



CITY COUNCIL AGENDA REPORT

MEETING DATE: JUNE 19, 2012

ITEM NUMBER: CC-13

SUBJECT: PARTIAL REFUND OF CIVIL CITATION 009789

DATE: MAY 31, 2012

FROM: DEVELOPMENT SERVICES DEPARTMENT

PRESENTATION BY: PETER NAGHAVI, DIRECTOR OF ECONOMIC AND DEVELOPMENT/DEPUTY CEO

FOR FURTHER INFORMATION CONTACT: WILLA BOUWENS-KILLEEN, AICP
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RECOMMENDATION:

Refund \$21,000 of the \$51,000 citation fine, as ordered by the City's Administrative Hearing Officer.

BACKGROUND/ANALYSIS:

On Friday, March 2, 2012, the City received complaints about a large number of rental cars stored on public streets (Pullman Street, McCormick Avenue, Kalmus Drive, and Airway Avenue). Code Enforcement Officer Fidel Gamboa visited the location, confirmed the storage of the cars, and identified Enterprise Holdings as the owner of the cars. Despite his notice that a private company is not permitted to conduct business on a public street, the employees of Enterprise continued storing and staging the vehicles on the public street as Enterprise felt they were allowed to continue since the individual cars did not remain on the public street in excess of the 72-hour parking limit allowed by the Municipal Code.

Based on a survey by Code Enforcement Officer Bob Baumgardner on Saturday, March 3, 2012, Officer Gamboa issued a citation on Monday, March 5, 2012 for 340 counts of the violation, resulting in a \$51,000 fine. Enterprise Holdings paid the fine and so they could contest the citation.

At the May 1, 2012, administrative hearing, Hearing Officer Rod Fick heard from both the City and Enterprise regarding the matter. Since there was a question as to the exact number of rental vehicles parked in violation of Code, Mr. Fick upheld 200 counts and dismissed 140 counts, ordering the City to refund \$21,000 of the \$51,000 citation. Because the amount exceeds \$5,000, City Council action on the refund is required.

ALTERNATIVES CONSIDERED:

There are no alternatives considered for this item.

FISCAL REVIEW:

Finance directed the Development Services Department to forward this matter to the City Council for approval.

LEGAL REVIEW:

No legal review was required.

CONCLUSION:

The City's Administrative Hearing Officer has ordered the City to refund \$21,000 of the \$51,000 citation fines to Enterprise Holdings.



WILLA BOUWENS-KILLEEN, AICP
Chief of Code Enforcement



PETER NAGHAVI
Director of Economic & Development/
Deputy CEO

Attachment: Notice of Hearing Decision/Supplemental Order on Civil Citation 009789

Distribution: Chief Executive Officer
Deputy CEO
City Attorney
City Clerk
Staff
File

**NOTICE OF HEARING DECISION
AND SUPPLEMENTAL ORDER
ON CIVIL CITATION**

**In Re: the Matter of
The City of Costa Mesa
and
Mark Buenzli, Appellant**

Date of Hearing: May 1, 2012

Citation No.: 009789

This matter was heard on May 1, 2012, at 1:30 p.m. in City of Costa Mesa ("City") City Hall at 77 Fair Drive, Costa Mesa, CA 92628.

The following persons were present:

Rodell R. Fick, Esq., Hearing Officer

Gregory Palmer, Esq., Counsel for the City
Kathya Oliva, Esq., Counsel for the City
Ofc. F. Gamboa, Code Enf. Officer, for the City
Ofc. Baumgartner, Code Enf. Officer, for the City
Willa Bouwens-Killen, Administrator, for the City

Mark Buenzli, Airport Market Manager, for Enterprise Holdings
Joel Brantham, for Enterprise Holdings

Documentary Evidence presented for Hearing:

City of Costa Mesa:

1. Hearing Book, with the following:
 - a. CMMC Section 1-34; Civil Citations, Procedures
 - b. CMMC Title 20; Definitions of 'Public Nuisances', etc.
 - c. Copy of Administrative Citation No. 009789 (3/3/12)
 - d. Costa Mesa CUP No. PA-96-42
 - e. Costa Mesa CUP No. PA-97-21
 - f. Google Map of site of violations
 - g. Multiple Pictures of Vehicles parked at site of violations
 - h. Costa Mesa City Complaint Investigation, No. C12-0323

Mark Buenzli:

1. Notes prepared by M. Buenzli dated 3/2-4/30/12
2. Computer printouts from Costa Mesa Police Department
Re: Parking Enforcement information

The appeal hearing was recorded and a record of this hearing will be maintained by the City of Costa Mesa.

