



## LEGISLATIVE ANALYST REPORT

**To:** Members of the Board of Supervisors  
**From:** Ernie Tedeschi, Adam Van de Water, and Andrew Murray, Office of the Legislative Analyst  
**Date:** January 8, 2007  
**Re:** **Employee Suggestion - Citation Authority for the Department of Planning**  
(OLA No. 083-06A)

### SUMMARY OF REQUESTED ACTION

As part of the 2006 Board of Supervisors Employee Suggestion Program, a City employee suggested that the Department of Planning's Enforcement Division be granted the power to issue citations for minor violations of the Planning Code.

### EXECUTIVE SUMMARY

The Planning Department does not itself currently have an effective means of compelling property owners to correct violations of the Planning Code. Rather, apart from withholding planning permits, the department must rely on the City Attorney or District Attorney to take action against the violator. Granting Planning Department code enforcement staff citation authority represents a direct, expedient, and cost-effective means of improving compliance. A department with a related mission, the Department of Building Inspection (DBI) has numerous tools to heighten compliance, including citation authority.

There are three main citation models with precedent in the City that the Planning Department could adopt. These include the criminal infraction model used by Municipal Railway (MUNI) fare inspectors; the administrative hearing model used by Department of Public Works (DPW) street inspectors; or the hybrid model used by Department of Parking and Traffic (DPT) parking control officers and Department of Building Inspection (DBI) code inspectors. The pure criminal infraction model is the least desirable of the three, suffering from court backlog, barriers to fee recovery, and problems of public perception. Of the remaining two, the administrative hearing model is better suited to a pure compliance strategy, while the hybrid model can be effective at both compliance and revenue collection.

Given that code compliance is the Planning Department's primary goal, the Office of the Legislative Analyst (OLA) recommends granting citation authority within an administrative model that provides sufficient time and incentives for abatement prior to assessing penalties. Compliance incentives such as fines and liens on the property should be considered.

## FINDINGS

### Background

In August 2003, Deputy City Attorney Sarah Owsowitz responded via email to a request from the Planning Department to outline the legal necessities for giving staff citation authority. Her answer was manifold: 1) enact an ordinance authorizing certain classes of Planning staff to issue citations, 2) change the civil service job descriptions of these classes, and 3) address issues of the bail schedule, ticket book compliance, right to trial, and conformity to state first offense rules. The Planning Department did not pursue the issue further.

### Current Situation - Planning Department

Staff of the Planning Department's Code Enforcement Division investigates various Planning Code violations, many on the basis of complaints lodged by neighbors or neighborhood organizations. Division staff also investigates potential violations revealed through referrals from other city departments, including the Department of Building Inspection (DBI). Common Planning Code violations include illegal advertising signs, illegal change of uses (from take-out food to fast-food restaurant, for example), and illegal removal of required landscaping (primarily paving of front yards). The division receives an average of approximately 80-90 cases per month, and investigates and closes a similar number. However, due to various staffing shortages, the division currently has a backlog of approximately 3,000 cases.

The six members<sup>1</sup> of the Code Enforcement Division prioritize possible violations to investigate based on quadrant priorities and a hierarchy established by the Planning Commission<sup>2</sup>. Subsequent to initial investigation, the staff issues a Notice of Alleged Violation to the property owner. If the allegations are sustained, the Zoning Administrator issues a Notice of Violation, which is appealable to the Board of Appeals. If a violation is not abated within the timeframe established in the Notice of Violation (usually 15 - 30 days), the case may be referred for civil prosecution to the City Attorney. The City Attorney pursues nearly every case that is referred by the Planning Department that has adequate legal and factual basis. However, the prosecution can require significant expenditure of Planning and City Attorney staff time, and the Planning Code does not allow for the recovery of attorney's fees or related Planning Department costs.

Per Section 176 of the Planning Code, the Zoning Administrator shall have authority to enforce code violations by any of the following actions:

- (1) Serving notice requiring the cessation, removal or correction of any violation of this Code upon the owner, agent or tenant of the property that is the subject of the violation, or upon the architect, builder, contractor or other person who commits or assists in such violation;

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<sup>1</sup> One senior planner (Planner IV) as team leader, one planner (Planner III) assigned to each of the four neighborhood planning quadrants (NE, NW, SE, SW), and one planner (Planner III) responsible for the general advertising sign program.

<sup>2</sup> Life safety, loss of housing, neighborhood livability, loss of jobs or businesses, and plan design noncompliance

- (2) Calling upon the City Attorney to maintain an action for injunction to restrain or abatement to cause the correction or removal of any such violation, and for assessment and recovery of a civil penalty for such violation;
- (3) Calling upon the District Attorney to institute criminal proceedings in enforcement of this Code against any such violation; and
- (4) Calling upon the Chief of Police and authorized agents to assist in the enforcement of this Code.

Violators shall be liable for a civil penalty of up to \$500 per day, assessed and recovered in a civil action brought by the City Attorney. Violators may be deemed guilty of a misdemeanor and upon conviction fined up to \$500 or imprisoned up to six months, or both.

In practice, although the Zoning Administrator can issue notice requiring the correction of a violation, the Planning Department has no effective means itself of compelling a violator to comply without the assistance of another City agency. The Planning Department can only withhold future permits. To receive a court ordered injunction, the City Attorney must take the violator to court. Similarly, the District Attorney's office must pursue criminal proceedings on behalf of the Planning Department. Although the Zoning Administrator could invoke the Police Department, it is not well suited to compel people to abate.

