	20	2	Weapons; Saturday Night Special/Junk Gun Sales Prohibition
5	21	.12	Bingo Games; Profits; Separate Accounts; Records; Violations; Penalties
5	30	5-30.1.18(a) Entire	Regulation of Firearms Dealers
6	1	1.107	Animals and Fowl; Keeping of Vicious Animals Within City Prohibited
6	13	Entire	Stormwater Treatment Design, Management and Discharge Control Program
7	1	Entire	Datum Plane
7	5	.13	Grading; False Statements and Data
7	8	Entire	Wastewater Collection System
9	6	1.105	Subdivisions; Prohibitions

(f) Notwithstanding any other provision of this Code, any person violating or failing to comply with only the following provisions of this Code shall be guilty of an infraction:

Title	Chapter	Article/ Section	Chapter Description
4	2	Entire	Emergency Plans
4	5	Entire	Fire Code
4	6	Entire	Fireworks
4	8	Entire	Vehicles for Hire; Taxicabs; Limousines

Title	Chapter	Article/ Section	Chapter Description
4	10	Entire	Parking Meters
5	2	Entire	Advertising
5	4	Entire	Cabarets and Dances
5	9	Entire (Except for subsequent violation of Sec. 5.9.03 occurring within ninety (90) days is subject to misdemeanor)-02	Intoxication; Possession of Open Alcohol Beverage Container; <u>Consumption of Alcoholic Beverages on Public Streets or on Private Property Adjacent Thereto</u>
5	13	Entire	Noise
5	14	Entire	Obstructions to Streets and Sidewalks
5	20	Entire	Weapons
5	21	Entire (except Section 5-21.12)	Bingo Games
5	23	Entire	Community Events
5	24	Entire	Parks
5	29	Entire	Smoking Pollution Control
5	30	Entire	Regulation of Firearms
5	34	Entire	Signs on Public Sidewalks
5	38	Entire	Skateboard Facilities
6	2	.02 and .03	Dangerous and Insanitary Conditions; Littering and Accumulations: Public Places, Parks and Schools
6	6	Entire	Obstructions to Watercourses
6	13	Entire	Stormwater Treatment Design, Management, and Discharge Control Program
7	2	Entire	Excavations and Encroachments in the Public Right-of-Way
7	8	Entire	Wastewater Collection System
8	1	Entire	Building Code
8	2	Entire	Historical Building Code
8	3	Entire	Existing Building Code
8	4	Entire	Residential Code
8	5	Entire	Mechanical Code
8	7	Entire	Electrical Code
8	8	Entire	Green Building Standards

Title	Chapter	Article/ Section	Chapter Description
			Code
8	9	Entire	Property Maintenance Code
8	11	Entire	Dangerous Buildings Code
10	1	Entire	Rules and Regulations for the Emeryville Marina
10	1 and 2	Entire	Tidelands: Rules and Regulations for the Emeryville Marina; Activities in the Tidelands Within the City of Emeryville

(g) The following officers and their subordinates designated in writing to the City Manager shall have and are hereby invested with the authority to cite and/or arrest any person who violates the provisions of this Code set forth in subsections (e) and (f) of this section:

TITLE OF OFFICERS

Fire Chief

Chief Building Official

City Engineer

Police Officers

Community Preservation Officer

Director of Planning and Building

(h) The Council shall have the power to designate by written order that particular officers or employees shall be authorized to enforce the provisions of this Code set forth in this section in addition to those officers enumerated in subsection (g) of this section. Officers or employees so designated shall have the authority to cite and/or arrest persons who violate any of said provisions.

(i) An officer or employee designated pursuant to subsection (g) or (h) of this section shall be determinative of the enforcement powers of such officer or employee, notwithstanding a designation of a different officer or employee within the particular provision of this Code referred to in subsection (g) of this section.

