



Oregon Law Center

WORKING TOGETHER TO ACHIEVE JUSTICE FOR LOW INCOME OREGONIANS

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Larry Sullivan
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CC:

Ontario City Council
Mayor Riley Hill
President Ken Hart
Member Michael Braden
Member John Kirby
Member Sam Baker
Member Eddie Melendrez

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Re: Excessive Fines for Nuisance Abatement

Dear City Attorney Sullivan and Members of the City Council:

We are writing to you on behalf of our client, Heriberta Contreras Granados, regarding the City of Ontario's imposition of excessive fines for nuisance and its policies and procedures for doing so. Our intention in sending you this notice is to provide you with an opportunity to resolve this matter amicably so as to protect the rights of our client as well as all other residents of Ontario without resorting to litigation.

I. Background

A. Our Client

The City of Ontario assessed a civil penalty dated February 21, 2020 against Ms. Contreras Granados for alleged violations at her property at 248 SE 1st Street in Ontario. She did not receive a Notice of Abatement or any letters about the alleged civil code violations prior to

the February 21, 2020 civil penalty notice. The maximum per-violation fine amount was \$1,500. The civil penalties notice alleged the following violations of city code provisions and assessed the following fines for each alleged violation: "outdoor storage of personal property" (\$1,000), "outdoor storage of non-trash items" (\$750), "attractive nuisance" (\$450), "debris" (\$1,000), "iceboxes/freezers" (\$750), "weeds/grass over 10" tall" (\$500) and "storage of vehicles and parts" (\$500). The notice does not explain how violations differ from one another. The notice also does not provide factual specifics regarding the alleged violations. Although the actual sum of these fines is \$4,950, the City assessed a total of \$3,950 in civil penalties. The civil penalty notice provided that Ms. Contreras Granados could appeal to the city's hearing officer upon payment of a \$250 appeal fee.

The City of Ontario assessed a second Notice of Civil Penalty dated March 4, 2020 against Ms. Contreras Granados. The City used a revised fine matrix in this notice, which set the fine level based on the severity of the violation, whether the property owner had taken any mitigation steps and whether there were prior related violations. The maximum per-fine violation increased to \$2,000. The civil penalties notice alleged the following violations of city code provisions and assessed the following fines for each alleged violation: "outdoor storage of personal property" (\$2,000), "outdoor storage of non-trash items" (\$500), "attractive nuisance" (\$300), "debris" (\$2,000), "iceboxes/freezers" (\$1,000), "weeds over 10" tall" (\$500), "noxious weeds" (\$1,000) and "junk vehicles" (\$500). The notice does not explain how violations differ from one another. In all, the City assessed \$7,800 in civil penalties. The civil penalty notice provided that Ms. Contreras Granados could appeal to the city's hearing officer upon payment of a \$250 appeal fee.

Ms. Contreras Granados did not timely receive either notice. At the time of the notices, Ms. Contreras Granados was not living at the property and she believed the property to be vacant. Unbeknownst to Ms. Contreras Granados, people were living in an RV on her property. She did not learn of the notices until March or April 2020, when those people living in the RV contacted her after they had received two or three notices.

When Ms. Contreras Granados belatedly learned about the fines, she worked diligently to remedy the violations. The notices were written in English only. Ms. Contreras Granados primarily speaks Spanish, and speaks only very limited English. She does not read English and did not understand the notices. She visited the Ontario Police Department to ask for help interpreting the notices. She explained to police staff that she did not live on the property, and was not aware that anyone was staying on the property. Staff at the police department told her that because her name was on the property, it was her responsibility to clean it up. She worked with her family to clean up the property. She returned to the police department to notify them that the property had been cleaned. When a code enforcement officer visited the property, he told Ms. Contreras Granados that there were still violations. For example, he pointed out a weed that

she had missed. Ms. Contreras Granados and her family made multiple additional attempts to clean the property to the satisfaction of code enforcement officers.

The penalty notices provided that Ms. Contreras Granados could appeal to the city's hearing officer business days upon payment of a \$250 appeal fee. The penalty notice warned that if Ms. Contreras Granados did not pay the civil penalty amount within 30 days, a lien would attach to her property. Our client asked police staff about an appeal, but police told her she would have to file with the Malheur County Circuit Court in Vale, Oregon. At that time, the circuit court was closed due to COVID-19. Ms. Contreras Granados did not file an appeal with the circuit court as she was directed to do by police, or with the city's hearing officer as the notice directed her to do.

