



City of San Leandro

Meeting Date: November 17, 2014

Ordinance

File Number: 14-457 **Agenda Section:** CONSENT CALENDAR

Agenda Number: 8.C.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Debbie Pollart
Public Works Director

FINANCE REVIEW: Not Applicable

TITLE: ORDINANCE Amending Title 3 (Health and Safety), Chapter 18 of the San Leandro Municipal Code Relating to Enforcement of Environmental Regulations (establishes authority for environmental inspectors to issue Notices of Violation)

The City Council of the City of San Leandro does **ORDAIN** as follows:

SECTION 1. PURPOSE. The purpose of this amendment is to establish authority for environmental inspectors to issue Notices of Violation.

SECTION 2. AMENDMENT OF CODE. Title 3, Chapter 18 of the San Leandro Municipal Code is hereby amended to read as follows, with additions in underline and deletions in strikethrough text:

CHAPTER 3-18 ENVIRONMENTAL ENFORCEMENT **ARTICLE 1. GENERAL**

3-18-100 ENVIRONMENTAL ENFORCEMENT.

This Chapter shall be known as the "City of San Leandro Environmental Enforcement Ordinance" and may be so cited.

3-18-105 PURPOSE AND INTENT.

The purpose of this Chapter is to ensure the future health, safety and general welfare of the City of San Leandro ~~citizens~~ **and its residents** by:

(a) Providing for ~~a~~ uniform and effective enforcement of the City of San Leandro Storm Water Management and Discharge Control Ordinance in Chapter 3-15 and the Uniform Wastewater Discharge Regulations in Chapter 3-14; and

(b) Providing for procedures by which the City of San Leandro will implement the enforcement of environmental laws pursuant to its role as ~~the~~ **a** Certified Unified Program Agency.

3-18-110 SCOPE.

The provisions of this Chapter shall apply to the City of San Leandro Storm Water Management and Discharge Control Ordinance in Chapter 3-15, and; the Uniform Wastewater Discharge Regulations in Chapter 3-14; ~~and the Certified Uniform Program Agency Ordinance at Chapter 3-17;~~ and hazardous materials provisions ~~of~~ in the Fire Code.

3-18-115 FALSIFYING INFORMATION.

Any person who knowingly makes any false statements, representation, record, report, plan or other document filed with the City, or who knowingly renders inaccurate any monitoring device or method required under these regulations, shall be punished by a fine of not more than Ten Thousand Dollars (\$10,000.00) or by imprisonment in a County Jail for not more than six (6) months, or by both. The City Attorney, upon order of the City Council, shall petition the court of appropriate jurisdiction to impose, assess, and recover such sums.

3-18-120 ENFORCEMENT RESPONSIBILITY.

Primary responsibility for enforcement of these regulations shall be vested in the City Manager or agents of the City as he or she shall designate; ~~f.~~ Field inspectors or other employees of the City are hereby authorized to act as agents of the City for and on behalf of the City Manager with the power to inspect and issue notices and/or citations for violations of these regulations.

3-18-125 AUTHORITY TO INSPECT.

Whenever necessary to make an inspection to enforce any provisions of this Title 3 or whenever the City Manager has reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a violation of the provisions of this Title, the City Manager may enter such building or premises at all reasonable times to inspect the same or perform any duty imposed upon the City Manager by this Title; provided that (1) if such building or premises be occupied, he or she shall first present proper credentials and request entry; and (2) if such building or premises be unoccupied, he or she shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry.

Any such request for entry shall state that the property owner or occupant has the right to refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of an inspection or search warrant by a duly authorized magistrate. In the event the owner or occupant refuses entry after such request has been made, or in the event that the owner or person in charge of the building or premises cannot be located, an inspection/abatement or search warrant authorizing entry shall be obtained prior to City's entry onto the building or premises. The City Manager is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such warrant authorizing entry.

Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this Title 3.

(a) **Authority to Sample and Establish Sampling Devices:** The City shall have the right to establish on any property such devices as are necessary to conduct sampling or ~~metering~~ monitoring operations. During all inspections as provided herein, the City Manager may take any samples deemed necessary to aid in the pursuit of the inquiry or in the recordation of the activities onsite.

(b) **Notification of Spills:** As soon as any person in charge of a facility or responsible

for emergency response for a facility has knowledge of any confirmed or unconfirmed release of materials, pollutants or waste, such person shall take all necessary steps to ensure the discovery and containment and clean-up of such release and shall notify the City of the occurrence by telephoning the City Manager and confirming the notification by correspondence to the same.

