



CITY COUNCIL AGENDA REPORT

MEETING DATE: April 20, 2010

ITEM NUMBER: IX-3

SUBJECT: Civil Citation Ordinance/Proposed Amendment

DATE: April 6, 2010

FROM: Kimberly Hall Barlow, City Attorney

PRESENTATION BY: Kimberly Hall Barlow

FOR FURTHER INFORMATION CONTACT: Kimberly Hall Barlow, 714 754-5399

RECOMMENDED ACTION:

Introduce and give first reading to the attached Ordinance Amending Title 1 relating to Civil Citations.

BACKGROUND:

Chapter II of Title 1 of the Costa Mesa Municipal Code authorizes the City of Costa Mesa to issue civil citations for violations of the municipal code. In particular, Section 1-44 and 1-46, provide for administrative hearings, respectively, for a hardship waiver of the fine deposit, and for an appeal to the issuance of the citation. Currently, the hearing officer is required to make a decision immediately at the conclusion of the hearings, and inform the appellant of his/her decision at that time.

ANALYSIS:

Sometimes hearings relating to civil citations can be volatile, such as when the citee has been in conflict with the City of Costa Mesa or with neighbors for a period of time, and there may be some instances where a witness may feel intimidated by the citee. In volatile situations, issuing a decision on the administrative citation at the end of the hearing might lead to altercations. In addition, in some instances the hearing officer might need some time to prepare and issue a written decision.

Staff therefore recommends that both Section 1-44 and Section 1-46 be amended to allow the hearing officer a few days to make his/her decision, and notify all interested parties by mail.

ALTERNATIVES CONSIDERED:

The Council could determine not to adopt the proposed revision.

ORDINANCE NO. 10-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA AMENDING TITLE I (GENERAL PROVISIONS) OF THE COSTA MESA MUNICIPAL CODE REGARDING CIVIL CITATIONS

WHEREAS, the City Council of the City of Costa Mesa finds that sometimes hearings relating to civil citations can be volatile, such as when the citee has been in conflict with the City of Costa Mesa or with neighbors for a period of time, and that there may be some instances where a witness may feel intimidated by the citee; and

WHEREAS, the City Council finds that in volatile situations, issuing a decision on the administrative citation at the end of the hearing might lead to altercations;

WHEREAS, the City Council further finds that in some instances the hearing officer might need some time to prepare and issue a written decision.

THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Subdivisions (c) and (d) of Section 1-44 of Chapter II of Title 1 of the Costa Mesa Municipal Code is hereby amended as follows:

Sec. 1-44. Waiver of fine deposit.

(a) [No change.]

(b) [No change.]

(c) The request for a waiver of the fine deposit will be heard by the hearing officer at the administrative review, at the date, time and place specified on the notice of administrative review. At the conclusion of the hearing on the waiver request, or within three (3) business days after the waiver request hearing, at the hearing officer's discretion, the hearing officer shall issue a decision that the fine deposit is or is not waived. The hearing officer shall then insert on the notice of decision form relating to the waiver request the new date set for the administrative review, which shall be within

forty-five (45) days of the date on the notice of decision. A copy of the notice of decision shall be delivered to the citee at the end of the hearing on the waiver request, or shall be sent via U.S. Mail within three (3) business days following the conclusion of the hearing on the waiver request.

(d) If the hardship waiver is denied, the hearing officer shall provide the citee a self-addressed envelope to use in making the fine deposit. The citee shall mail the deposit in the envelope provided so that it is postmarked at least three (3) business days before the date designated on the notice of decision for the administrative review. The director is authorized to designate the address to which the deposit is to be mailed. Failure to make the deposit by the time required shall be deemed an abandonment of the contest.

(e) [No change.]

Section 2. Subdivision (a) of Section 1-46 of Chapter II of Title 1 of the Costa Mesa Municipal Code is hereby amended as follows:

Sec. 1-46. Administrative review decision.

(a) After considering all the evidence and testimony submitted at the administrative review, the hearing officer shall issue a written decision to uphold the citation or cancel it based upon a conclusion of whether or not a violation occurred for which the citee was a responsible person. The hearing officer has no discretion or authority to reduce or modify a fine. The decision will be made on a notice of decision form and designate the reasons and evidence considered for the decision. The decision of the hearing officer shall be made at the conclusion of the administrative review, or soon thereafter, and shall be final. The notice of decision shall be personally delivered to the citee at the conclusion of the administrative review, or it shall be mailed to the citee within three (3)

business days following the conclusion of the administrative review.

Section 3. Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

Section 4. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

Section 5. This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after

adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this _____ day of _____, 2010.

