

ORDINANCE NO. 4906

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

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**AN ORDINANCE AMENDING CHAPTER 5.158 OF THE SAN MATEO COUNTY
ORDINANCE CODE TO CLARIFY AND STRENGTHEN MINIMUM WAGE
ENFORCEMENT PROCEDURES BY AUTHORIZING THE OFFICE OF LABOR
STANDARDS AND ENFORCEMENT (OLSE) TO IMPLEMENT AND ENFORCE THE
MINIMUM WAGE IN THE UNINCORPORATED AREAS OF THE COUNTY**

The Board of Supervisors of the County of San Mateo (“County”) State of California, **ORDAINS** as follows:

WHEREAS, the County has the authority to regulate wages and labor conditions within its jurisdiction as an essential function of local governance, consistent with its power to protect public welfare, economic security, and fair employment practices; and

WHEREAS, on December 6, 2022, this Board adopted Chapter 5.158 of the San Mateo County Ordinance Code, which established a minimum wage to ensure that workers within the unincorporated area of the County receive fair compensation for their labor, recognizing that fair wages contribute to the economic stability and well-being of both employees and the broader community (“Minimum Wage Ordinance”); and

WHEREAS, robust enforcement of labor laws, including the Minimum Wage Ordinance, is a critical function of local government to prevent wage theft, discourage unfair business practices, and promote compliance among employers; and

WHEREAS, California Labor Code Section 1205(b) expressly authorizes local jurisdictions to enact and enforce minimum wage laws that exceed state standards,

thereby reaffirming the County's legal authority to implement labor protections beyond those in State law; and

WHEREAS, the Board of Supervisors established the Office of Labor Standards and Enforcement (OLSE) to enhance enforcement efforts and reduce wage and hour violations within the unincorporated area of San Mateo County; and

WHEREAS, to increase enforcement efficiency and streamline administrative procedures, this Board finds it appropriate to amend Chapter 5.158 of the San Mateo County Ordinance Code to do the following:

1. Integrate the OLSE into the enforcement framework of the Minimum Wage Ordinance; and
2. Provide for the assessment of citations and penalties; and
3. Clarify administrative procedures for investigating violations and assessing penalties; and
4. Establish transparent and efficient due process mechanisms for employers and affected parties.

WHEREAS, vesting the OLSE with responsibility to enforce the Minimum Wage Ordinance will enhance the County's ability to investigate violations, impose appropriate sanctions, and provide education and guidance to both employers and employees, thereby promoting compliance and reducing labor violations; and

WHEREAS, on October 10, 2023, the State of California enacted Assembly Bill (AB) 594, which explicitly conferred authority upon local public attorney offices, including

District Attorney's and County Counsel's offices, to initiate civil or criminal actions against employers for specified state Labor Code violations; and

WHEREAS, AB 594 reinforces the County's authority to pursue enforcement actions against noncompliant employers, aligning with the County's broader policy objectives of strengthening labor protections and deterring wage theft; and

WHEREAS, a review of minimum wage ordinances in comparable jurisdictions has demonstrated that granting explicit enforcement authority to a designated agency to conduct investigations, issue citations, and impose penalties significantly improves compliance rates and reduces instances of wage theft; and

WHEREAS, establishing clear administrative and judicial review processes enhances transparency, safeguards due process, and ensures fair enforcement, fostering a balanced approach that benefits both workers and businesses; and

WHEREAS, the Ordinance Code set forth herein align with the County's commitment to promoting equitable labor conditions, preventing wage theft, and protecting workers in unincorporated areas.

SECTION 1. Amendment of Chapter 5.158.

Chapter 5.158 of the San Mateo County Ordinance Code is hereby amended in its entirety to read as follows:

5.158.010 Purpose and Intent.

- (a) In enacting this Chapter, the Board of Supervisors recognizes the importance and value of workers in the unincorporated areas of San Mateo County and seeks to address the relatively higher cost of living in the County.
- (b) A higher minimum wage promotes the health, safety, and welfare of workers in the unincorporated areas of the County by requiring that employees be

compensated in a manner that enhances their standard of living and ensures fair labor practices that contribute to economic stability for workers and their families.

