



## Effective Implementation and Enforcement Clauses in Ordinances A Fact Sheet for Advocates

*All laws should contain certain provisions to ensure that residents and businesses comply. This fact sheet illustrates how strong implementation and enforcement provisions work to help government enforce local laws effectively.*

The National Policy & Legal Analysis Network to Prevent Childhood Obesity (NPLAN) provides a variety of legal tools to help communities combat childhood obesity, including model laws (“ordinances”) local decision-makers and attorneys can adapt for their communities. Ordinances must contain **implementation** and **enforcement** provisions to ensure that residents and businesses comply with the law. Without any enforcement provision, a community would have to rely on voluntary compliance.<sup>1</sup>

When a city council adopts an ordinance, it decides how to enforce the new law. This fact sheet explains the different ways local governments can enforce laws. Local governments may use one or a combination of the options described here.

**State and local law dictates the type of enforcement permitted. A local attorney must draft the enforcement clauses to ensure they conform to state and local law and procedures.**

In some cities or counties, each new law contains its own enforcement language. In others, state law or another section or chapter of the city or county’s municipal code will specify the new law’s penalties.

## Implementation

*Implementation* refers to how the local government will carry out the local ordinance. Implementation clauses assign the responsibility to specific departments or officials. These clauses are important for advocates because they identify those responsible when a law is not adequately enforced.

The implementation clause(s) should:

- Designate the department(s) or official(s) responsible for implementing and administering the law's requirements;
- Authorize or direct the official to issue additional regulations (if necessary) for how to implement the law;
- Authorize any other powers the official will need to administer the law, such as delegating authority to other employees, entering into contracts, or issuing citations; and
- Designate those authorized to issue citations for violations.

### Example of an implementation clause:

- (a) The Director of the Department of Public Health shall implement, administer, and enforce this chapter. The Director is hereby authorized to issue all rules and regulations consistent with this chapter and shall have all necessary powers to carry out the purpose of this chapter.
- (b) In addition to any peace officer, the following classes of employees are authorized to issue citations for violation of this chapter: Environmental Health Inspector, Senior Environmental Health Inspector, Principal Environmental Health Inspector, Director, Bureau of Environmental Health, and Assistant Director of the Bureau of Environmental Health.

## Enforcement

*Enforcement* refers to the way government ensures that its citizens abide by the law and the consequences for failing to do so. There are four major types of enforcement:

1. Civil enforcement
2. Administrative enforcement
3. Criminal enforcement
4. Citizen enforcement

### 1. Civil Enforcement

A city or county can file a civil lawsuit to enforce a law, remedy a wrong, or protect a right. If someone is violating an ordinance, the city or county may sue for an injunction, civil penalties, or both.

- An **injunction** is a court order requiring a party to take or refrain from certain action. A city or county may sue for an injunction to stop a person or business from violating an ordinance.<sup>2</sup> For example, if a city has adopted a menu-labeling law requiring fast food restaurants to post the calories of each item on the menu and a restaurant fails to abide by the law, the city attorney might file a lawsuit to get a court to order the restaurant to comply with the law.

### Example of a clause authorizing injunctive relief:

The city attorney is hereby authorized to bring an action for injunctive relief to enjoin a violation of this ordinance.

- **Civil penalties** are similar to the damages (money) a private party may receive in a civil lawsuit. Where state law permits, a city or county may file a lawsuit to collect civil penalties for the violation of an ordinance.<sup>3</sup> For example, a menu-labeling ordinance could state that a restaurant failing to post calories is subject to a civil penalty of \$100 per day. The city attorney could file a lawsuit to establish that the restaurant violated the ordinance and to get the court to order the restaurant to pay the financial penalty to the city.

When establishing civil penalties in an ordinance, a local government must comply with the requirements of state law, including any caps on the amount it may impose. The government also must ensure the process for imposing the penalties is fair, and the penalty must be reasonably related to a legislative goal.<sup>4</sup> The amount of the civil penalties must not be oppressive or unreasonable.<sup>5</sup>

State or local law may determine how the collected financial penalties can be used. State law may also permit a local government to collect court costs and attorneys' fees for successfully prosecuting a civil lawsuit.<sup>6</sup>

### Example of clauses authorizing civil penalties:

- (a) Any person who violates this chapter may be liable for a civil penalty, not to exceed \$100 per occurrence for each day such violation is committed or permitted to continue.
- (b) The city attorney may bring a civil action to recover civil penalties for the violations of this chapter.
- (c) Attorneys' Fees. The city attorney may seek recovery of the attorneys' fees and costs incurred in bringing a civil action pursuant to this section.

## 2. Administrative Enforcement

In some states, a city or county may be authorized to enforce ordinances by imposing an *administrative* financial penalty. Administrative enforcement occurs within the local government, rather than through a lawsuit in court.<sup>7</sup> The agency or department issues a citation or notice of the violation, holds a hearing that is less formal than a court proceeding to hear evidence, and then determines whether a violation occurred and what the penalty should be.

For example, a menu-labeling law could subject violators to an administrative penalty of \$100 per day. The ordinance would authorize certain city employees to issue administrative citations, and the restaurant would be entitled to an administrative hearing before a city hearing officer to argue against the citation. The hearing officer would determine whether the restaurant violated the ordinance and assess the financial penalty.

State law may require a local jurisdiction to provide in the ordinance the administrative procedures through which the government will impose, enforce, collect, and review the fine.<sup>8</sup> The fine may also be subject to review by a court.

The advantage of administrative penalties is that they are less costly and quicker to administer than civil penalties.

The city or county also may be able to collect administrative penalties by assessing a lien against property (the legal right to keep the property as security for a debt) where it can connect the violation with property subject to the lien.

