

AN ORDINANCE 2012-10-04-0780

AMENDING CHAPTER 20 OF THE CITY CODE OF SAN ANTONIO, ESTABLISHING ADMINISTRATIVE ADJUDICATION HEARING PROCEDURES FOR CERTAIN CITY ORDINANCE VIOLATIONS; ESTABLISHING A PENALTY RANGE NOT TO EXCEED \$1,000.00 PER DAY FOR CERTAIN VIOLATIONS; PROVIDING FOR ADMINISTRATIVE HEARING OFFICERS TO CONDUCT AND IMPOSE PENALTIES FOR PARKING AND SPECIFIC CITY ORDINANCE VIOLATIONS AT MUNICIPAL COURT; AND DIRECTING THE CITY CLERK TO PUBLISH NOTICE.

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WHEREAS, Chapter 19 of the City Code of San Antonio (the "City Code") currently provides for the administrative adjudication of parking violations as authorized by the Texas Transportation Code; and

WHEREAS, Chapter 54 of the Texas Local Government Code allows a municipality to adopt an ordinance creating a procedure for administrative adjudication hearings under which administrative penalties, fees and costs may be imposed for the enforcement of ordinances described by Texas Local Government Code Section 54.032; and

WHEREAS, Article I, Section 3, Paragraph 12 of the City Charter provides that the City may appropriate funds for the assistance of the needy to provide basic necessities of life as defined by ordinance; and

WHEREAS, assistance is needed for indigent persons lacking the resources to repair or rehabilitate their properties or premises which are found to be in violation of the City Code; and

WHEREAS, pursuant to the authority granted by Charter, the City Council desires to establish a fund to assist the aforementioned indigent persons, as well as establish procedures for administrative adjudication hearings to enforce City ordinances pursuant to the authority granted by statute; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Chapter 20 of the City Code of San Antonio, Texas entitled "Municipal Court," is hereby amended by adding language that is underlined (added) and deleting the language that is stricken (~~deleted~~) to the existing text as set forth in this Ordinance.

SECTION 2. Chapter 20 of the City Code of San Antonio, Texas is hereby amended as follows:

ARTICLE I. - MUNICIPAL COURT OF RECORD

Sec. 20-1. - Creation of the court.

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Sec. 20-17. - Juvenile case manager fund.

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Secs. 20-18 – 20-99. Reserved.

ARTICLE II – ADMINISTRATIVE ADJUDICATION HEARINGS

Sec. 20-100. Purpose.

It is the intent of this Article to promote, protect and improve the health, safety and welfare of the citizens of the City of San Antonio, by providing for Administrative Hearing Officers with the authority to impose administrative penalties in order to provide an equitable, expeditious, effective and inexpensive method to enforce ordinances described by Section 54.032, Texas Local Government Code, *Ordinances Subject to Quasi-Judicial Enforcement*, and to provide continued authority to adjudicate parking violations under Section 19-225 of the City Code.

Sec. 20-101. Authority and Supplementary Provisions.

The City of San Antonio (the “City”), as a home-rule city, adopts in this Article a procedure for administrative adjudication hearings pursuant to Section 54.044 of the Texas Local Government Code and the powers of self-rule granted by the voters under the City of San Antonio Charter as authorized by the Constitution of the State of Texas.

Nothing in this Article shall preclude the City's pursuit of any and all other remedies allowed under the civil and criminal statutes and, in equity, to address conditions which are treated in this Article under the theory of public nuisance and abatement of dangerous structures or buildings. Neither shall the City be required to issue, nor be prohibited from issuing, criminal citations before, during, or after any proceeding prescribed in this Article.

Sec. 20-102. Jurisdiction.

(1) The jurisdiction of the Administrative Hearing Officers shall be limited to City ordinances:

(a) for the preservation of public safety, relating to the materials or methods used to construct a building or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing and fixtures, entrances or exits;

(b) relating to the fire safety of a building or improvement, including provisions relating to materials, types of construction or design, warning devices, sprinklers or other fire suppression devices, availability of water supply for extinguishing fires, or location, design, or width of entrances or exits;

_____ (c) relating to dangerously damaged or deteriorated buildings or improvements;

_____ (d) relating to conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents; or

_____ (e) relating to a building code or to the condition, use or appearance of property in the City.

_____ (2) Pursuant to the home rule powers of the City, the jurisdiction of the Administrative Hearing Officers shall include the administrative adjudication of parking violations under Section 19-225 of the City Code.

Sec. 20-103. Definitions.

_____ For the purpose of this Article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

_____ *City.* The City of San Antonio, Texas.

_____ *Person.* Any natural person, corporation, partnership, joint venture, association (including homeowners or neighborhood associations), trust or any other entity recognized by law.