### **Current Situation - Department of Building Inspection**

The Department of Building Inspection (DBI) has a much more robust set of enforcement tools (described below) than does the Planning Department. DBI inspectors can issue citations, and the Director can issue an Emergency Order and Order of Abatement. All of these are backed by financial penalties that do not necessarily require the involvement of the City Attorney or District Attorney, including the following:

- Bail schedule associated with citations;
- Reimbursement for investigative fees (nine times the permit fee) regarding permit violations;
- Assessment of Costs to be reimbursed;
- A Special Assessment Lien placed on the property tax bill;
- Billing the property owner for work DBI contracts to comply with Emergency Orders;
- Recordation on the land record of a Director's Order of Abatement; and
- Notification of the State Franchise Tax Board for non-complying rental housing.

The department also has a robust appeals process involving various bodies, including the Board of Permit Appeals, Board of Examiners, and the Abatement Appeals Board.

DBI utilizes the code enforcement process<sup>3</sup> to compel property owners of buildings with substandard conditions to comply with the San Francisco Administrative, Building, Electrical, Housing, Mechanical, and Plumbing Codes. Code enforcement is primarily implemented by the Building Inspection Division and Code Enforcement Section; Disability Access Section; Electrical Inspection Division; Housing

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<sup>3</sup> The primary authority for code enforcement is Chapter 1, Sections 102, 103, and 104 of the San Francisco Building Code.

Inspection Services; and Plumbing Inspection Division. Other City Departments that are also involved in the code enforcement process include the Departments of Fire, Planning, Public Health, and Public Works.

Code enforcement begins when DBI issues, mails to the owner, and posts on the subject building a Notice of Violation detailing code violations found. A Notice of Violation can be issued as a result of an inspection spurred by a filed complaint, the routine periodic inspection schedule, or permit review. The Notice of Violation identifies the required repairs or modifications, and by when the corrective work must be completed. Notices of Violation can require abatement or condemnation.

If a property owner, agent or operator of an apartment house or hotel does not correct code violations as indicated on a Notice of Violation, a District Housing Inspector may issue a citation. Once issued, a citation will require the payment of a bail fee and/or appearance at a hearing before the San Francisco Municipal Court. Two types of citations may be issued pursuant to Section 204(a) of the Housing Code. A misdemeanor citation may be issued for various violations, including fire safety, life hazards, and failure to provide the requisite heat to residential buildings<sup>4</sup>. The penalty upon conviction of a misdemeanor citation is a fine from not less than \$500 to \$1000. An infraction citation may be issued for all remaining violations of the Housing Code. The bail fee for each violation is \$271 payable to the Municipal Court. The maximum fine per building for infraction or misdemeanor citations is \$7,500.

In situations of serious and imminent hazard, the DBI Director can issue an Emergency Order<sup>5</sup>, which requires the property owner to take immediate corrective action. If not completed within the specified time period, DBI may contract to have the work done. The property owner is billed for work performed to abate the code violations and any administrative costs incurred by DBI. Failure to pay these costs will result in the imposition of a Special Assessment Lien on the property.

If violations cited in a Notice of Violation are not corrected within the given timeline, a representative of the Director presides over an administrative hearing referred to as a Director's Hearing. After full consideration of the evidence at the hearing, the representative may issue a Director's Order of Abatement. Such orders are appealable to the Abatement Appeals Board. An issued Director's Order of Abatement is recorded at the San Francisco Recorder's Office and placed on the land records of the property in violation. Note that lending agencies will not typically give loans on real property involved in code enforcement proceedings in which a Director's Order of Abatement is recorded. Also note that Chapter 2 of the San Francisco Housing Code allows DBI to go straight to court for civil penalties and/or injunctive relief and by-pass the abatement proceedings if the violations warrant such.

After a Director's Order has been issued and recorded, the cost of preparation for and appearance at the hearing and all prior and subsequent attendant costs, including reinspection time, related to the code enforcement action shall be assessed upon the property owner. This process is called "Assessment of Costs". These bills must be paid before the Order of Abatement is revoked and recorded. The property owner is charged an hourly rate, as prescribed by the San Francisco Building Code, for inspector and clerical time used to clear all violations.

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<sup>4</sup> Pursuant to Sections 701 (a), (b), & (c) of the Housing Code

<sup>5</sup> Pursuant to Section 102.16 of the San Francisco Building Code

A Special Assessment Lien can be placed on the property tax bill and legal penalties can be levied against the property owner, if the Assessment of Costs is not paid within the required time frame. Penalties at the legal rate of interest are levied for late payments.

Note that the State Revenue and Taxation Code requires local regulatory agencies to notify the State Franchise Tax Board when rental housing has substandard conditions. A referral is made to the State Franchise Tax Board when code violations have not achieved compliance after six (6) months from the Notice of Violation completion date. The State Revenue and Taxation Code asserts that no deduction shall be allowed from substandard rental housing for interest, taxes, depreciation, or amortization paid or incurred in that taxable year. Appeal of a State Franchise Tax Board referral can be made to the San Francisco Abatement Appeals Board.

