

Chapter 1.08
ENFORCEMENT OF CODE 2

Sections:

- 1.08.010 Violations and remedies.
- 1.08.015 Injunction and civil penalties.
- 1.08.015.5 Personal liability for unpaid taxes.
- 1.08.016 Cost recovery for enforcement; attorneys' fees.
- 1.08.020 Certain violations deemed infractions.
- 1.08.025 Parking violations.
- 1.08.030 Violation of administrative provisions.
- 1.08.040 Enforcement powers.
- 1.08.050 City manager authorized to appoint reserve or auxiliary city policemen.

1.08.010 Violations and remedies.

A. No person shall violate any provision or fail to comply with any of the requirements of this Code or of any other ordinance of the city. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Code or of any city ordinance, other than administrative provisions thereof, shall be guilty of a misdemeanor, unless the violation of such provision is designated as an infraction or is a parking violation. The Code provisions for which a violation is an infraction are set forth in Section 1.08.020. The Code provisions for which a violation is a parking violation are set forth in Section 1.08.025.

B. Any person convicted of a misdemeanor under the provisions of this Code or other city ordinance shall be punishable by a fine of not more than one thousand dollars or by imprisonment in the city or county jail for a period not exceeding six months, or by both such fine and imprisonment.

C. Any person convicted of an infraction under the provisions of this Code or other city ordinance shall be punishable by:

1. A fine not exceeding one hundred dollars for a first violation;
2. A fine not exceeding two hundred dollars for a second violation, within one year, of the same provision of this Code or of the same ordinance;
3. A fine not exceeding five hundred dollars for a third violation, within one year, of the same provisions of this Code or of the same ordinance; and
4. Any person violating the same provision of this Code or other city ordinance that is designated as an infraction, for the fourth time within one year, shall be guilty of a misdemeanor.

D. Any person determined to have committed a parking violation under the provisions of this Code or other city ordinance shall be subject to parking penalties and late payment penalties as set forth by resolution of the city council.

E. 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 of any other city ordinance is committed, continued or permitted by such person, and shall be punishable accordingly.

F. Any condition existing in violation of any of the provisions of any state or federal law or regulation or of this Code or any other city ordinance shall be deemed a public nuisance and may be abated by the city. Nuisance shall include, but is not limited to, the factors in Section 1.13.050.

G. The remedies specified in this section are in addition to, and do not supersede or limit, any other remedies, civil, administrative or criminal.

(Prior code § 1200; Ords. 21735, 21819, 24428, 29043.)

1.08.015 Injunction and civil penalties.

A. In addition to all other remedies provided by law, any provision of this code may be enforced by injunction issued by the superior court upon a suit brought by the city of San José.

B. In addition to all other remedies, as part of any civil action brought by the city, a court may assess a civil penalty in an amount not to exceed two thousand five hundred dollars per violation for each day, payable to the city, against any person who commits, continues, operates, allows or maintains any violation of any provision of this code.

(Ord. 24381.)

1.08.015.5 Personal liability for unpaid taxes.

A. In addition to all other remedies provided by law, any person required to collect, truthfully account for, and pay over any tax imposed by this code who willfully fails to collect such tax, or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat any such tax or payment thereof, shall be personally liable for the total amount of the unpaid tax and interest and penalties on the unpaid tax evaded or not collected or not accounted for and paid over to the city.

B. For the purposes of this section, "person" includes, but is not limited to, an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to collect, truthfully account for, and pay over the tax to the city.

(Ord. 29145.)

1.08.016 Cost recovery for enforcement; attorneys' fees.

A. In addition to all other remedies and cost recovery provided by law, any person violating the provisions of this code shall be liable to the city for the expenses incurred in detecting, investigating, and abating the violation, including the costs of monitoring compliance.

B. Any person violating the provisions of this code shall be liable to the city for the city's reasonable attorneys fees and costs in enforcing the code against the violator, including recovery of the city's reasonable attorneys fees and costs in bringing an administrative or civil action and any action to enforce an administrative determination or court order. The recovery of attorneys' fees and costs under this subsection is in addition to all other remedies and cost recovery provided by law, with the exception that cost recovery under this subsection does not apply to public nuisance abatement actions, for which attorneys' fee and cost recovery is authorized by Subsection C. herein.

C. In any individual action or proceeding brought by the city to abate a public nuisance, the prevailing party shall be entitled to the recovery of reasonable attorneys' fees and costs where the city elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees and costs.

D. For the purposes of this section, the term "public nuisance" means any violation of the San José Municipal Code or other conduct that has been declared to be a public nuisance by any provision of this code.

E. The city may recover the costs specified in this section by civil or other action, or by billing the violator pursuant to the collection and payment provisions of Chapters 1.17 and 1.18 of this code.

(Ord. 27144.)

1.08.020 Certain violations deemed infractions.

Violations of the following provisions shall be infractions:

Title 4:

Section 4.76.320.

Title 6:

Sections 6.02.100 and 6.08.080.

Chapter 6.16.

Sections 6.18.020, 6.20.010, 6.30.010, 6.36.020 and 6.36.030.