_____ *Violator.* The person charged with violating a City ordinance described in Section 20-102 of this Article.

Sec. 20-104. Establishment of an Administrative Hearing Officer; Duties.

_____ (1) An Administrative Hearing Officer shall be hired by the City Manager and shall serve under the direction of the Presiding Judge of the Municipal Court to preside over the administrative adjudication hearings established under this Article. The City Manager may also provide for Associate Administrative Hearing Officers to preside over the administrative adjudication hearings established under this Article and shall have the same powers, duties and functions, and must meet the same qualifications, as the Administrative Hearing Officer.

_____ (2) The Administrative Hearing Officer shall:

_____ (a) be a licensed attorney in good standing with the State Bar of Texas;

_____ (b) be authorized to administer oaths and issue orders compelling the attendance of witnesses and production of documents;

_____ (c) act pursuant to the authority granted by Texas Local Government Code Section 54.044, this Article and in Section 19-225 of the City Code; and

_____ (d) enforce and adjudicate parking violations pursuant to the provisions, duties and procedures in Section 19-225 of the City Code.

(e) be responsible for additional administrative adjudicative duties as assigned by passage of ordinance.

Sec. 20-105. Notice and Hearing.

(1) A Violator is entitled to notice by citation or summons.

(2) A citation or summons issued pursuant to the procedures adopted under this Article must:

(a) notify the Violator that the Person has the right to a hearing;

(b) provide information as to the time and place of the hearing;

(c) state the type, date and location of violation;

(d) state the penalty range for which the Violator may be liable; and

(e) provide instructions and the due date for paying penalties, costs and fees, as prescribed by the Municipal Court Clerk in conformance with Section 20-106, in lieu of a hearing and payment of which shall be an admission of liability for the violation charged.

(3) The original or a copy of the summons or citation shall be kept by the Municipal Court Clerk as a record in the ordinary course of business of the City and is rebuttable proof of the facts it states.

(4) The person who issued the citation or summons is not required to attend a hearing under this Article.

(5) A Violator who fails to appear at a hearing authorized under this Article is considered to admit liability for the violation charged. The Administrative Hearing Officer shall issue an order of liability and assess appropriate penalties, costs and fees against the Violator in conformance with Section 20-106 of this Article.

(6) At a hearing under this Article, the Administrative Hearing Officer shall issue an order stating whether the Violator is liable for the violation. Upon a finding of liability, the Administrative Hearing Officer shall issue an order:

(a) assessing the penalty, costs and fees; and

(b) requiring abatement of the violation by a specific date.

(7) Upon a finding of liability, the Administrative Hearing Officer may set the date and time for a compliance hearing. A copy of the order shall be provided to the Violator as notice of the compliance hearing.

(8) If, at a compliance hearing, the Administrative Hearing Officer finds that the Violator has remedied or abated the violation, the Administrative Hearing Officer may reduce the applicable penalty, fees and costs.

(9) If, at a hearing under this Article, the Administrative Hearing Officer finds the Violator is not liable for the violation, the Violator shall not be responsible for any penalty, cost or fee.

(10) An order issued pursuant to this Article may be filed with the Municipal Court Clerk, who shall keep the order in a separate index and file. The order may be recorded using microfilm, microfiche, or data processing techniques.

Sec. 20-106. Establishing Penalty.

(1) The establishment of a penalty shall be consistent with and pursuant to the provisions of Section 54.044 of the Texas Local Government Code, and as amended.

(2) The penalty range to be assessed against a Violator found liable under this Article shall be:

(a) not less than \$20, nor more than \$1,000 a day for a first violation;

(b) not less than \$250, nor more than \$1,000 a day for a second violation; and

(c) not less than \$500, nor more than \$1,000 a day for a third or subsequent violation.

(3) In addition to the penalty assessed, the Administrative Hearing Officer may require the Violator to pay fees and costs.

(4) In determining the amount of penalty to be assessed, the Administrative Hearing Officer shall consider the following factors:

(a) the gravity of the violation;

(b) any actions taken by the Violator to correct the violation;

(c) any previous violations committed by the Violator;

(d) the actual costs of repairs to the City due to the violation as supported by receipts or testimony or other evidence;

(e) indigence of the Violator; and

(f) any other relevant evidence.

Sec. 20-107. Enforcement of Order.

An order issued against a Person found liable for a City ordinance violation under this Article may be enforced by:

(1) filing a civil suit for the collection of a penalty assessed against the Person;

(2) obtaining an injunction that:

(a) prohibits specific conduct that violates the ordinance; or

(b) requires specific conduct necessary for compliance with the ordinance; and

(3) referral to a collection agency for non-payment of assessed penalties, costs and fees, with the cost to the City for collection services assessed as costs and added to the judgment.