(c) **Requirement to Test or Monitor:** The City Manager may request that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to storm water pollution, contamination, illicit discharges, discharge of non-storm water to the storm water system, and/or release, discharge or deposit of hazardous materials, **shall** undertake such monitoring activities and/or analyses and furnish such reports as the City Manager may specify. The burden, including costs, of these activities, analyses, and reports shall bear a reasonable relationship to the need for the monitoring, analyses, and reports and the benefits to be obtained. The recipient of such request shall undertake and provide the monitoring, analyses and/or reports requested.

3-18-130 SUBMISSION OF TIME SCHEDULES.

(a) When the City finds that a discharge of wastewater is taking place, has been taking place or threatens to take place, in violation of prohibition s or limitations prescribed in this Title 3, effluent limitations or pretreatment standards, or the provisions of a Permit, the City may, at its discretion, require the User to submit for approval, with such modifications as the City Manager deems necessary, a detailed time schedule of specific actions which the User shall take in order to prevent or correct a violation of these regulations or of any permit issued pursuant to these regulations, and to take such action in accordance with such schedule.

(b) Nothing provided in this section shall limit or prohibit the City from pursuing any other remedy, legal or equitable, otherwise available to City, or from seeking sanctions in any criminal or civil action related to the violation set forth in subsection (a) of this section.

3-18-135 VIOLATIONS DEEMED A PUBLIC NUISANCE.

In addition to the penalties provided in this Chapter, any condition caused or permitted to exist in violation of this Title 3 is a threat to the public health, safety and welfare, and is declared and deemed a **public** nuisance. Such violation may be abated in the manner provided in Chapter 1-12. Any violation of a discharge standard and/or requirement of these regulations, applicable State or Federal regulations or any order issued by the City as authorized by these regulations, is hereby declared a public nuisance and shall be corrected or abated as directed by the City. Any person creating a public nuisance shall be subject **to** the provisions of this Code or other laws or ordinances governing such nuisance. Such nuisance may be abated, removed or enjoined and damages assessed therefore, in any manner provided by law or this Code.

The cost of such abatement and restoration shall be borne by the owner of the property, and the cost thereof shall be a lien upon and against the property. The lien procedures in Chapter 1-12 of this Code shall be followed for any such lien.

If violation of this Chapter constitutes a seasonal and recurrent nuisance, the City shall so declare. Thereafter, such seasonal and recurrent nuisance shall be abated every year without the necessity of any further hearing.

3-18-140 EMERGENCY CORRECTION.

In the event clean-up, repairs, construction, or other public work is performed on any premises pursuant to any provision of law relating to the emergency performance of public

work and the expenditure of public funds therefore, or pursuant to any other provision of law authorizing public work on private property in order to correct, eliminate or abate a condition upon such premises which threatens to cause, causes, or has caused a violation of any provisions of these regulations, or of any permit issued pursuant to these regulations, or of any other requirement of law, the owner, occupant and/or responsible party is responsible for the occurrence or condition giving rise to such work, the occupant, the owner of the premises and responsible party shall be liable jointly and severally to the City for such public expenditures including overhead costs.

3-18-145 CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1094.6.

The provisions of Section 1094.6 of the California Code of Civil Procedure are applicable to judicial review of City decisions pursuant to this Title 3.

3-18-150 ISSUANCE OF CEASE AND DESIST ORDER.

When the City Manager finds that a violation of this Title 3 or the provisions of a permit has taken place or is likely to take place, the City may issue an order to cease and desist such discharge, or practice, or operation likely to cause such violation and direct those persons not complying with such prohibitions, limits, requirements or provisions to:

- (a) Comply forthwith;
- (b) Comply in accordance with a time schedule set forth by the City; or
- (c) Take appropriate remedial or preventative action.

3-18-155 NOTICE TO CLEAN.

Whenever the City Manager finds any oil, earth, dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste, or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel of land, or upon any parcel of land or grounds which may result in (1) a release or (2) ~~in~~ pollutants entering the City storm sewer systems or a non-storm discharge to the City storm sewer system, said official may give notice to the property owner and/or to the tenant, if any, to remove such oil, earth, dirt, grass, weeds, dead trees, tin cans, rubbish, refuse, waste or other material, in any manner that he or she may reasonably provide. The recipient of such notice shall undertake the activities as described in the notice.

3-18-160 DAMAGE TO FACILITIES-ADDITIONAL REMEDY.

When a discharge causes an obstruction, damage, or any other impairment to City facilities including, but not limited to the City sewerage system, the City may assess a charge against the owner, occupant or responsible party for the work required to clean, repair and/or replace the facility and add such charge to the facilities' charges and fees, including overhead costs.

3-18-165 APPEALS.