On April 2, 2020, the City placed a lien on Ms. Contreras Granados' property for \$3,950, the full amount of the February 21 civil penalty notice. On June 17, 2020, the City placed a second lien on her property for \$6,000. Notes in the City's internal system indicate that the lien was reduced to \$6,000 from \$7,800 because the property was "in compliance above and beyond." Our client now has thousands of dollars in fines that she cannot pay and has a lien against her property as a result of the City's actions. Because of the City's actions, Ms. Contreras Granados has been hindered in her ability to sell the property, which is her only asset, and she has suffered serious stress, anxiety, and loss of sleep. Ms. Contreras Granados is extremely worried about the lien because City officials told her it could cause her to lose her property. She wants to protect her property, her only asset, but she does not have \$9,950 to pay off the debt.

Our client is one of many poor people residing in Ontario. As you know, 27.3 percent of Ontario's population is below the federal poverty line, and an additional 13.8 percent of the population survives on an income between 100 to 149 percent of the federal poverty level. U.S. Census Bureau, American Community Survey (2019) available at <https://data.census.gov/cedsci/table?q=ontario%20oregon&tid=ACSST5Y2019.S0601>.

Ms. Contreras Granados is extremely low-income. She lives with her daughter. The sole source of income for her household is currently \$970 in workers' compensation due to an injury she sustained at work in March 2021, placing the household of two at 67.5% of the federal poverty level.

Our client is also one of many non-English speakers residing in Ontario. As you know, 8.3 percent of Ontario's population above the age of 5 speaks English "less than very well." U.S. Census Bureau, American Community Survey "Language Spoken at Home" (2019) available at <https://data.census.gov/cedsci/table?g=1600000US4154900&tid=ACSST5Y2019.S1601&hidePreview=true>. As you also know, 66.3 percent of Ontario's population speaks English only and 32.6 percent speaks Spanish. *Id.*

Ms. Contreras Granados, who does not live on the subject property, worked diligently to remedy the violations as soon as she received notice of them. Despite her efforts, and despite the fact that she is extremely low-income, the City of Ontario placed a lien of nearly \$10,000 on her property. She did not appeal the civil penalty notices because she was not provided notices in Spanish and City staff misdirected her to appeal to a closed court. Even if she had been provided notices in Spanish and/or City staff had given her correct information of their own appeal policies, she would not have been able to afford the \$250 fee that would only be refunded if she prevailed in the hearing.

B. City Ordinance & Enforcement Scheme

In 2017, City Council adopted an enforcement scheme which dramatically increased the fines that may be imposed upon property owners for “nuisances” that go unabated on their properties as well as other violations of the City Code. Ontario Municipal Code (OMC) Title I, Chapter 15, Sections 9-13 (2017). OMC 7-1-2 defines “nuisance” broadly. Property owners who do not timely abate the nuisance or timely appeal the Notice of Abatement or subsequent Notice of Civil Penalty face a civil penalty of up to \$2,000 *per day* per violation. OMC 1-15-15. Property owners who receive more than one abatement notice in a year face the imposition of an automatic civil penalty of up to \$2,000 *per day* per violation. OMC 1-15-9(F). In practice, the City imposes daily fines of 25% of the original civil penalty, but that may be increased to greater than 25% at the administrator’s discretion “should specific circumstances warrant.” Ontario Civil Penalty Matrix. There is no limit under city law for how many daily penalties may be applied nor for the total amount of penalties that may be imposed. This scheme allows for exorbitant fines to be assessed.

Notices of Abatement and Notices of Civil Penalty are delivered by a code enforcement officer with the Ontario Police Department. Comments by police staff indicate that the code enforcement officer’s position may be compensated from the civil penalty fine revenue. The passage of the Civil Penalty ordinances means that the same conduct can be penalized at double the fine amount and with a different appeal procedure than under the City’s Building Maintenance Code. Compare OMC 1-15 Sections to OMC Title 4, Chapter 5, Sections 7A-8D (2010). If a building inspector issued a citation instead of a code enforcement officer, a property owner could face a fine of \$1,000 *per day* per violation for the same “nuisance.” OMC 4-5-8A. That \$1,000 fine applies equally to actually dangerous buildings—for example, those at risk of collapse—and to nuisances under the City’s Building Regulations. OMC 4-5-7A, OMC 4-5-8A.

II. The civil penalty fines imposed against Ms. Contreras Granados for alleged nuisance violations are unconstitutional.

The Eighth Amendment of the U.S. Constitution and Article I Section 16 of the Oregon Constitution prohibit governments from imposing excessive fines. Both also require that penalties be proportionate to the offense. The Ninth Circuit Court of Appeals has held that municipalities are barred from imposing “grossly disproportional” fines and penalties or fees for

non-payment of those fines. *Pimentel v. City of Los Angeles*, 974 F.3d 917, 925 (2020). The City's imposition of an initial civil penalty fine of \$3,950 and a second civil penalty fine of \$7,800 totaling \$11,750 on Ms. Contreras Granados for failing to abate the nuisance are each grossly disproportional to the vague and overlapping offenses alleged in each notice.