- (c) Establishment of a minimum wage above the State minimum wage that is commensurate with minimum wages adopted by towns and cities within San Mateo County underscores the Board of Supervisor's continued commitment to improve County residents' quality of life and acknowledge their significant economic contributions to the County.
- (d) Effective enforcement of labor laws, including the Minimum Wage Ordinance, is essential to deterring wage theft, preventing unfair business practices, and promoting employer compliance. The Board of Supervisors has determined that granting enforcement authority to the Office of Labor Standard ("OLSE") will strengthen the County's ability to investigate violations, issue citations, impose penalties, and provide outreach and education to both employers and employees.

5.158.020 Definitions.

- (a) "Administrative Appeal" means a request for review of an administrative citation issued by the Office pursuant to this Chapter, conducted in accordance with the administrative procedures established herein.
- (b) "Appellant" means any person who files an appeal challenging an administrative citation issued under this Chapter.
- (c) "Calendar Week" means a period of seven consecutive days starting on Sunday.
- (d) "CPI-W" means the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). It is a monthly measure of the average change over time in the prices paid by urban wage earners and clerical workers for a market basket of consumer goods and services. The CPI-W is based on the spending patterns of urban wage earners and clerical workers and is published by the Bureau of Labor Statistics (BLS).
- (e) "County" means the County of San Mateo.
- (f) "County Attorney" means the San Mateo County Attorney.
- (g) "County Executive" means the San Mateo County Executive Officer.
- (h) "County Minimum Wage" means the hourly wage rate set by Section 5.158.050.

- (i) “Employee” means any person who:
 - 1. In a Calendar Week performs at least two hours of work for an Employer within the unincorporated areas of the County; and
 - 2. Qualifies as an employee entitled to payment of a minimum wage from any Employer under the California Minimum Wage law, Section 1197, et seq. of the California Labor Code and wage orders published by the State of California Industrial Welfare Commission. Employees shall include learners.
- (j) “Employer” means any person, as defined in Section 18 of the California Labor Code, who directly or indirectly, including through the services of a temporary services or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of any Employee. “Employer” does not include any government agency.
- (k) “Enforcement Officer” means any person designated by the County Executive to carry out the responsibilities of enforcing this Chapter. This includes, but is not limited to, the authority to investigate complaints, access and review employer records, issue administrative citations and notices of violation, prepare enforcement-related documents, and take any actions necessary to ensure compliance with this Chapter.
- (l) “Hearing Officer” means the person appointed by the County Executive to conduct Administrative Appeal hearings under this Chapter.
- (m) “Learners” means employees, as defined by the applicable wage order of the California Industrial Welfare Commission, who have no previous similar or related experience in the occupation for which they are employed. A Learner may be paid not less than 85 percent of the minimum wage for the first 160 hours of employment in occupations in which the employee has no previous similar or related experience.
- (n) “Office” means the Office of Labor Standards and Enforcement (OLSE).
- (o) “Pay Period” means the regular and recurring span of time designated by the employer for which wages are calculated and paid, including but not limited to weekly, biweekly, or semimonthly periods, which must be consistent with the requirements of California Labor Code Section 204 and which shall not exceed 16 days.

5.158.030 Statute of Limitations.

- (a) A complaint alleging a violation of this Chapter must be submitted to the Office within three (3) years from the date the alleged violation occurred.
- (b) Each instance of noncompliance with this Chapter shall constitute a separate violation for purposes of determining the statute of limitations.
- (c) The statute of limitations for submitting a complaint under this Chapter shall be tolled under any circumstances recognized under state or federal law, including, but not limited to, cases of willful concealment of the violation by the employer or fraudulent misrepresentation that prevents the employee from discovering the violation.
- (d) Nothing in this section limits the authority of the County or any other enforcement agency to pursue civil, administrative, or criminal remedies beyond the three-year period where permitted by law.