Any User, permit applicant, permit holder, property owner, occupant, or responsible party affected by any decision, action or determination, including cease and desist orders, made by the City, interpreting or implementing the provisions of Title 3 or in any permit issued herein, may file with the City Manager a written request for reconsideration within ten (10) days of such decision, action, or determination, setting forth in detail the facts supporting the appellant's request for reconsideration. The City Manager shall appoint a hearing officer who shall hear the appeal within sixty (60) days from the date of filing. The hearing officer shall make a ruling on the appeal within thirty (30) days of the close of the hearing. If the ruling

made by the hearing officer is unsatisfactory to the person requesting reconsideration, he may within ten (10) days after notification of the City's action, file a written appeal to the City Council. The written appeal shall be heard by the body within sixty (60) days from the date of filing. The City Council shall make a final ruling on the appeal within thirty (30) days of the close of the hearing. The City Manager's decision, action or determination shall remain in effect during such period of reconsideration. The City Council's determination on the appeal shall be final.

3-18-170 CIVIL AND CRIMINAL PENALTIES.

Any person, without regard to intent or negligence, who violates any provision of Chapter 3-14 of this Code, or of any provisions of any permit issued pursuant to these regulations, or who discharges any material which causes contamination, nuisance, pollution, or who violates any cease and desist order, termination of service, prohibition, effluent limitation, national standard of performance or national pretreatment or toxicity standard or requirement, shall be civilly and/or criminally liable to the City in a sum not to exceed Six Thousand Dollars (\$6,000.00) ~~for each per day in which such per violation occurs (civilly liable to penalties imposed by the City)~~ and in a sum not to be less than One Thousand Dollars (\$1,000.00) ~~for each per day in which such per violation occurs~~. The City may petition the Superior Court to impose, assess and collect such sums pursuant to this Chapter and Section 54740 of the California Government Code.

3-18-175 ACTS POTENTIALLY RESULTING IN VIOLATION OF FEDERAL CLEAN WATER ACT AND/OR PORTER-COLOGNE ACT.

Any person who violates any provision of this Chapter, any provision of any permit issued pursuant to this Chapter, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition, or effluent limitation, may also be in violation of the Federal Clean Water Act and/or Porter-Cologne Act and may be subject to the sanctions of those Acts including civil and criminal penalties. Any enforcement action authorized under this Article shall also include notice to the violator of such potential liability.

3-18-180 CIVIL ACTIONS.

In addition to any other remedies provided for in this Chapter, any violation of this Title may be enforced by civil action brought by the City. In any such action, the City may seek, and the court shall grant, as appropriate, any or all of the following remedies:

- (a) A temporary and/or permanent injunction;
- (b) Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection;
- (c) Compensatory damages for loss and destruction to water quality, wildlife, fish and aquatic life. Assessments under this subdivision shall be paid to the City to be used exclusively for programs of the Environmental Services ~~Division~~ Section.

3-18-185 AUTHORITY TO ISSUE CITATIONS OF ARREST.

The City Manager may issue a citation for an infraction and notice to appear in the manner prescribed by Chapter 5c of Title 3, Part 2 of the Penal Code (or as the same may hereafter be amended-). It is the intent of the City Council that the immunities prescribed in Section 836.5 of the Penal Code be applicable to public officers or employees acting in the

course and scope of their employment pursuant to Title 3 of the Penal Code.

Police officers, but not the City Manager, shall have and are hereby vested with the authority to arrest or cite any person who violates any section of Title 3 in the manner provided by the California Penal Code for the arrest or release on citation of misdemeanor infractions as prescribed by Chapters 5, 5c, and 5d of Title 3, Part 2 of the Penal Code (or as the same may be hereinafter amended).

3-18-190 CONTINUING VIOLATION.

Unless otherwise provided, a person, firm, corporation, or organization shall be deemed guilty of a separate offense for each and every day during any portion for which a violation of this Title 3 is committed, continued, or permitted by the person, firm, corporation or organization and shall be punishable accordingly as herein provided.

3-18-195 CONCEALMENT.

Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Title 3 shall constitute a violation of such provision.

3-18-200 MISDEMEANOR.

Any person violating any provision of these regulations, or of any permit issued pursuant to said regulations shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by imprisonment in the County Jail for a term not to exceed one year, or by a fine not to exceed One Thousand Dollars (\$1,000.00) or by both such imprisonment and fine. Every day such violation continues shall constitute a separate offense. The ~~attorney for the City~~ City Attorney, upon order of the City Manager, shall petition the Superior Court to impose, assess, and recover such sums as may be applicable. Any such violation constituting a misdemeanor may, in the discretion of the City, be charged and prosecuted as an infraction.