The Board of Examiners is the hearing body with jurisdiction limited to the review of “Requests For Variance or Interpretation” of construction methods, assemblies or materials involving safety pursuant to Section 105.1 of the San Francisco Building Code.

### **PENALTY MODEL CASE STUDIES**

The Planning Department could adopt one of three models of penalty assessment that already exist within the City.

#### **1. The Criminal Infraction Model (Transit Fare Inspectors)**

The Owsowitz memo spoke to the implementation of this model, which is characterized by the following attributes:

Notice of Violation:	None. Penalties take effect immediately upon issuance of citation.
Nature of Citation:	Criminal infraction.
Setting of Fines:	Superior Court, as part of the Court’s bail schedule.
Penalty Accrual:	Shared between the City and Superior Court.
Appeals:	Directly to the Traffic Section of the Superior Court.

MUNI transit fare inspectors currently utilize this criminal infraction model, though they have new authority to change to an administrative model in 2007.

## Case Study: Transit Fare Inspectors (MUNI)

Like most American mass-transit systems, MUNI has entrance barriers in place (turn-styles and driver verification) to prevent fare evasion. Nevertheless, MUNI has estimated that lost revenue from fare evaders is substantial enough to justify additional safeguards; MUNI thus employs 55.50 FTE Transit Fare Inspectors at an incremental salary/benefit cost of \$58,687 - \$71,354 annually, as well as 7.50 FTE Fare Inspections Supervisors at \$75,629 - \$91,915<sup>6</sup>. The job description filed with Human Resources is reproduced in Appendix I.

The Board of Supervisors first authorized MUNI's fare inspectors in 1998 by amending the Traffic Code to add Section 128(1-A):

- (a) The Director of Public Transportation is authorized to designate officers or employees of the Public Transportation Department to be fare inspectors. Any fare inspector so designated is hereby authorized to issue citations for any violation of Sections 127 and 128 of this Article.*
- (b) Persons designated as fare inspectors shall receive the requisite training as established and approved by the Public Transportation Department and the San Francisco Police Department.*

Fare evasion is a criminal infraction under both municipal<sup>7</sup> and state law<sup>8</sup>. This overlap leads to the violator incurring parallel and complementary penalties. On one hand, the San Francisco Traffic Code nominally spells out the fines for fare evasion as \$35 for the first offense, \$55 for the second, and \$75 for the third and each subsequent offense occurring within a year of the first<sup>9</sup>. Since ultimately the Superior Court adjudicates infractions, however, it sets the bail for fare evasions, which is the *de facto* penalty for the offense and in theory encapsulates the fines imposed by both MUNI and the Superior Court. In 2006, fare evasion carried a bail of \$164.15 in San Francisco<sup>10</sup>. Of this, MTA has internally estimated that their agency receives only \$16 back per citation, not the \$35 - \$75 they “charge” per the Traffic Code<sup>11</sup>.

The weak returns to MTA, coupled with complaints of backlog from the Superior Court, have led San Francisco to support “decriminalization” of fare evasion. With encouragement from the MTA, on September 14, 2006 the state senate passed SB1749 (Migden) allowing for administrative enforcement of transit-related violations in the City and County of San Francisco and Los Angeles County. MTA therefore hopes to have an administrative enforcement mechanism in place by July 2007<sup>12</sup>. The collection mechanism for citations will be similar to that of parking citations, implemented by a private collection firm. On difference, however, is that parking citation collection is currently backstopped by the power to attached uncollected fines and penalties to state vehicle registration renewal. For an overview of a hybrid, post-decriminalization model, see the section on Parking Control Officers (PCOs) below.

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<sup>6</sup> Annual Salary Ordinance 2006-07 Job Codes 9132 & 8121 (+ 20%)

<sup>7</sup> Traffic Code §128.1

<sup>8</sup> California Penal Code §640(b)(1)

<sup>9</sup> Traffic Code §128.1

<sup>10</sup> Superior Court of California, County of San Francisco, 2006 Infraction Bail Schedule, PC640B1

<sup>11</sup> Kate Breen, MTA

<sup>12</sup> Judson True, MTA

## 2. Administrative Penalty and Hearing Model (Street Inspectors)

An alternative to the criminal infraction model is one crafted around administrative penalties and hearings. This model is currently in use at the Department of Public Works (DPW) for handling several of the provisions they are charged with enforcing, such as excavation without a permit and failure to abate graffiti<sup>13</sup>. It has the following characteristics:

Notice of Violation:	First notification is a Notice of Violation giving up to 72 hours for abatement or a notice of corrective action.
Nature of Citation:	Not an infraction. Emphasis is on compliance rather than penalty collection.
Setting of Fines:	By ordinance, passed by the Board of Supervisors.
Penalty Accrual:	To the department, with case specific daily limits per the Public Works Code.
Appeals:	Internally via administrative hearing, acting on authority of the director.