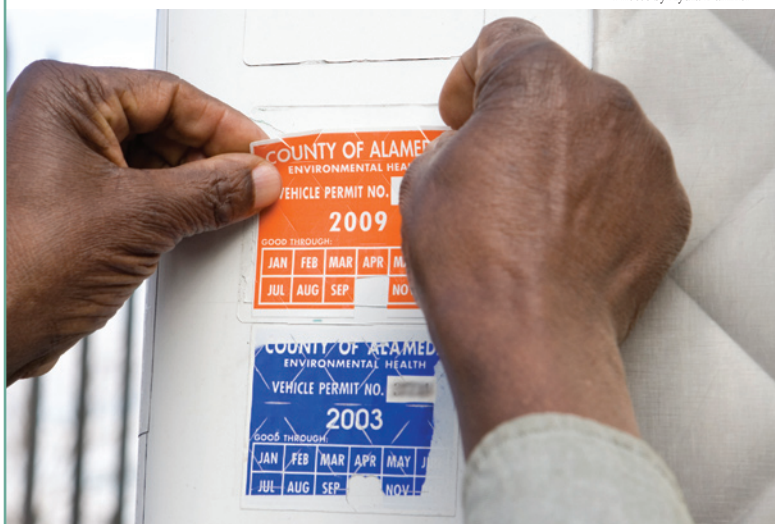
#### Example of administrative penalties:

- (a) Any person who violates any of the provisions of this section shall be subject to an administrative penalty not to exceed \$100 per day for each violation. Administrative penalties authorized by this section shall be assessed, enforced and collected in accordance with section \_\_\_\_\_ of this Municipal Code.
- (b) Where an officer or employee designated in this chapter determines that there has been a violation of any of the provisions of this section, the officer or employee may issue an administrative citation to the person and/or entity responsible for the violation. For purposes of this section, an entity is responsible if an officer, employee, or agent of the entity commits the violation. The citation shall inform the person or entity responsible of the date, time, place, and nature of the violation and the amount of the proposed penalty, and shall state that the penalty is due and payable to the Treasurer within 30 business days from the date of the notice, if not contested within the time period specified. The citation shall also state that the person or entity responsible has the right, pursuant to section \_\_\_\_\_ to request administrative review of the citing officer or employee's determination as to the violation and assessment of penalties, and shall set forth the procedure for requesting administrative review.

### 3. Criminal Enforcement

In some states, cities and counties are authorized to make violations of an ordinance a crime.<sup>9</sup> The county's district attorney or a city attorney would bring an action in criminal court to prove the ordinance was violated. A criminal violation of a local ordinance is usually either a *misdemeanor* (less serious than a felony, and usually punishable by a fine or brief confinement in a city or county jail) or an *infraction* (punishable by a fine but not incarceration).<sup>10</sup> For example, a menu-labeling ordinance could provide that any person violating the ordinance (by failing to post the calories) is guilty of a misdemeanor or an infraction.

Photos by Lydia Daniller



#### Example of violation constituting a misdemeanor:

Any person who violates this chapter is guilty of a misdemeanor, punishable by a fine of not more than \$1,000 or by imprisonment in the city/county jail for a period of not more than six months, or by both such fines or imprisonment.

#### Example of violation constituting an infraction:

Any person who violates this chapter is guilty of an infraction, punishable by a fine of not more than \$100.

### 4. Citizen Enforcement

In some states, a local ordinance may allow for an individual citizen to enforce the ordinance in certain limited circumstances. (This is called a “private right” of enforcement.) Generally, this right is only for cases where the individual has suffered injury or damage different from what the general public has experienced.<sup>11</sup> For example, someone whose home is next to a restaurant where rat-infested trash has piled up may suffer greater or different harm from the public at large, and that person may be able to sue for an injunction to stop the harm. In some cases, the individual may be able to sue for damages (money), but usually only enough to compensate for any actual loss or injury.

#### Example of citizen enforcement:

Any aggrieved person is hereby authorized to bring a civil action for damages or for injunctive relief to enjoin a violation of this ordinance.

For additional materials designed to help advocates ensure that new public health laws are effectively enforced, visit [www.nplanonline.org](http://www.nplanonline.org).

*NPLAN is a nonprofit organization that provides legal information on matters relating to public health. The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.*

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<sup>1</sup> Different enforcement options have varying strategic and political ramifications. A discussion of political strategies associated with advocating for different enforcement mechanisms is beyond the scope of this fact sheet.

<sup>2</sup> See, e.g., Cal. Gov't. Code §§ 36900-25132.

<sup>3</sup> See, e.g., 55 Ill. Counties Code § 5-1113; *City of Syracuse v. Barbuto*, 500 N.Y.S.2d 625 (1986).

<sup>4</sup> *Hale v. Morgan*, 22 Cal.3d 388, 398 (1978).

<sup>5</sup> *Id.* at 399.

<sup>6</sup> *City of Santa Paula v. Narula*, 114 Cal. App. 4th 485, 492-493 (2003).

<sup>7</sup> See, e.g., Cal. Gov't. Code § 53069.4; Ga. Code Tit. 36 Ch. 74 (“Local Government Code Enforcement Boards Act”).

<sup>8</sup> See, e.g., Cal. Gov't. Code § 53069.4

<sup>9</sup> 56 Am.Jur.2d Municipal Corporations § 376 (2nd Ed. 2008).

<sup>10</sup> See, e.g., 65 Ill. Mun. Code § 1-2-1.1.

<sup>11</sup> See 8A McQuillin Mun. Corp. § 25.351 (3rd Ed.); see also *Major v. Silna*, 134 Cal. App. 4th 1485, 1498-1499 (2005) “courts have generally permitted a citizen to enjoin violations of local ordinances only when the violations work a special injury on the citizen.”