5.158.040 Payment of Minimum Wage and Authorized Exceptions.

- (a) Except as provided in subsection (b), an Employer must pay an Employee no less than the County Minimum Wage for all time worked within the geographic boundaries of the unincorporated areas of the County.
- (b) An Employer must pay an Employee who is a Learner no less than 85 percent of the County Minimum Wage for the first 160 hours of employment. Thereafter, the Employer must pay the Learner the County Minimum Wage.
- (c) No Employer may fund increases in compensation required by this Chapter, nor otherwise respond to the requirements of this Chapter, by reducing the wage rate paid to any Employee. An Employer may not increase charges to Employees for parking, meals, uniforms, or other items, nor reduce the compensation or other non-wage benefits of any such Employee, except to the extent such prohibition would be pre-empted by the Federal Employee Retirement Income Security Act or state law.

5.158.050 Hourly Rate.

The County Minimum Wage is:

- (a) Beginning April 1, 2023, an hourly rate of \$16.50.
- (b) Beginning on January 1, 2024, and each January thereafter, the County Minimum Wage shall be an hourly rate equal to the prior year hourly rate increased by the lesser of: (i) 3.5 percent or (ii) a percentage amount equal to the prior year's increase, if any, in the CPI-W as determined by the United States Department of Labor. A change, if any, to the County Minimum Wage

is calculated by using the preceding August to August change in the CPI-W to calculate the annual increase. The hourly rate is not decreased by a decrease in the CPI. In no event shall the County Minimum Wage be decreased.

5.158.060 Notice and Posting.

- (a) An Employer must give written notification to each current Employee, and to each new Employee at time of hire, of the Employee's rights under this Chapter. The notification shall be posted prominently in areas at the work site where it will be seen by all Employees. Failure to post such notice shall constitute a violation of this Chapter. The County Executive may prepare sample notices for use by Employers which use will constitute compliance with this subsection.
- (b) An Employer must provide each Employee, at the time of hire, with the Employer's name, address, and telephone number in writing.

5.158.070 Retention of Records.

- (a) Each Employer shall maintain records documenting their compliance with this Chapter for four years. For each Employee, such records shall include, but are not limited to, a record of:
 - i. The Employee's name, phone number, and personal email address to the extent the Employer obtains employees' email addresses during the regular course of its business;
 - ii. By day, the Employee's start and end time of work, and total hours worked;
 - iii. By Pay Period, all applicable hourly pay rates, the number of hours paid at each hourly pay rate, the number of piece-rate units earned, and any applicable piece rate if the employee is paid on a piece-rate basis; and
 - iv. By Pay Period, an itemized list of all deductions from the employee's pay.
- (b) Each Employer shall provide each Employee a copy of the records relating to such Employee required to be maintained by this Chapter within twenty-one (21) days of the Employee's request.
- (c) A person or Employer under investigation by the Office shall provide the Office with the information or evidence requested pursuant to the investigation, including but not limited to all records required to be maintained under this Chapter. The Office shall have access to all places of labor subject to this Chapter and all premises in which the Employer maintains records during business hours to inspect books and records,

interview Employees and investigate such matters necessary or appropriate to determine whether an Employer has violated any provisions of this Chapter.

- (d) An Employer's failure to maintain, retain, or produce a record or other information required to be maintained by this Chapter and requested by the Office in furtherance of an investigation conducted pursuant to this Chapter creates a rebuttable presumption that the facts alleged against the employer are true, absent clear and convincing evidence otherwise.