The sole question presented by this Appeal Hearing of the Civil Citation noted above is whether or not Enterprise Holdings violated Section CMMC Section 20-4(b) by unlawfully using dedicated city streets for storage of a fleet of rental cars on or about March 3, 2012.

Legal Standard of Review:

The legal standard of review in such cases is a preponderance of the evidence or 'evidence with is of greater weight and more convincing than the evidence which is offered in opposition to it; that is evidence which as a whole shows that the fact sought to be proved is more probable than not'. **Black's Law Dictionary, Fifth Edition.**

Findings and Order:

The City of Costa Mesa issued this Civil Citation to Mr. Buenzli on or about March 3, 2012 because they alleged that Enterprise Holdings was using a system of public streets adjacent to the Orange County Airport for temporary storage of a large fleet of rental cars. According to the City, this constituted a violation of CMMC Section 20-4 (b), entitled: 'Prohibited Conduct', which reads in part:

'Except as provided in section 20-6 Exemptions, it shall be unlawful for any responsible party having charge or possession of any real property in the city to:

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- (b) Operate any business or other activity in the city not consistent with all of the terms and conditions of all applicable zoning approvals and approved plans granted by the city. This includes, but is not limited to, business tax registration certificates and conditional use permits.'

Officer Gamboa stated that on March 2, 2012 the City of Costa Mesa began receiving complaints about a large volume of rental cars (hundreds) stored along the curbs within commercial areas, including Pullman Street, McCormick Avenue, Kalmus Drive and Airway Avenue. From the initial information received, it was determined that a vehicle was owned by EA Holdings, Tulsa, OK. An internet search revealed that EA Holdings was associated with Enterprise, Alamo and National car rentals. A field investigation by Officer Gamboa substantiated the information that on the above streets, there were scores of cars being stored 'toe to toe' along the curbs of the streets in these commercial areas. Officer Gamboa made contact with a person that was 'scanning' the bar coded markings on the cars and confirmed that the vehicles belong to Enterprise. That employee called his supervisor, Theresa Kelly, Fleet Logistic Supervisor and confirmed the information about the rental cars. Ms. Kelly arrived at the site, provided her business card, and stated that she did not see why it was a violation. She said that their lot at the airport was full to capacity and they needed a temporary place to store them. She further stated that these vehicles were scheduled to be transferred to various Enterprise locations in the area. Then Mr. Buenzli arrived and also provided Officer Gamboa a business card. He told the officer that their attorneys had already looked into the matter and had found no law against their activity of storing the rental cars on the streets. At one point, Ms. Kelly told Officer Gamboa that there were 'over 200 vehicles' parked in such a fashion, but no exact number of parked cars was ever provided to the City. His personal estimate that there were far more vehicles than that parked in the area that were rental cars.

Officer Baumgartner stated that he was requested by staff to undertake a field inspection of the above areas and do a vehicle count on Saturday, March 3, 2012. He responded to the above streets and began to check and tally the number of rental cars parked 'toe to toe' on the four public streets. He identified only the cars with the identical bar code information posted on the windows that were also parked in a 'compact' fashion and not obviously a citizen parking the car to visit an adjoining business. He tallied approximately 342 cars parked on the various streets and took photographs of portions of the area to document the parking 'practice' being used by Enterprise Holdings.