### Case Study: Street Inspectors (DPW)

Municipal law requires a permit for all street excavation within the public right-of-way. Violation is an infraction under Section 2.4.83(d) of the Public Works Code:

*Among other violations, citations may be issued for the following specific violations:*

*(i) Excavation without a valid permit;*

Section 2.4.80(a) grants the director the authority to enforce those provisions:

*The Director shall have authority to enforce this Article against violations thereof. Upon the Director's determination that a person has violated any provision of this Article, the standard plans and specifications, notices, orders, or regulations of the Department; any term, condition, or limitation of any permit; or is subject to any outstanding fees, deposits, or other charges, the Director shall serve notice on said person to abate the violation. Any person whom the Director determines to be a responsible party may be subject to any or all of the enforcement mechanisms specified in Section 2.4.81, 2.4.82, and 2.4.83.*

Section 2.4.83(a) specifically extends this authority to cover criminal enforcement:

*The Director is authorized to enforce the criminal provisions of this Article, to call upon the Chief of Police and authorized agents to assist in the enforcement of this Article, or both.*

To assess potential violations and issue citations, DPW employs 9 complaint-driven street inspectors with salary and benefits totaling \$68,453 - \$83,179 per FTE, 3 senior street inspectors at \$79,217 - \$96,314, and 1 street inspector supervisor at \$91,728 - \$111,509<sup>14</sup>, all of whom act on the director's authority. Each conducts an average of 5 – 6 inspections per day, and the unit as a whole issues

<sup>13</sup> See Public Works Code Subarticle VII §2.4.80 – 2.4.83

<sup>14</sup> Annual Salary Ordinance 06-07 + 20% for benefits

approximately 1,000 tickets per year<sup>15</sup>. Appendix II presents the job description registered at Human Resources for the street inspector.

DPW's primary enforcement goal is to affect compliance, not to collect revenue; therefore, the first citation a street inspector issues is a Notice of Correction, which carries no fine and may give the offender 72 hours to remedy the violation<sup>16</sup>. Failure to comply leads to an imposition of administrative penalties, which Section 2.4.81(b), (c), (d), and (e) allow to accrue for every day of non-compliance, but also place daily limits on. For example, penalties for excavating without a permit cannot exceed \$10,000, but can include both a "pure" penalty and a charge for enforcement costs. Because in this particular case excavation without a permit is an infraction, DPW would also impose criminal fines of \$100 for the first violation, \$200 for the second within a year, and \$500 for the third and each thereafter within a year of the first<sup>17</sup>.

The Public Works Code allows the alleged violator to appeal their case for an administrative review within 10 days of receiving notice of administrative penalties (13 days after the original citation)<sup>18</sup>. A hearing officer oversees the review: typically for DPW, internal staff fill these roles, though when a contractor is involved, the agency will bring in staff from outside departments to act as administrative hearing officers<sup>19</sup>. Both parties submit written evidence and testimony, and the hearing officer issues a decision within 10 days of the review. This decision constitutes the recommendation to the director, who within 5 days must either accept the recommendation as is, reject it, or modify it. The director's decision is final: there are no further avenues for appeal<sup>20</sup>. If the appellant is still found in violation, but refuses to pay the assessed administrative penalties, the director may call on the City Attorney to issue an injunction against him or her<sup>21</sup>.

### **3. Hybrid Administrative-Court Model (Parking Control Officers)**

The hybrid enforcement model was a policy response to backlog in the Superior Court. Prior to 1993, parking violations were criminal infractions; accordingly, the parking tickets issued by the Department of Parking and Traffic (DPT) were in fact promises to appear, and the Superior Court set the bail levels in the Uniform Bail and Penalties Schedule. In 1993, however, the State of California decriminalized parking violations<sup>22</sup>, stripping the Court of its penalty-processing responsibility and shifting it to each jurisdiction's enforcing agency (DPT in San Francisco's case). Thus, the citations issued by parking officers today are no longer criminal infractions, but rather an entirely separate category of penalty that is unique to parking violations. The Board of Supervisors sets these penalties by ordinance<sup>23</sup>.

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<sup>15</sup> Dan McKenna, DPW

<sup>16</sup> Public Works Code §2.4.81(a)

<sup>17</sup> Public Works Code §2.4.83(b)

<sup>18</sup> Public Works Code §2.4.81(g)

<sup>19</sup> Anna LaForte, DPW

<sup>20</sup> Public Works Code §2.4.81(k)

<sup>21</sup> Public Works Code §2.4.82(a)

<sup>22</sup> Assembly Bill 408 (Stats. 1992, ch. 1244)

<sup>23</sup> Traffic Code §210

The hybrid model is characterized by the following:

Notice of Violation: None. The citation is issued immediately and the penalty payable to the issuing agency.

Nature of Citation: Not an infraction, but a separate penalty that does not appear on the criminal record.

Setting of Fines: By ordinance, passed by the Board of Supervisors.

Penalty Accrual: In FY 2007, the MTA expects to collect \$88.5 million in parking fines of between \$35 and \$500 per violation.

Appeals: Internally via administrative hearing, acting on authority of the director. May then be appealed to the Traffic Section of the Superior Court.

Case Study: Parking Control Officers (DPT)

As stated, DPT currently uses the hybrid model with their parking control officers (PCOs)<sup>24</sup>. PCOs receive their authority from Article 2, Section 12 of the Traffic Code:

*... any regularly employed and salaried civilian employee of the Department of Parking and Traffic designated by the Director of Parking and Traffic to enforce parking regulations (hereinafter referred to as a "Parking Control Officer") shall have the power and authority to issue parking control notices as provided by Section 41102 and 40202 of the Vehicle Code of the State of California.*

DPT employs a patrol approach to enforcement, constantly monitoring the city's on street and public structure parking. For this, DPT employs 320 PCOs<sup>25</sup>. Salary and benefits cost the department \$44,210 - \$53,102 per PCO<sup>26</sup>, with additional incremental costs totaling \$64,031 broken down as follows<sup>27</sup>:

Uniforms (initial):	\$1,493
Safety equipment	\$1,053
Supplies	\$168
Radio	\$2,989
Ticket writer, printer, rack	\$9,955
Vehicle	\$26,440
Facilities	\$21,933

For the full job description of the PCO class, see Appendix III.