5.158.080 Implementation.

- (a) The County Executive shall publish and make available to Employers a bulletin announcing the adjusted Minimum Wage rate, to take effect April 1, 2023. The County Executive shall publish and make available to Employers a notice suitable for posting in the workplace informing Employees of the Minimum Wage rate and of their rights under this Chapter.
- (b) Beginning October 1, 2023, and each year thereafter, the County Executive shall publish and make available to Employers a bulletin announcing the adjusted Minimum Wage rate, to take effect January 1 of the following year. Beginning November 1, 2023, and each year thereafter, the County Executive shall publish and make available to Employers a notice suitable for posting by Employers in the workplace informing Employees of the Minimum Wage rate and of their rights under this Chapter.
- (c) The Office shall coordinate the implementation and enforcement of this Chapter and may issue appropriate guidance and policies for purposes consistent with this Chapter. Such guidance or policies may establish procedures for ensuring fair, efficient, and cost-effective implementation of this Chapter, including supplementary procedures for helping to inform Employees of their rights under this Chapter, for monitoring Employer compliance with this Chapter, and for providing and conducting administrative hearings to determine whether an Employer or other person has violated the requirements of this Chapter.

5.158.090 Enforcement.

- (a) The Office may take appropriate actions to enforce this Chapter. In response to a complaint or on its own initiative, the Office may investigate suspected violations of this Chapter. If there is a reasonable basis to believe that a violation of this Chapter has occurred, the Office may order appropriate temporary or interim relief to mitigate the violation or to maintain the status quo pending completion of a full investigation or hearing.
- (b) When the Office initiates an investigation in response to a complaint, the scope of such investigation may exceed the scope of the complaint, in the reasonable discretion of the Office. During an investigation, the Office may

investigate an Employer's wage compliance for all of the Employer's Employees, including at multiple job sites within the unincorporated area of the County.

- (c) Where the Office determines that a violation of this Chapter has occurred, it may order all appropriate remedies, including, but not limited to, reinstatement, the payment of any back wages unlawfully withheld, and the payment of an additional sum as an administrative penalty in the amount of \$50 to each Employee whose rights under this Chapter were violated for each day that the violation occurred or continued. A violation for unlawfully withholding wages shall be deemed to continue from the date immediately following the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date immediately preceding the date the wages are paid in full.
- (d) Where prompt compliance is not forthcoming, the Office may take any appropriate enforcement action to secure compliance, including, but not limited to, initiating a civil action, except where prohibited by state or federal law.
- (e) In addition to any other remedies that may be ordered, the Office may impose on an Employer a fee, payable to the County, of not more than \$50 for each day and for each Employee as to whom a violation of this Chapter has occurred or continued, in order to offset the costs incurred by the Office to implement and enforce this Chapter.
- (f) An Employee or any other person may report a suspected violation of this Chapter to the Office in writing, in person, by phone, or electronically through any means provided by the Office. At the request of a complaining party, the Office shall, to the extent practicable, maintain confidential the identity of any person reporting a violation of this Chapter. In order to further encourage reporting by Employees, if the Office notifies an Employer that the Office is investigating a complaint, the Office may require the Employer to post or otherwise notify its Employees that the Office is conducting an investigation, using a form provided by the Office.
- (g) In any administrative or civil action brought for the nonpayment of wages under this Chapter, the Office or court, as the case may be, shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date the wages are paid in full.
- (h) A violation of this Chapter by an Employer may be remedied by any means available under this Chapter, including, but not limited to, the filing of a complaint with the California Labor Commissioner's Office or by filing a private action in a court of competent jurisdiction. An Employee or the Office, if the prevailing party in a civil action to enforce this Chapter, shall

be entitled to an award of reasonable attorney's fees and costs.

- (i) Posting Notice of Violation. The Office may require an Employer to post public notice, in a form determined by the Office, of the Employer's failure to comply with (i) a settlement agreement with the Office; (ii) an administrative citation issued under Section 5.158.130 that has not been timely appealed; (iii) a decision made in an administrative appeal brought under Section 5.158.180 that has become final; or (iv) a judgment issued by the Superior Court that has become final.