Upon conviction of an infraction, a person shall be subject to payment of a fine, not to exceed the limits set forth in California Government Code Section 36900. After a third infraction conviction for a violation of the same provision within a twelve (12) month period, or subsequent violations of that same provision within a twelve (12) month period may be charged as misdemeanors.

3-18-205 ADMINISTRATIVE ORDER PROCESS.

~~The Administrator~~ Any City enforcement officer may issue a complaint to any person on whom civil liability may be imposed pursuant to Chapter 3-17 of this Title. The complaint shall allege the acts or failures to act that constitute a basis for liability and the amount of the proposed civil liability. The complaint shall be served by personal service or certified mail and shall inform the party so served that a hearing shall be held at a specific time and place within sixty (60) days after the party has been served. Failure of any person to receive notice shall not affect the validity of any proceedings hereunder.

3-18-210 ADMINISTRATIVE ORDER HEARING PROCESS.

The administrative order hearing shall be held before the City Manager or his/her designee. All hearings shall be ~~tape~~ recorded. Hearings need not be conducted according to the technical rules of evidence. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this State. Any relevant evidence shall be admitted if it is the type of evidence on

which reasonable persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this State. Oral evidence shall be taken only on oath or affirmation. Irrelevant and unduly repetitious evidence shall be excluded. At the time stated in the complaint, the City Manager shall hear and consider all relevant evidence, objections or protests, and shall receive testimony under oath relative to the acts or failures to act that constitute a basis for liability. If the City Manager finds that there is sufficient cause to find liability, the City Manager shall prepare findings and an order, which shall specify the nature of the violation and the amount of the proposed civil liability.

3-18-215 ADMINISTRATIVE ORDER APPEAL PROCESS.

The owner, occupant or responsible party (Respondent) subject to an Administrative Order proceeding may appeal the City Manager's findings and order to the City Council by filing an appeal with the City Clerk within ten (10) calendar days of the date of service of the City Manager's decision. The appeal shall contain:

- (a) A specific identification of the alleged basis for liability;
- (b) The names and addresses of all appellants;
- (c) A statement of appellant's legal interest in the proceedings;
- (d) A statement in ordinary and concise language of the specific order or action protested and the grounds for appeal, together with all material facts in support thereof;
- (e) The date and signatures of all appellants;
- (f) The verification of at least one appellant as to the truth of the matters stated in the appeal.

As soon as practicable after receiving the appeal, the City Clerk shall set a date for the City Council to hear the appeal which date shall not be less than ten (10) calendar days nor more than sixty (60) calendar days from the date the appeal was filed. The City Clerk shall give each appellant written notice of the time and place of the hearing at least five (5) calendar days prior to the date of the hearing, either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address shown on the appeal. Continuances of the hearing may be granted by the City Council on request of the Respondent for good cause shown, or on the City Council's own motion.

Upon the conclusion of the hearing, the City Council shall determine whether any civil liability exists and the amount of the liability. If the City Council so finds, the City Council shall adopt a resolution setting forth its findings and ordering the payment of the civil penalty. The decision and order of the City Council shall be final.

3-18-220 WAIVER OF HEARING ON ADMINISTRATIVE ORDER.

The responding party in an administrative order proceeding may waive the right to a hearing. If the party waives the right to a hearing, the ~~administering agency~~ City shall issue an order setting liability in the amount proposed in the complaint unless the ~~administering agency~~ City and the party have entered into a settlement agreement, in which case the ~~administering agency~~ City shall issue an order setting liability in the amount specified in the settlement agreement. Where the party has waived the right to a hearing or where the ~~administering agency~~ City and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.

3-18-225 REMEDIES CUMULATIVE.

The remedies provided for in this Chapter shall be cumulative and not exclusive, and shall be in addition to any and all other remedies available to the City. The violations and penalties as set forth in Chapters 6.7 and 6.95, Division 20 of the California Health and Safety Code, are hereby specifically adopted and shall be cumulative to the remedies set forth herein.

SECTION 3. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of San Leandro hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or unenforceable.

SECTION 4. EFFECTIVE DATE AND PUBLICATION. This ordinance shall take effect thirty (30) days after adoption. The City Clerk is directed to publish the title once and post a complete copy thereof on the City Council Chamber bulletin board for five (5) days prior to adoption.

Introduced by Councilmember Souza on this 3rd day of November, 2014, and passed to print by the following called vote:

Members of the Council:

AYES:	Councilmembers Cutter, Lee, Prola, Reed, Souza; Mayor Cassidy	(6)
NOES:	None	(0)
ABSENT:	Councilmember Gregory	(1)