Mayor of the City of Costa Mesa

ATTEST:

City Clerk of the City of Costa Mesa

APPROVED AS TO FORM:

City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF COSTA MESA)

I, Julie Folcik, City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 10-__ was introduced and considered section by section at a regular meeting of said City Council held on the ____ day of _____, 2010, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the ____ day of _____, 2010, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this ____ day of _____, 2010.

City Clerk and ex-officio Clerk of the
City Council of the City of Costa Mesa

ORDINANCE NO. 10-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA AMENDING TITLE I (GENERAL PROVISIONS) OF THE COSTA MESA MUNICIPAL CODE REGARDING CIVIL CITATIONS

WHEREAS, the City Council of the City of Costa Mesa finds that sometimes hearings relating to civil citations can be volatile, such as when the citee has been in conflict with the City of Costa Mesa or with neighbors for a period of time, and that there may be some instances where a witness may feel intimidated by the citee; and

WHEREAS, the City Council finds that in volatile situations, issuing a decision on the administrative citation at the end of the hearing might lead to altercations;

WHEREAS, the City Council further finds that in some instances the hearing officer might need some time to prepare and issue a written decision.

THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Subdivisions (c) and (d) of Section 1-44 of Chapter II of Title 1 of the Costa Mesa Municipal Code are hereby amended as follows:

Sec. 1-44. Waiver of fine deposit.

(a) A person filing a request for an administrative review may also request at the same time a hardship waiver of the fine deposit. To seek such a waiver and obtain a separate hearing on the request, the citee shall file with the city the signed written request form contained on the reverse side of the citation, check the box indicating this request, and attach a statement on the grounds for the request. The procedure governing the filing of such requests shall be the same as provided in section 1-43(b).

(b) The person requesting the waiver bears the burden of establishing by substantial evidence that he or she does not have the financial ability to make the deposit of the fine. The citee shall personally appear at the hearing on the request and non-

appearance shall constitute an abandonment of the request unless excused pursuant to section 1-45(f).

(c) The request for a waiver of the fine deposit will be ~~decided~~ heard by the hearing officer at the administrative review, at the date, time and place specified on the citation notice of administrative review. ~~The request shall be heard at a separate hearing before the administrative review hearing on the contest of the citation.~~ At the conclusion of the hearing on the waiver request, or within three (3) business days after the waiver request hearing, at the hearing officer's discretion, the hearing officer shall issue a decision that the fine deposit is or is not waived. The hearing officer shall then insert on the notice of decision form relating to the waiver request the new date set for the administrative review, which shall be within forty-five (45) days ~~of the date on the notice of decision~~. A copy of the notice of decision shall be delivered to the citee at the end of the hearing on the waiver request, or shall be sent via U.S. Mail within three (3) business days following the conclusion of the hearing on the waiver request.

(d) If the hardship waiver is denied, the hearing officer shall ~~give~~ provide the citee a self-addressed envelope to use in making the fine deposit. The citee shall mail the deposit in the envelope provided so that it is postmarked at least three (3) business days before the date designated on the notice of decision for the administrative review. The director is authorized to designate the address to which the deposit is to be mailed. Failure to make the deposit by the time required shall be deemed an abandonment of the contest.

e) The filing of a request for hardship waiver of the fine deposit does not extend the time within which to request an administrative review or any other time set forth in this

chapter, except as provided in subsection (d), above. A hearing officer decision on the waiver is final and not subject to an appeal pursuant to section 1-47.

Section 2. Subdivision (a) of Section 1-46 of Chapter II of Title 1 of the Costa Mesa Municipal Code is hereby amended as follows:

Sec. 1-46. Administrative review decision.

(a) After considering all the evidence and testimony submitted at the administrative review, the hearing officer shall issue a written decision to uphold the citation or cancel it based upon a conclusion of whether or not a violation occurred for which the citee was a responsible person. The hearing officer has no discretion or authority to reduce or modify a fine. The decision will be made on a notice of decision form and designate the reasons and evidence considered for the decision. The decision of the hearing officer shall be made at the conclusion of the hearing administrative review, or soon thereafter, and shall be final. The notice of decision shall be personally delivered to the citee at the conclusion of the ~~administrative review hearing, or it shall be mailed to the citee within three (3) business days following the conclusion of the administrative review.~~

Section 3. Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

Section 4. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the

remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

Section 5. This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this _____ day of _____, 2010.

Mayor of the City of Costa Mesa

ATTEST:

City Clerk of the City of Costa Mesa

APPROVED AS TO FORM:

City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF COSTA MESA)

I, Julie Folcik, City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 10-__ was introduced and considered section by section at a regular meeting of said City Council held on the ____ day of _____, 2010, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the ____ day of _____, 2010, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this ____ day of _____, 2010.

City Clerk and ex-officio Clerk of the
City Council of the City of Costa Mesa