Sec. 20-108. Appeal.

(1) A Person who is found by an Administrative Hearing Officer to have violated an ordinance under this Article may appeal the determination by filing a petition in the Municipal Court before the 31st day after the date the Administrative Hearing Officer's order is filed. An appeal does not stay enforcement and collection of the judgment unless the Person, before filing the appeal petition, posts a bond with the Municipal Court for twice the amount of the penalties, costs and fees ordered by the Administrative Hearing Officer.

(2) If a Person found liable for a violation does not timely appeal the Administrative Hearing Officer's order, the order shall become a final judgment.

Sec. 20-109. Disposition of Administrative Penalties, Costs and Fees.

(1) Except as provided in Subsection (2), penalties, costs and fees assessed under this Article shall be paid into the City's general fund for the use and benefit of the City.

(2) \$20 of each penalty assessed and paid under this Article shall be deposited into the Compliance Assistance Account established in Section 20-110 of this Article.

Sec. 20-110. Compliance Assistance Account.

(1) The Compliance Assistance Account is composed of:

(a) penalties collected under Section 20-109 (2) of this Article; and

(b) any funds donated by a Person, as accepted by City Council ordinance.

(2) The Compliance Assistance Account shall be used for the sole purpose of rehabilitating, repairing or abating nuisances of properties and premises in the City for Persons who:

(a) have been found liable for an administrative violation under this Article;

(b) are found by the Administrative Hearing Officer to be indigent and financially unable to comply with an administrative order under Section 20-105;

(c) file a request with the Development Services Department for the purpose of rehabilitating and/or repairing the Person's property or premises until it complies with the administrative order;

(d) have not have received funds from the Compliance Assistance Account within the preceding 60 months;

(e) do not qualify for other home repair or rehabilitation assistance programs available through the City; and

(f) own and occupy the property.

(3) The Director of the Development Services Department shall adopt policies and procedures consistent with this Article for the administration of the fund.

Secs. 20-111 – 20-199. Reserved.

SECTION 3. All other provisions of Chapter 20 of the City Code of San Antonio, Texas shall remain in full force and effect unless expressly amended by this Ordinance.

SECTION 4. Violations occurring after the effective date of this Ordinance shall be punished as provided in the revised Chapter 20, City Code. Violations occurring prior to the effective date of this Ordinance shall be punished under the formerly-applicable Chapter and Sections of the City Code, which shall remain in effect for that purpose.

SECTION 5. Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this Ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

SECTION 6. Funding for this Ordinance is available as part of the Fiscal Year 2013 adopted budget in Fund 11001000 with cost centers and general ledgers to be determined.

SECTION 7. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

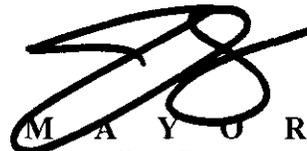
SECTION 8. The City Clerk is directed to promptly publish public notice of this Ordinance in accordance with Section 17 of the City Charter of San Antonio, Texas.

SECTION 9. The publishers of the City Code of San Antonio, Texas are authorized to amend said Code to reflect the changes adopted herein and to correct typographical errors and to index, format and number paragraphs to conform to the existing Code.

SECTION 10. This Ordinance shall become effective immediately upon passage by eight (8) or more affirmative votes or, if passed by fewer than eight (8) affirmative votes, shall be effective ten (10) days after passage.

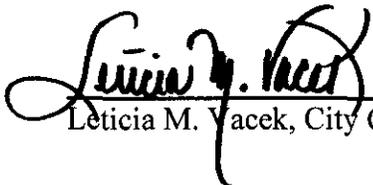
SECTION 11. Penalties provided for in this revised Chapter 20 shall be effective five days after publication by the City Clerk.

PASSED AND APPROVED this 4th day of October, 2012.



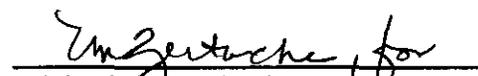
M A Y O R
Julián Castro

ATTEST:



Leticia M. Yacek, City Clerk

APPROVED AS TO FORM:

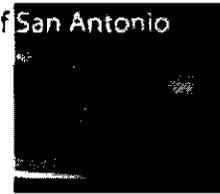


Michael Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 12

Name:	12						
Date:	10/04/2012						
Time:	10:13:45 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance amending Chapter 20 of the City Code of San Antonio, establishing administrative adjudication hearing procedures for certain City ordinance violations; establishing a penalty range not to exceed \$1,000.00 per day for certain violations; providing for Administrative Hearing Officers to conduct and impose penalties for parking and specific City ordinance violations at Municipal Court; and directing the City Clerk to publish notice. [John W. Bull, Presiding Judge]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				x
Carlton Soules	District 10		x			x	