Sections 6.60.070B., 6.60.350, 6.64.280, 6.64.390, 6.64.450 and 6.66.080.

Title 7:

Sections 7.20.570B, 7.20.580, 7.20.700, 7.20.710, 7.40.010, 7.40.020, 7.40.030, 7.40.040, 7.40.050, 7.40.100, 7.40.120, 7.40.140, 7.50.010, 7.50.090, 7.60.050, 7.60.310, 7.60.500, 7.60.510, 7.60.700, 7.60.750, 7.60.755, 7.60.760, 7.60.790, 7.60.795, 7.60.800, 7.60.810, 7.60.815, and 7.60.820.

Title 9:

Sections 9.36.150 and 9.44.010(a).

Title 10:

Sections 10.12.010, 10.12.110, 10.20.010 and 10.46.030.

Title 11:

Sections 11.12.010, 11.12.050 and 11.16.100.

Sections 11.20.020, 11.20.040, 11.20.050.

Section 11.24.010.

Sections 11.32.010, 11.32.020, 11.32.030, 11.32.040, 11.32.050, 11.32.060 and 11.32.070.

Sections 11.34.010, 11.34.070 and 11.36.040.

Section 11.44.340.

Section 11.48.660.

Sections 11.64.020, 11.64.030, 11.64.040 and 11.64.050.

Sections 11.72.080, 11.72.100, 11.72.120, 11.72.130, 11.72.170.

Sections 11.76.020, 11.76.110, 11.76.120.

Section 11.84.010.

Sections 11.96.070 and 11.96.080.

Title 13:

Sections 13.08.020, 13.16.010, 13.20.010, 13.20.020, 13.20.050, 13.20.080, 13.21.200, 13.21.300, 13.28.440B., 13.44.020, 13.44.080, 13.44.090, 13.44.100, 13.44.110A-E, 13.44.150, 13.44.160, 13.44.170, 13.44.180, 13.44.230, 13.44.250 and 13.44.260.

Title 17:

Section 17.20.480, 17.20.600 and 17.20.630.

Title 20:

Sections 20.30.430, 20.80.860, and 20.80.1840.

Title 25:

Sections 25.03.300, 25.03.310, and 25.12.1200.

(Prior code § 1202; Ords. 19838, 20082, 21559, 21735, 21830, 22386, 22395, 22469, 22737, 22989, 23018, 23084, 23085, 23111, 23293, 23315, 23586, 23606, 23655, 23723, 24034, 24232, 24296, 24429, 24565, 24952, 25116, 25411, 25940, 26472, 27001, 27524, 28080, 28205, 29001, 29128.)

1.08.025 Parking violations.

A. Parking violations shall be governed by the civil administrative procedures set forth in California Vehicle Code Sections 40200 through 40230, as may be amended from time to time.

B. Violations of the following provisions shall constitute parking violations:

Title 6:

Section 6.46.030.

Title 11:

Sections 11.16.120, 11.32.010, 11.36.050, 11.36.060, 11.36.080, 11.36.100, 11.36.110, 11.36.130, 11.36.140, 11.36.150, 11.36.170, 11.36.190, 11.36.200, 11.36.210, 11.36.220, 11.36.232, 11.36.235, 11.36.250, 11.36.260, 11.36.280, 11.36.290, 11.36.300, 11.36.320, 11.36.330, 11.36.340, 11.36.430, 11.36.440, 11.36.470, 11.40.350, 11.40.380, 11.40.400, 11.40.410, 11.40.430, 11.44.010, 11.44.040, 11.44.045, 11.44.100, 11.44.130, 11.44.140, 11.44.160, 11.44.180, 11.44.280, 11.44.300, 11.44.340, 11.48.300, 11.49.300, 11.51.040, 11.52.320, 11.52.330, 11.52.570, 11.52.730, 11.54.030, 11.54.040, 11.54.470, 11.54.480, 11.72.120 and 11.98.060.

Title 25:

Sections 25.16.030 and 25.16.040.

(Ords. 24428, 27183.)

1.08.030 Violation of administrative provisions.

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

(Prior code § 1201.)

1.08.040 Enforcement powers.

A. Police officers are hereby empowered to enforce, and are charged with the duty of enforcing, any and all provisions of this code or any other ordinance of the city, where a violation of such provision or provisions or of such ordinance would constitute a misdemeanor, an infraction or a parking violation.

B. The city manager is authorized to designate persons, other than police officers, to enforce all parking laws and regulations, including any and all provisions of this code or any other ordinance, where a violation of such provision or provisions or of such ordinance would constitute a parking violation.

(Prior code § 1203; Ord. 24428.)

1.08.050 City manager authorized to appoint reserve or auxiliary city policemen.

Pursuant to the provisions of Section 830.6 of the Penal Code of the state of California, the city manager is authorized to deputize or appoint, as a reserve or auxiliary city policeman, any officer or employee of the city who meets such qualifications therefor as may be imposed by law, and who is assigned specific police functions by the city manager.

(Prior code § 1204.)