The Fourteenth Amendment requires that before the government may deprive a citizen of their rights to abate a nuisance, the citizen must be provided an adequate opportunity to respond to the allegations and be heard in a meaningful manner. *Schneider v. Cty. of San Diego*, 28 F.3d 89, 92 (9th Cir. 1994). The Supreme Court has held that "even the temporary or partial impairments to property rights that attachments, liens, and similar encumbrances entail are sufficient to merit due process protection." *Connecticut v. Doehr*, 501 U.S. 1, 12 (1991). Due process requires that notices be individually "calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). A notice, such as the one received by Ms. Contreras Granados, with vague allegations that requires a \$250 hearing fee be paid before an individual can counter the allegations in the notice (even if they cannot afford \$250), and that results in a fine, providing no opportunity to object, is not a constitutionally-sound notice.

Further, a notice of civil penalty, such as the one received by Ms. Contreras Granados, that requires a \$250 hearing fee be paid before an individual can object to the fine amount (even if they cannot afford \$250), and that results in an initial fine and limitless daily fines, providing no opportunity to object is not a constitutionally-sound notice. The City's imposition of fines resulting in a \$9,950 lien on Ms. Contreras Granados' property without a constitutionally sufficient notice or opportunity to be heard violates due process.

Our understanding, based on our review of public records and public comments, is that what happened to our client is not unique. Rather, it reflects the City's standard procedures and de facto policy in place for the past several years. As a result, it is not just our client who has been harmed; everyone subject to the draconian approach to nuisance abatement described above has been harmed by the City of Ontario.

III. Required Remedy

The Eighth and Fourteenth Amendment rights of Ms. Contreras Granados and all Ontarians must be protected. However, our client is eager to avoid litigation and negotiate with the City in her quest for justice for herself and others in a similar position. We are encouraged by the City's recent decision to impose a moratorium on new nuisance abatement fines, and hope we can resolve this dispute without court action. We propose the City do the following:

1. Agree to cease enforcement of any citation, nuisance action, or ordinance infraction pursuant to OMC 7-1-2 against Ms. Contreras Granados issued on February 21, 2020 and March 4, 2020, formally rescind the notices it issued to Ms. Contreras Granados on those

dates, cease enforcement of and formally rescind the liens placed upon Ms. Contreras Granados' property at 248 SE 1st Street on April 2, 2020 and June 17, 2020, and provide assurance that civil penalties will not be assessed in the future.

2. Agree to adopt definitions and policies within the City's nuisance abatement enforcement ordinances which comport with the prohibition against excessive fines of the Eighth Amendment and Article 1 Section 16.

Specifically, we request that the City's legal counsel review OMC Title 1, Chapter 15, Sections 9-13 with the City, and that the City strike the fine schedule for nuisance properties and return to a process wherein the City imposes only abatement costs and administrative costs for non-compliant properties. If the City maintains a fine schedule for nuisances, the City must impose fines that are proportionate to each specific offense.

We further request that the City: 1) establish a process for granting a hardship waiver to fully waive or reduce the amount of the fine or costs where the fine or costs would impose an undue financial burden on the individual; 2) establish a process for extending the amount of time to comply with an abatement notice for persons with a disability that impacts their ability to comply; 3) include the language that must be included on Notices of Abatement and Notices of Civil Penalty (if civil penalties are not abolished) within the OMC, the notice language must include information of the City's policies on the availability of financial hardship waiver and fine reduction, the availability of a reasonable accommodation for persons with disabilities, the hearing process including the availability of hearing fee waivers for low-income individuals, and be written in English and Spanish.

3. Agree to adopt policies that promote abatement rather than punish individuals who lack the time, money, or ability to remedy nuisance violations on their own. The City should converse with the individual before issuing a Notice of Abatement, and should document records of those conversations or conversation attempts. If a Notice of Abatement is issued, there should be no fee for a hearing, or if a hearing fee is required, it must be waivable for low-income individuals. As discussed above, civil penalties should be abolished, but if they are not, the hearing fee must also be non-existent or waivable for low-income individuals. If civil penalties are maintained, there must be a limit on the daily penalties that may be imposed.
4. Agree to implement fair hearing processes for review of Notices of Abatement and Notices of Civil Penalty (if civil penalties are not abolished). A fair hearing must involve a neutral third-party decisionmaker. There should be no fee for the hearing, or the fee should be waivable for low-income individuals.

We are happy to meet with you to discuss the issues raised in this letter. We will wait ten days to hear from you before deciding on litigation options. Please contact Sara Montrone in the Oregon Law Center's Ontario office: smontrone@oregonlawcenter.org. Thank you.

Sincerely,

/s/ Jamie Trinkle

/s/ Sara Montrone

Jamie Trinkle
Attorney

Sara Montrone
Attorney