5.158.100 Retaliation Prohibited.

- (a) No Employer, or any person acting on behalf of an Employer, shall discharge, reduce the compensation of, or otherwise retaliate or take any adverse action against an Employee for engaging in any of the following:
 - i. Making a complaint to the Office, the California Labor Commissioner, or any other public agency charged with enforcement of this Chapter or labor standards;
 - ii. Filing a complaint, claim, or lawsuit related to their rights under this Chapter;
 - iii. Cooperating with or participating in any investigation, proceeding, or hearing related to enforcement of this Chapter;
 - iv. Providing information, assisting another Employee, or testifying—or preparing to testify—in connection with any enforcement action;
 - v. Exercising or attempting to exercise any rights under this Chapter, including discussing rights or concerns with co-workers or others; or
 - vi. Reporting a potential violation of this Chapter to a government agency or law enforcement.
- (b) For purposes of this Chapter, adverse actions include, but are not limited to, threats, intimidation, discipline, discharge, demotion, suspension, harassment, discrimination, reduction in hours or pay, reassignment to less desirable duties, blacklisting, or informing another employer of the Employee's actions under this Chapter. Adverse actions also include those taken based on perceived immigration status or work authorization.
- (c) An Employer who takes an adverse action against an Employee within 120 days of the Employee's exercise of rights protected under this Chapter shall be subject to a rebuttable presumption of having done so in retaliation for

the exercise of such right.

5.158.110 Waiver Through Collective Bargaining.

Except for Employees in the property services industry (e.g., janitors, landscapers, groundskeepers, and security guards), the provisions of this Chapter may be waived in whole or in part with respect to Employees covered under a written collective bargaining agreement if the following conditions are met:

- (a) The collective bargaining agreement or a subsequently negotiated waiver contains provisions which specifically waive County-mandated minimum wage rates that are higher than the contractually required wage rates for any group or groups of covered employees; and
- (b) The entire collective bargaining agreement or a subsequently negotiated waiver, inclusive of the provisions referred to in subsection (a) above, was negotiated and entered into prior to the effective date of this Chapter.

5.158.120 No Pre-Emption of Higher Standards.

The purpose of this Chapter is to ensure minimum labor standards. This Chapter does not pre-empt or prevent the establishment of higher or superior employment standards (including higher minimum wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the County. This Chapter does not limit a discharged Employee's right to bring a common law cause of action for wrongful termination.

5.158.130 Administrative Citations.

- (a) The Administrative Citations. An administrative citation may be imposed for violating this Chapter, as set forth below. The Office may issue an administrative citation.
- (b) Citation Amounts. In addition to all other civil penalties provided for by law, the following violations of this Chapter are subject to administrative citations in the amounts set forth below:

VIOLATION	CITATION AMOUNT
Failure to maintain payroll records or to retain payroll records for four years – Ordinance Code Section 5.158.070(a)	\$500.00

Failure to allow the Office of Labor Standards Enforcement to inspect payroll records –Ordinance Code Section 5.158.070(c)	\$500.00
Retaliation –Ordinance Code Section 5.158.100	\$1,000.00
Failure to post notice of Minimum Wage rate – Ordinance Code Section 5.158.060(a)	\$500.00
Failure to provide notice of investigation to employees –Ordinance Code Section 5.158.090 (f)	\$500.00
Failure to post notice of violation to public –Ordinance Code Section 5.158.090(i)	\$500.00
Failure to provide employer’s name, address, and telephone number in writing –Ordinance Code Section 5.158.060(b)	\$500.00

- (c) For each additional violation of the same provision by the same employer or individual within a three-year period, the penalty will be increased cumulatively by 50%. The maximum penalty that may be imposed through an administrative citation in any calendar year for each type of violation specified above is capped at \$5,000, or \$10,000 if a citation for retaliation is issued. Additionally, the Office may impose enforcement costs to recover reasonable expenses incurred in enforcing the administrative penalty which will not be applied toward the \$5,000 annual limit, including reasonable attorneys’ fees. If civil penalties and costs are the subject of administrative appeal or judicial review, then the accrual of penalties and other costs is stayed until the determination of the appeal or review is final.
- (d) If an Employer ceases its business operations, sells out, exchanges, or otherwise disposes of the Employer’s business, then any person who becomes a successor to the business will be liable for the unpaid amount of the remedies as defined in the Administrative Citation, Notice of Violation, or Hearing Officer’s Decision.
- (e) In issuing an Administrative Citation, the Office shall base its decision on the preponderance of the evidence, determining whether it is more likely than not that a violation has occurred. The formal rules of evidence shall not strictly apply; however, only relevant, reliable, and probative evidence shall be considered.