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<sup>24</sup> Steve Bell, MTA

<sup>25</sup> Annual Salary Ordinance 06-07 + 20%

<sup>26</sup> Annual Salary Ordinance 06-07 + 20%

<sup>27</sup> OLA #034-01 (February 2002) Appendix B, adjusted to 2005 prices using ABAG Bay Area CPI (<http://www.abag.ca.gov/abag/overview/datacenter/retail/cpi.html>)

DPT has three stages of appeal. Staff completes initial review of all citation appeals. The next stage is an administrative hearing led by dedicated, part-time administrative hearing officers who report to the director of MTA. These hearing officers are trained annually and, due to the nature of the work, move on to other positions fairly frequently. The final stage of review is a de novo hearing before the Traffic Section of the Superior Court, which levies a refundable \$25 filing fee to the alleged violator. Appeals seldom get as far as the courts, however, as violators tend to be dissuaded by a negative decision at the administrative hearing stage. Court congestion is thus not a consequence of the hybrid model in the same way it is for a pure criminal infraction model.

The MTA subcontracts with PRWT Services, Inc. to process all parking ticket citations and payments.

**PROGRAM DESIGN CONSIDERATIONS**

The three citation models currently in use by City agencies can be summarized as follows:

**Table I: Summary of the Three Citation Models**

	<b>Criminal Infraction</b> <i>(MUNI, pre- '93 DPT)</i>	<b>Administrative Review</b> <i>(DPW)</i>	<b>Hybrid</b> <i>(post- '93 DPT)</i>
<b>Notice of Violation</b>	None. Penalties take effect immediately upon issuance.	First citation is a notice giving 72 hours for abatement.	None. The citation is a penalty payable to the issuing agency.
<b>Nature of Citation</b>	Criminal infraction.	Not an infraction, but a separate penalty that does not appear on the criminal record.	Not an infraction, but a separate penalty that does not appear on the criminal record.
<b>Governed By</b>	State law.	City law.	City law.
<b>Setting of Fines</b>	Superior Court, as part of the Court's bail schedule.	By ordinance, passed by the Board of Supervisors.	By ordinance, passed by the Board of Supervisors.
<b>Appeals</b>	Directly to the Traffic Section of the Superior Court.	Internally via administrative hearing, acting on authority of the director.	Internally via administrative hearing, acting on authority of the director. May then be appealed to the Traffic Section of the Superior Court.

The models of enforcement and penalty assessment that Planning chooses should be predicated on several considerations.

## **What provisions should be enforced?**

Planning staff has in the past drafted a list of possible provisions enforceable by citation. These included prohibited commercial or industrial uses, buildings more than one foot in excess of height specifications, and the creation of paved parking in a required rear yard<sup>28</sup>. The final determination will be a matter of policy for the Planning Department and other decision makers. As part of implementation, the Planning Department should consider whether to address any inconsistencies within the Code, as consistency will make enforcement easier<sup>29</sup>.

## **Are compliance, revenue collection, or both priorities?**

An approach that primarily fosters compliance would be appropriate given Planning's mission. Property owners would likely appreciate a grace period for abatement. The experience of other city agencies has been that the criminal infraction model's use of the courts hinders revenue collection by the enforcing agency.

## **Patrol-, complaint-, or inspection- driven enforcement?**

Once it agrees upon a list of citation-enforceable provisions, Planning will need to choose how it intends to monitor compliance. The three general approaches to enforcement are patrol-, complaint-, and inspection-driven. Planning currently identifies most alleged violations through complaints or referrals from DBI or other city agencies.

Pro-active patrol enforcement incurs the highest costs in terms of money, time, and resources (assuming that patrols cover the bulk of the City and are fairly regular), but is the most thorough in ensuring compliance. Staff patrols the City on a regular basis to identify violators.

An inspection-driven approach, meanwhile, involves Planning and DBI staff monitoring of code violations only through the course of other planning or code enforcement work. This is less expensive than patrol-driven but also less comprehensive.

Complaint-driven enforcement involves no regular patrols, but rather responds to complaints filed by concerned neighbors and others. Costs are the lowest, but effective enforcement relies on an adequate public understanding of the Planning Code to make complaints. This approach thus may work at addressing the more egregious and obvious violations, but likely not more subtle ones.

## **How prevalent are Planning Code violations?**

An aggressive, comprehensive approach to code enforcement such as the patrol-driven option fits with an environment where violations are common. If violations are abundant, then a key consideration is crafting a robust appeals process that won't get congested with cases. The penalty assessment model the department chooses will therefore need to be scaled to fit the number of violations.

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<sup>28</sup> Draft internal Planning document, 17 Sept 2003

<sup>29</sup> For example, there might be inconsistency relative to setbacks and landscaping addressed by Sections 131 and 132.

