

Proposed Update to District Code Enforcement Authorities and Remedies

CURRENT

PROPOSED

General Enforcement

District may issue Notice of Violation pursuant to Section 1.08.010.

- Identifies the violation
- Provides a time to correct
- Demands cessation/correction of violation

If violation is not corrected:

- Disconnection (§1.08.040)
- Criminal citation (§ 1.08.060)
- Civil action to abate a nuisance through injunction (§ 1.08.050)

Recover District costs of correction (§ 1.08.090)

Consolidate with administrative enforcement authority to issue Notice of Violation and abatement authority

No change

Consolidate with abatement authority and clarify District may recover costs and attorney's fees from legal proceedings and may bring civil action for damages

Remedies Cumulative

Remedies are cumulative (§ 1.08.030)

Remedies are cumulative (§ 1.14.180)

Consolidate

Responsible Parties

Violation may be enforced against:

- Current record parcel owner where the sewer or proposed sewer is located;

Expand definition of "Responsible Parties" to accommodate non-property-related violations

- Record parcel owner at the time of violation of any District requirement;
- Record parcel owner at the time of the District's discovery of violation of any District requirement;
- Person or entity entering into an owner's sewer improvement agreement relevant to the violation; and
- Person or entity signing the sewer permit or other District permit relevant to the violation

(§ 1.08.100)

Right of Entry for Inspection

District may enter private property “for the purpose of inspection and maintenance” of District facilities” (1.08.020)

Inspection of private property (§ 1.14.030)

District authorized to enforce Building Sewer Infiltration & Inflow Control Ordinance (§ 1.08.110)

Delinquent Charges and Fees

District may impose late fee and interest for delinquent charges or fees not placed on tax roll (§ 1.08.080)

Consolidate overlapping provisions

Clarify District may enter property where no expectation of privacy, otherwise District will obtain permission or inspection warrant

Move to chapter with sewer-specific enforcement

No change

CURRENT

Administrative Enforcement

Notice of Violation

- Detailed procedure for issuance (§ 1.14.040)
- May include Order to Show Cause (§ 1.14.050)
- Appeal (§§ 1.14.100, 1.14.110, 1.14.130)

Initial appeal before an undefined hearing officer and a second appeal to the District Board of Directors.

Not clear that the Notice of Violation may include a penalty authorized by Section 1.14.070.

PROPOSED

Simplify procedure for issuance and allow imposition of monetary penalty with initial notice of violation

Simplify appeal process by allowing only one appeal

- Current procedures provide for two levels of appeal: An initial appeal to unidentified hearing officer and second appeal to Board of Directors.
- Updated procedures could allow one appeal to an identified staff member or their designee or other hearing officer
- **Should the District allow one or two levels of appeal?**
- **Who should serve as hearing officer at appeal hearings?**
- Suggestions for consideration:
 - General Manager or their designee
 - Applicable department head or their designee
 - Applicable Commission (subject to Brown Act)
 - Board of Directors (subject to Brown Act)
 - Board President, Commission Chair, or both
- Other considerations:
 - Hearing officer must be different from the person who issued the Notice of Violation
 - Scheduling considerations
 - Current and future officer availability when needed
 - Individuals without ability to designate another person might need a back-up officer in case of a conflict or unavailability

CURRENT

Abatement

District may issue an Order to Show Cause for hearing to issue abatement order (§ 1.14.050)

- Notice (§ 1.14.040)
- Time (§ 1.14.060)
- Hearing (§§ 1.14.140, 1.14.150)
- Two-step appeal process (§§ 1.14.140, 1.14.150)
- Proceedings for abatement by District (§ 1.14.050)

Recovery of abatement costs recover through cost account procedure (§§ 1.14.160, 1.14.170)

Judicial review of penalties and abatement orders (§§ 1.14.140, 1.14.150)

Summary abatement if violation or nuisance condition poses imminent threat to public health, welfare, or safety (§ 1.14.190)

PROPOSED

Consolidate with Chapter 1.08 provisions pertaining to “correction” of violation

Describe procedures so they are clear and efficient

Declare any violation of District Code to be public nuisance

Order to Show Cause—Specify hearing officer or method for selecting hearing officer

- Who should serve as hearing officer at OSC hearings to determine whether the District should abate a violation?
- Suggestions for consideration:
 - General Manager or their designee
 - Applicable department head or their designee
 - Applicable Commission (subject to Brown Act)
 - Board President, Commission Chair, or both
- Other considerations:
 - Hearing officer must be different from the person who issued the Notice of Violation
 - Scheduling considerations
 - Current and future officer availability when needed
 - Individuals without ability to designate another person might need a back-up officer in case of a conflict or unavailability