(Sec. 1.7, E.T.C.; Ord. 81-04, eff. Nov. 19, 1981; Ord. 82-09, eff. June 1, 1982; Ord. 91-06 § 2, eff. Sept. 5, 1991; Ord. 94-011 §§ 2-4, eff. Sept. 4, 1994; Ord. 94-012 § 2, eff. Oct. 20, 1994; Ord. 95-003 § 2, eff. Mar. 9, 1995; Secs. 4, 5, 6, Ord. 99-011, eff. Nov. 6, 1999; Sec. 3, Ord. 02-010, eff. July 6, 2002; Secs. 3, 4, Ord. 03-006, eff. June 19, 2003; Sec. 2, Ord. 04-008, eff. July 15, 2004; Sec. 3, Ord. 06-001, eff. Mar. 9, 2006; Sec. 3, Ord. 06-005, eff. May 18, 2006; Sec. 4, Ord. 06-007, eff. Aug. 17, 2006; Sec. 3 (part), Ord. 06-021, eff. Mar. 1, 2007; Sec. 3, Ord. 07-004, eff. May 3, 2007; Sec. 3, Ord. 07-015, eff. Jan. 3, 2008; Sec. 3, Ord. 08-006, eff. Oct. 2, 2008; Sec. 3, Ord. 09-003, eff. July 16, 2009; Sec. 3, Ord. 09-004, eff. July 16, 2009; Sec. 3, Ord. 10-019, eff. Jan. 20, 2011; Sec. 4, Ord. 11-005, eff. June 2, 2011; Sec. 4, Ord. 11-011, eff. Nov. 17, 2011; Sec. 4, Ord. 12-001, eff. Feb. 16, 2012; Sec. 8, Ord. 12-003, eff. Mar. 8, 2012; Sec. 4, Ord. 12-005, eff. Mar. 8, 2012; Sec. 2, Ord. 14-001, eff. Mar. 6, 2014; Sec. 4, Ord. 15-005, eff. Aug. 20, 2015; Sec. 3, Ord. 15-007, eff. Oct. 1, 2015; Sec. 3, Ord. 17-011, eff. Nov. 2, 2017; Sec. 2 (Exh. 1), Ord. 22-015, eff. Jan. 19, 2023; Sec. 2, Ord. 24-007, eff. July 18, 2024)

1-2.02 Prohibited Acts.

Whenever in this Code any act or omission is made unlawful, it shall include causing, permitting, aiding, abetting, suffering, maintaining, or concealing the fact of such act or omission.

(Amended by Ord. 81-04, eff. Nov. 19, 1981)

1-2.03 Imposition of Penalties.

The provisions of this Code which declare certain crimes to be punishable as therein mentioned devolve a duty upon the court authorized to pass sentence to determine and impose the punishment described.

1-2.04 Determination of Punishment.

Whenever in this Code the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case shall be determined by the court authorized to pass sentence, within such limits as may be prescribed by this Code.

1-2.05 Place of Confinement.

Every person found guilty of violating any of the provisions of this Code and sentenced to imprisonment shall be imprisoned in the County Jail.

1-2.06 Fees, Charges, Licenses and Taxes Made a Civil Debt.

The amount of any fee, service charge, utility charge, license, or tax of any nature whatsoever imposed by any provision of this Code shall be deemed a civil debt owing to the City. An action may be commenced in the name of the City in any court of competent jurisdiction for the collection of the amount of any such delinquent or unpaid fee, service charge, utility charge, license or tax, together with any penalties applicable thereto as prescribed by this Code. The remedy prescribed by this section shall be cumulative, and the use of an action to collect such an amount as a debt by civil action shall not bar the use of any other remedy provided by this Code or by law for the purpose of enforcing the provisions thereof.

1-2.07 Violations of Administrative Provisions.

The violation of any administrative provision of this Code by any officer or employee of the City may be deemed a failure to perform the duties or to observe the rules or regulations of the department, office, or board within the meaning of the rules and regulations of the City or of the civil service regulations of the City.

1-2.08 Public Nuisance.

In addition to other penalties provided by law, any condition caused or permitted to exist in violation of any provision of this Code shall be deemed a public nuisance and may be summarily abated as such by the City, and each day such condition continues shall constitute a new and separate offense.

(Sec. 2 (part), Ord. 16-005A, eff. Nov. 17, 2016)

1-2.09 Continuing Violations.

It shall constitute a new and separate offense for each and every day during any portion of which a violation of, or failure to comply with, any provision or requirement of this Code is committed, continued or permitted by any person and shall be punished accordingly.

(Sec. 2 (part), Ord. 16-005A, eff. Nov. 17, 2016)

1-2.10 Alternate Civil Remedies.

In addition to the penal provisions provided in this chapter, and completely separate therefrom and cumulative thereto, at the sole discretion of the City, the City may institute appropriate civil actions or proceedings in a court of competent jurisdiction for the abatement, removal and enjoinder of any condition or activity declared by this Code to be or found to be a public nuisance.

(Sec. 2 (part), Ord. 16-005A, eff. Nov. 17, 2016)