5. 158.140 Administrative Citation; Notice of Violation.

- (a) Warning Notice of Violation and Opportunity to Cure. In order to facilitate compliance, prior to the issuance of an administrative citation, the Office shall notify any person in violation of this Chapter of such violation.

- (b) The warning notice of violation and the administrative citation shall include all requirements of Section 5.158.170, below, and specify the action required to correct or otherwise remedy the violation(s). The person or persons responsible for the violation may be allowed fourteen (14) days from the date of the service of the administrative citation to correct or remedy the violation; provided, however, that the Office may, on its discretion, assign a longer period, not to exceed twenty-one (21) days, within which to correct or otherwise remedy each violation. The Office may consider the cost of correction and the time needed to obtain information, documents, data and records for correction in assigning a specific period of time within which to correct or otherwise remedy each violation or obtain and submit evidence that no violation occurred or such person or persons are not responsible for the violation.

5.158.150 Payments

- (a) Separate and Continuing Violations; Penalties Paid Do Not Cure Violations. Each and every day that a violation exists constitutes a separate and distinct offense. Each section violated constitutes a separate violation for any day at issue. If the person or persons responsible for a violation fail(s) to correct the violation within the time period specified on the citation, the Office may issue subsequent administrative citations for the uncorrected violation(s) without issuing a new notice as provided in Section 5.158.140. Payment of the penalty shall not excuse the failure to correct the violation, nor shall it bar any further enforcement action by the Office or the County. If penalties and costs are the subject of administrative appeal or judicial review, then the accrual of such penalties and costs shall be stayed until the determination of such appeal or review is final.
- (b) Payments to County; Due Date; Late Payment Penalty. All penalties assessed under Section 5.158.130 shall be payable to the County. Administrative penalties and costs assessed by means of an administrative citation shall be due within fourteen (14) days from the date of the citation. The failure of any person to pay an administrative penalty and costs within that time shall result in the assessment of an additional late fee. If full payment is not received within that time, a late fee shall be assessed in accordance with the following graduated schedule:
- 10% of the total penalty if payment is 15–30 days late;
 - 20% if payment is 31–60 days late;
 - 30% if payment is more than 60 days late

In addition, simple interest shall accrue on the original administrative penalty amount at a rate of ten percent (10%) per annum, beginning on the twentieth (20th) day after the penalty becomes a final decision or order, and continuing until paid in full. Interest shall be calculated in accordance with California Code of Civil Procedure Section 685.010. Interest shall accrue commencing on the twentieth (20th) day after the penalty becomes the final decision or order.

- (c) Collection of Penalties. The failure of any person to pay a penalty assessed by administrative citation under Section 5.158.130 within the time specified on the citation constitutes a debt to the County. The County may take all legal steps available to it to collect such amounts, including, but not limited to, filing a civil action or pursuing any other legal remedy authorized by law. The County Executive or the Office may establish and implement processes and procedures for the collection of unpaid penalties.
- (d) Payment to County. The Office has the authority to require that payment of back wages found to be due and owing to Employees be paid directly to the County for disbursement to the Employee(s). The County shall act solely as an intermediary in disbursing such payments and shall not be deemed the employer of record for any purpose, including tax reporting or withholding obligations.
- (e) The County Executive shall hold back wages in escrow for workers whom the Office, despite reasonable efforts, including any required public notice, cannot locate; funds so held for three years or more shall escheat to the County and be dedicated to the enforcement of the Minimum Wage Ordinance or other laws enforced by the Office.