## **What amount of resources should Planning invest?**

A combination of the criminal infraction model, which requires no internal appeals system, and inspection enforcement demands the least number of net additional FTEs to existing staff, as most citation duties would be undertaken by existing Planning staff. The hybrid/patrol combination would be the most taxing and would likely require additional hires.

### **CONCLUSION**

Granting Planning Department code enforcement staff citation authority represents a direct, expedient, and cost-effective means of improving compliance, particularly for minor violations. Granting authority is a multi-step process:

1. Decide which provisions of the Planning Code will be enforced by citation;
  - Reconcile Sections 131 and 132 of the Planning Code;
2. Choose a patrol-, inspection-, or complaint-driven enforcement mechanism;
3. Choose a criminal, administrative, or hybrid model; and
4. Fulfill the ancillary legal and administrative requirements of implementation as appropriate, possibly including:
  - Position descriptions;
  - Training requirements for issuing citations;
  - Badging and identification;
  - Right of entry authority;
  - Bail or penalty schedule;
  - Ticket book compliance; and
  - Right to trial and conformity to state first offense rules.

Table II, below, provides an assessment of the strengths and limitations of the various enforcement and penalty models under consideration.

**Table II: Evaluation of the Three Enforcement and Penalty Models**

	<b>Identification Effectiveness</b>	<b>Penalty Revenues</b>	<b>Required new FTEs</b>	<b>Net Training/ Incremental</b>	<b>Court Congestion</b>
<b>Enforcement Models</b>					
<b>Patrol-driven</b>	High	High	High	High	High
<b>Inspection-driven</b>	Medium	Medium	Low	Medium	Medium
<b>Complaint-driven</b>	Low	Low	Low	Low	Low
<b>Penalty Models</b>					
<b>Criminal Infraction</b>	N/A	Low	Low	Medium	High
<b>Administrative Review</b>	N/A	Low	Medium	Medium	Low
<b>Hybrid</b>	N/A	High	Medium	Medium	Medium

As the table shows, the patrol-driven enforcement model is the most resource-intensive (assuming broad coverage and regularity), but also has the largest potential payoff in terms of compliance and, assuming violators are prevalent, penalty revenues. Integrating citations into existing inspection regimes – the “inspection-driven” option – will likely miss some violators but will also save on personnel costs. This option is the most appropriate if Planning feels that a modest inspection force could handle code violations in San Francisco. Relying on complaints to inspect property and issue citations will overlook many violators due to unfamiliarity with the code or neighbor apathy, absent an additional education campaign.

In terms of penalty assessment, the recent trend among city agencies indicates a rejection of the criminal infraction model. MUNI is in the process of transitioning away from the criminal infraction model; DPT, meanwhile, successfully accomplished this in 1993. Both agencies cited their complicated and often inefficient relationships with the Superior Court as a rationale for moving to the hybrid model, which removes the courts entirely from penalty collection and relegates them to the later stages of the appeals process. The Superior Court itself supported parking decriminalization and does so now for fare evasion, primarily because doing so alleviates internal scheduling congestion.<sup>30</sup>

Of the remaining two models, the hybrid model employs an immediate fine assessment that generates revenue but may also lead to more contentious appeals. It would also represent a greater departure from Planning’s status quo regime, which is closer to the administrative review model. By giving an initial Notice of Violation, the administrative review model sacrifices opportunities for penalty assessment in favor of a grace period for abatement. One relevant problem encountered by MUNI has been the lack of incentives to force violators to pay their fines, other than referral for collection. If Planning adopts the administrative review model, it should lay out parallel enforcement mechanisms to give weight to the

<sup>30</sup> Kate Breen, MTA

citations such as placing a lien on the property until the violation is abated or coupling payment with property tax bills. Like DPW, Planning could be authorized to call on the police or the city attorney to help enforce unmitigated Notices of Violations. These steps would encourage violators to promptly abate offenses and pay off fines.

### **RECOMMENDATION**

Our assessment is based on the assumption that compliance is the primary goal, that Planning Code violations are not pervasive enough to warrant routine pro-active patrol, and that violators, once identified, may be slow to abate.

Should the Planning Department therefore wish to grant citation authority to its staff, we recommend that they adopt an administrative review model that incorporates elements of DPW street inspectors and DBI code inspectors, which includes significant compliance incentives. This could include assessing administrative fines, reimbursement for costs, and placing liens on the subject property.

## **Appendix I: Transit Fare Inspector Job Description<sup>31</sup>**

### Description

Under general supervision, performs a variety of duties related to the enforcement of fare policies of the Municipal Railway (MUNI) Proof of Payment Program, and to the enforcement of other applicable civil and administrative codes, and MUNI regulations and policies.

### Distinguishing Features

Positions in this job code enforce the fare policies of the Proof of Payment fare system on the MUNI Metro and other MUNI lines, plus other applicable regulations, ordinances and policies related to MUNI operations. Incumbents are distinguished from class 8121 Fare Inspections Supervisor/ Investigator, Municipal Railway, by their lower level of responsibilities and decision-making.

### Examples of Important and Essential Duties

According to Civil Service Commission Rule 9, the duties specified below are representative of the range of duties assigned to this job code and are not intended to be an inclusive list.