5.158.160 Administrative Citation and Notice of Violation: Service.

Service of a warning notice of violation under Section 5.158.140 and an administrative citation under Section 5.158.130 shall be accomplished as follows:

- (a) By personal service; or
- (b) The Office shall post the notice or citation by affixing the citation to a surface in a conspicuous place on the property that is (1) the person's principal place of business in the County, or (2) if the person's principal place of business is outside the County, the fixed location within the County from or at which the person conducts business in the County, or (3) if the person does not regularly conduct business from a fixed location in the County, one of the following: (i) the location where the person maintains payroll records if the notice of violation is for violation of Section 5.158.070, or (ii) the jobsite or other primary location where the person's employees perform services in the County at the time the notice is posted. Conspicuous posting of the notice or citation is not required when personal service is accomplished or when conspicuous posting poses a hardship, risk to personal health or safety or is excessively expensive; and
- (c) The Office shall serve the notice or citation by first class mail as follows:
 - i. The notice or citation shall be mailed to the person responsible for the violation by first class mail, postage prepaid, with a declaration of service under penalty of perjury; and

- ii. A declaration of service shall be made by the person mailing the notice or citation showing the date and manner of service by mail and reciting the name and address of the person to whom the notice or citation is issued; and
- iii. Service of the notice or citation by mail in the manner described above shall be effective on the date of mailing.

5.158.170 Administrative Citation; Contents.

The administrative citation under Section 5.158.130 shall include all the following:

1. Date of the violation and any previous correspondence from the Office regarding the violation, including the warning notice;
2. Address or a definite description of the location where the violation occurred;
3. Section of this chapter that was violated and a description of the violation;
4. Amount of the current and potential future penalties for the violation;
5. Description of the penalty payment process, including a description of the time within which and the place to which the penalty shall be paid, and the fact that penalties are imposed each day the violation exists;
6. Actions required to correct the violation;
7. Order prohibiting the continuation or repeated occurrence of the violation;
8. Date, at least fourteen (14) days after the citation, by which the violation must be corrected to avoid additional enforcement;
9. Description of the appeal process, including the time within which the administrative citation may be contested and the department and person from which a Request for Hearing Form to contest the administrative citation may be obtained; and
10. Name and signature of the Enforcement Officer.

5.158.180 Administrative Appeal.

- (a) Period of Limitation for Appeal. Persons receiving an administrative citation may appeal it within fourteen (14) days from the date the citation is served.
- (b) Filing of Appeal. The appeal must be in writing; indicate a return address; be accompanied by the penalty amount, specifying the basis for the appeal in detail; and be filed with both the Office and the County Executive as

indicated in the administrative citation.

- (c) Appointment of Hearing Officer. Within a reasonable period of time after receiving the written notice of appeal and the penalty amount, the County Executive, or designee, shall promptly select a Hearing Officer.
- (d) Hearing Date. The Hearing Officer shall fix a date, time, and place for the hearing on the appeal. Written notice of the time and place for the hearing may be served by first class mail, at the return address indicated on the written appeal. Service of the notice must be made at least ten (10) days prior to the date of the hearing to the Appellant.
- (e) Notice. Except as otherwise provided by law, the failure of any Appellant, to receive a properly addressed notice of the hearing shall not affect the validity of any proceedings under this Chapter. Service by first class mail, postage prepaid, shall be effective on the date of mailing.
- (f) Failure to Appeal. Failure of any person to file an appeal in accordance with the provisions of this Section or to appear at the hearing shall constitute a failure to exhaust administrative remedies and a forfeiture of the penalty amount previously remitted.
- (g) Submittals for the Hearing. No later than five (5) days prior to the hearing, the Appellant and the Office shall submit to the Hearing Officer, with simultaneous service on the opposing party, written information including, but not limited to, the following: the statement of issues to be determined by the Hearing Officer and a statement of the evidence to be offered and the witnesses to be presented at the hearing. Service may be effectuated by electronic mail if the parties have agreed to accept service by electronic means in writing.
- (h) Conduct of Hearing. The Hearing Officer shall conduct all appeal hearings under this Section. The Office shall have the burden of proof in such hearings. Administrative enforcement hearings are intended to be informal in nature. Formal rules of evidence and discovery do not apply. The Hearing Officer may accept evidence on which persons would commonly rely in the conduct of their serious business affairs, including but not limited to the following:
 1. A valid citation shall be prima facie evidence of the violation.
 2. The Hearing Officer may accept testimony by declaration under penalty of perjury relating to the violation and the appropriate means of correcting the violation.
 3. The Appellant, or any other interested party, may present testimony, cross-examine witnesses, and introduce evidence regarding the violation, as well as the proposed means and timeframe for correction.

4. The standard of proof to be used by the Hearing Officer in deciding the issues at an administrative hearing is by a preponderance of the evidence.
 5. The hearing shall be open to the public and shall be audio-recorded. Any party to the hearing may, at his or her own expense, cause the hearing to be recorded and transcribed by a certified court reporter. The hearing officer may continue the hearing and request additional information from the Office or the Appellant prior to issuing a written decision.
- (i) **Hearing Officer's Findings.** The Hearing Officer shall make findings based on the record of the hearing and issue a decision based on such findings. The Hearing Officer's decision may uphold the issuance of a citation and back wages and penalties stated therein, may dismiss a citation, or may uphold the issuance of the citation but reduce, waive or conditionally reduce or waive the penalties stated in a citation or any late fees assessed if mitigating circumstances are shown and the Hearing Officer finds specific grounds for reduction or waiver in the evidence presented at the hearing. The Hearing Officer may impose conditions and deadlines for the correction of violations or the payment of outstanding civil penalties. Copies of the findings and decision shall be served upon the Appellant and the Office by certified or electronic mail if the parties have agreed to accept service by electronic means in writing.
- (j) **Hearing Officer's Decision.** The decision of the Hearing Officer is final. If the Hearing Officer concludes that the violation charged in the citation did not occur or that the person charged in the citation was not the responsible party, the Office shall refund or cause to be refunded the penalty amount to the person who deposited such amount. The Hearing Officer's decision shall be served on the Appellant by certified mail.

5.158.190 Regulations.

The Office may promulgate and enforce rules and regulations, and issue determinations and interpretations relating to the provisions of this Chapter. The County Executive may promulgate and enforce rules and regulations, and issue determinations and interpretations relating to the conduct of administrative appeals under Section 5.158.180.

5.158.200 Judicial Review.

- (a) **Procedures.** After receipt of the decision of the hearing officer under Section 5.158.180, the Appellant may file an appeal with the superior court pursuant to California Government Code Section 53069.4. The appeal shall be submitted within twenty (20) days of the date of mailing of the Hearing Officer's decision, with the applicable filing fee. The appeal shall state the reasons the Appellant objects to the findings or decision.

- (b) Review. The superior court shall conduct a de novo hearing, except that the contents of the Office's file (excluding attorney client communications and other privileged or confidential documents and materials that are not discoverable or may be excluded from evidence in judicial proceedings under the Evidence Code, Civil Code, Code of Civil Procedure or other applicable law) shall be received into evidence. A copy of the notice of violation and imposition of penalty shall be entered as prima facie evidence of the facts stated therein.
- (c) Filing Fee. If the court finds in favor of the Appellant, the amount of the filing fee shall be reimbursed to the Appellant by the County. Any deposit of penalty shall be refunded by the County in accordance with the judgment of the court.

5.158.210 Federal or State Funding.

This Chapter shall not be applied to the extent it will cause the loss of any federal or state funding of County activities.

5.158.220 Severability.

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

5.158.230 Other Remedies Not Affected.

The administrative citation procedures established in this Chapter shall be in addition to any other criminal, civil, or other remedy established by law which may be pursued to address violations of this Chapter. An administrative citation issued pursuant to this Chapter shall not prejudice or adversely affect any other action, civil or criminal, that may be brought to abate a violation or to seek compensation for damages suffered.

(Ord. No. 04872, § 1, 12-6-2022)

SECTION 2. Effective Date.

This Chapter shall take effect thirty (30) days after its adoption by the Board of Supervisors.

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