1. Inspects public transit passengers for appropriate fare on board moving vehicles, on station platforms and within transit stations and facilities.
2. Issues citations to passengers without valid passes, tickets or transfers; and for violations of applicable sections of proof of payment policy, as required by proof of payment program regulations; checks and verifies passenger identification documents; explains citation and appeal process to persons receiving citations.
3. Enforces all regulations, ordinances and policies related to Municipal Railway operations, within transit stations, vehicles and facilities.
4. Gathers/tabulates information on passengers inspected and cited; numbers of passengers, and other relevant data; fills out forms and writes basic daily reports regarding citations, unusual incidents, and other activities.
5. Appears in court to present evidence and testimony as required.
6. Reports safety hazards, potential problems, and violations of law observed during the course of duty, to appropriate authority; requests assistance when necessary.
7. Assists other MUNI and City personnel, and sworn law enforcement officers in the event of accidents, emergencies, and other incidents requiring response.
8. Provides general information and assistance, when requested, to public transit passengers and members of the public.
9. Operates communications and electronic equipment, such as two-way radios, and other office equipment, including computer terminals.

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<sup>31</sup> <http://agency.governmentjobs.com/sf/default.cfm?action=viewclassspec&ClassSpecID=15719>

### Job Related and Essential Qualifications

Knowledge of: the methods/techniques related to enforcement of applicable rules, regulations, ordinances, policies and procedures.

Ability to: accurately observe situations and exercise sound judgment to determine appropriate action, and to assess various options of how to handle a situation or whether there is a need for intervention or securing assistance; learn how to operate communications/electronic equipment and related codes and formats; drive a vehicle.

Skills to: deal tactfully and courteously with the general public and others, function effectively under stress, maintain a professional manner in a variety of situations; speak clearly, concisely and in an easily understandable manner with other employees, transit passengers and the general public, using appropriate terminology, to interpret applicable codes, ordinances and policies, and to listen with understanding and comprehension; prepare clear and concise written reports and other documents, and to read and comprehend applicable codes, ordinances and policies; perform basic math computations.

### Experience and Training Guidelines

Three years full-time experience working with the public, which must have included providing information and assistance, and working with applicable policies and regulations.

Desirable Qualifications: high school diploma /GED/state equivalency certificate.

Licenses or certificates: possession of a valid driver's license.

### Special Requirements

The work of job code 9132 is performed on MUNI buses, trains and station platforms, which may involve lifting, bending, and climbing stairs. The nature of work requires incumbents to: work varying hours and/or shifts, including weekends, evenings and holidays; work in a variety of conditions, including inclement weather and exposure to the elements; operate a variety of communications and electronic equipment; work for long periods of time standing or walking, including on moving transit vehicles, uneven terrain, and unstable surfaces, etc.; run short distances; wear designated attire while on duty as required.

## **Appendix II: Street Inspector Job Description<sup>32</sup>**

### Description

Under general supervision, inspects the use, condition, and construction of streets, sidewalks, trench excavations and repair projects to ensure compliance with federal, state, and municipal codes, specifications, regulations, permits, and plans; reads and interprets plans, specifications, codes, ordinances and regulations; investigates claims and requests regarding street and sidewalk defects and improper use; and takes corrective action.

### Distinguishing Features

This is an entry-level position that has responsibility for enforcement of codes, regulations and ordinances relative to the use and safety of the public right of way. It is distinguished from the Senior Street Inspector by its lower level of responsibility and lack of supervisory duties.

### Supervision Exercised

None.

### Examples of Important and Essential Duties

According to Civil Service Commission Rule 109, the duties specified below are representative of the range of duties assigned to this job code and are not intended to be an inclusive list.

1. Performs site inspections of streets, sidewalks, trench excavations, and utility and repair projects including inspecting the general condition or defects of streets and sidewalks; inspecting permit use for obstructions such as news racks, flower stands, restaurant furniture encroachments, produce stands, building construction, or other obstructions to paths of travel, especially with regard to compliance with the Americans with Disabilities Act and Title 24; inspecting excavation sites of sewer projects and utility companies to ensure that proper shoring practices and traffic and pedestrian safety procedures are followed.
2. Reads and interprets permits, plans and specifications to determine if condition and use of street, sidewalk, excavation, or repair project is in compliance with codes, regulations, ordinances, and permit conditions.
3. Enforces codes, regulations and ordinances by notifying responsible parties of the need to repair sidewalks on their property; of noncompliance with permit use; and of violations of health and safety codes and regulations, Title 24, or ADA mandates; performs follow-up inspections to ensure compliance.
4. Investigates requests, inquiries, and claims related to the public right of way, encroachment, permit use, and public safety.

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<sup>32</sup> <http://agency.governmentjobs.com/sf/default.cfm?action=viewclassspec&ClassSpecID=6230>

5. Writes reports and correspondence such as field reports, inspection records, notifications for corrective action, letters, warnings, citations, meeting documentation, and prepares diagrams and reports regarding findings of investigations; uses a computer for report-writing, correspondence, and data entry and retrieval.
6. Communicates orally with a variety of people in meetings, conferences, hearings, and on the phone and in person with contractors, utility company representatives, property owners, permit holders, business owners, other City agencies, and the general public.
7. Provides depositions and testifies in court proceedings as a representative of the City.
8. Performs mathematical calculations including percentages, slope, area, and volume related to construction, maps, plans, and drawings.
9. Operates a motor vehicle in the course of making site visits or attending meetings.
10. Performs related duties as required.

### Job Related and Essential Qualifications

Knowledge of: inspection practices and procedures for construction, maintenance, use, and repair of the public right of way; and safety procedures including an understanding of occupational hazards and procedures for accident prevention such as trench shoring, traffic and pedestrian safety requirements, and use of personal protective equipment (PPE's).

Ability to: interpret, apply, and enforce codes, specifications, ordinances and regulations; promote, establish, and maintain effective working relationships; communicate effectively orally with a variety of people and groups; write field reports, inspection reports, notifications and citations for corrective action, correspondence using a computer; perform basic mathematical calculations; and operate a motor vehicle.

### Experience and Training Guidelines

Three years of verifiable experience in construction related to streets, roadways and sidewalks; or in code enforcement affecting the public right of way; or in permit review, permit issuance, or construction materials testing; or plan checking related to the construction, maintenance or use of the public right of way.

License: Possession of a valid driver license.

## **Appendix III: Parking Control Officer (PCO) Job Description<sup>33</sup>**

### Description

Under general supervision, patrols an assigned area for the purpose of enforcing motor vehicle parking regulations, and performs related duties as required. Essential functions include: operating a three-wheeled vehicle, or walking, or riding a bicycle, or driving a van or automobile in patrolling the streets; issuing citations for illegal parking by means of handwritten and/or computer generated citations; directing vehicular and pedestrian traffic through the use of appropriate hand signals and whistles at specific intersections or control points; operating a radio transmitter to keep in contact with supervisors and to report circumstances requiring police action; preparing reports; and interacting with the public in explaining policies and procedures.

### Distinguishing Features

Positions in this class are staffed by civilian employees who normally wear a uniform and badge but do not carry weapons and are responsible for explaining and enforcing provisions of the California Vehicle Code and local traffic codes related to the movement of vehicular and pedestrian traffic and parking regulations. Positions in this class are further distinguished by the need for making regular, responsible public contact concerning traffic direction and control. Employees will be required to work any shift, rotating shifts, weekends, and holidays and may be required to work overtime.

### Examples of Important and Essential Duties

According to Civil Service Commission rule 9, the duties specified below are representative of the range of duties assigned to class 8214 Parking Control Officer and are not intended to be an inclusive list.

1. Patrolling the streets in an assigned area to cite illegally parked vehicles and to enforce motor vehicle parking regulations. Places identifying marks on parked vehicles, or records identifying information into hand-held computer, and subsequently checks for these data/marks as means of identifying vehicles which are parked beyond the legal time limit.
2. Arranges for removal of unlawfully parked vehicles as authorized by various state and local codes; completes inventory form describing contents of the vehicle and any visible damage or missing parts.
3. Directs vehicular and pedestrian traffic by using appropriate hand signals and whistles at a specific intersection or other control points; assists pedestrians in crossing from curb to curb at intersections; directs traffic and manages crowds at the perimeters of fires, accidents, parades, and other public functions.
4. Operates and monitors a radio transmitter to keep in contact with supervisors and to inform departmental supervisors and dispatch centers of any circumstances requiring police or emergency assistance and acts in accordance with instructions received.

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<sup>33</sup> <http://agency.governmentjobs.com/sf/default.cfm?action=viewclassspec&ClassSpecID=15719>

5. Makes notes of actions taken in line of duty and prepares detailed reports describing unusual problems encountered or instances observed relating to parking and traffic control; prepares daily reports.
6. Explains parking and traffic regulations; provides information in response to questions about routes of travel, points of interest, distances and related matters to the public; advises the public as to how and where they may contact the Police Department.
7. Lifts and attaches vehicle immobilization unit in order to immobilize vehicles.
8. Operates a motor vehicle with standard or automatic transmission, vans, and 3-wheeled vehicles.
9. Performs related duties and responsibilities as assigned.

### Job Related and Essential Qualifications

Knowledge of: California Vehicle Code and the San Francisco Traffic, Harbor and Park Codes; San Francisco street names, locations of public buildings, and recreational facilities, routes of travel, and other points of interest.

Ability to: Communicate clearly and effectively orally and in writing; accurately analyze situations and take an effective course of action; effectively interact with the public, parking violators, supervisors and staff in a tactful and courteous manner; read and understand departmental policies, rules, instructions, various codes, and city street maps; observe and recall street details and incidents; work independently with minimal supervision and under stressful and hostile conditions.

### Experience and Training Guidelines

Experience: Two years of satisfactory public contact experience which must include providing information, or applying and explaining rules, regulations, and procedures, or responding to complaints as a primary responsibility; or two years military service on either active or reserve duty; or six months of experience as a parking control officer.

Training: High school diploma or equivalent (GED or High School Proficiency Examination). Sixty semester units or ninety quarter units from an accredited college or university may substitute for experience.

License or Certificate: Current valid driver's license.

Special Requirements: Essential duties require the following physical skills and work environment: sit, stand, and walk for extended periods; engage in the repetitive motions involved in generating citations with a hand held computer or by hand and/or directing traffic; work in inclement weather. Some positions require the ability to lift 40 pounds as required to lift and attach a vehicle immobilization unit or to lift and position police barricades. Duties sometimes involve interacting with the public under hostile conditions.