Mark Buenzli stated his company had researched the parking laws for the City of Costa Mesa and also visited the website of the Police Department. He opined that parking rental cars temporarily on city streets would not violate the normal '72 hour' rule and even offered that a parking control officer once advised that parking rental cars in this fashion was acceptable as long as they were moved within the time limit of 72 hours. Based on that information, it was concluded that on this occasion when a large number of rentals were turned in at Orange County Airport, it was permissible to use the public streets to park the cars temporarily. He also added that this was a rare occasion when a larger volume of rental cars was turned in over a very short period of time.

The first question to be answered is whether this Code section applies under these facts and circumstances, and I find that it does, in fact, apply. One could reasonably argue that if just a few vehicles were temporarily parked adjacent to the airport, and no longer than 72 hours, that this City code section would not apply. However, in this extraordinary situation involving hundreds of rental cars, it is unreasonable for a business of any kind to claim that they can use the public streets for 'storage' of that many cars, thus depriving the streets and parking areas to the City's residents and business community.

This City Municipal Code section enforces the CUP provisions agreed to by Enterprise within the City of Costa Mesa. Those provisions allowed for vehicle storage that would appear to limit parking to less than 100 vehicles **on the property, not the City streets**. There is no agreement for Enterprise to use the public streets for the parking of hundreds of their rental cars.

Next, the City contends that each vehicle parked constitutes a single and separate City code violation of Section 20-4 (b), and I agree with that point. Each vehicle parked in a 'storage' mode by Enterprise constitutes a separate violation of this City code. Certainly, as a 'responsible party', which Enterprise clearly is by Code definition, Enterprise made a business decision to park the cars closer to save employee time and costs. While this Hearing Officer can understand such a business 'bottom-line' decision being made, such a decision places an unfair burden on the rest of the business community trying to operate their businesses lawfully in that area. Neither employees nor customers of those businesses could park anywhere near those locations due to the saturation of Enterprise rental vehicles being parked on those four streets.

Finally, there is the issue of the exact number of rental vehicles that were parked in apparent violation of this City code. It was testified to by the officers, under oath, that the number of Enterprise cars parked was tallied at approximately 342 vehicles. However, the officers candidly acknowledged that count was not exact and could have been more or less. Officer Baumgartner stated that his count was fairly accurate, based on the hand tally that he did. But the severity of the fines involved require a closer examination of the scope of the violations. One fact testified to by Officer Gamboa was an 'admission' by Ms. Kelly to him that there were 'over 200 vehicles'. Normally, such a statement would constitute unpermissible 'hearsay' evidence and not be admissible in a Court. However, in administrative hearings of this nature the 'rules of evidence' do not strictly apply and such hearsay can be considered in hearings and decisions. Thus, it will be the decision of this Hearing Officer that the uncontroverted 'admission' of Ms. Kelly to Officer Gamboa that there were over 200 Enterprise rental cars parked and this is sufficient to uphold the Civil Citation for 200 Counts, and dismiss the other 140 Counts, as outlined and Ordered below.

IT IS HEREBY ORDERED, as follows:

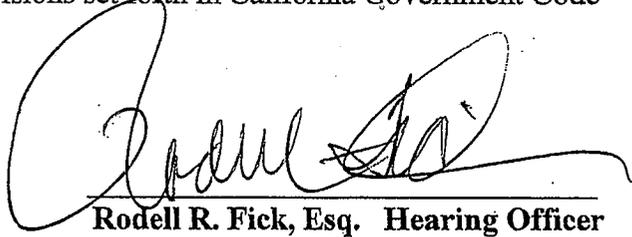
Counts 1 through 200: UPHOLD Counts 1 through 200 in this Citation. The Fines/Penalties totaling \$30,000.00 are to be retained by the City of Costa Mesa.

Counts 201-340: DISMISS Counts 201 through 340 in this Citation. The City of Costa Mesa is hereby directed to refund and return \$21,000.00 of the Fines/Penalties that were posted prior to this hearing to Mark Buenzli and Enterprise Holdings within thirty (30) days of filing this hearing decision, as provided for in CMMC Section 1-46 (b).

APPEAL:

This Administrative Hearing Order is final as to the Appeal of this Administrative Citation, ending the appeal process with the City of Costa Mesa. Judicial review of this Order may be obtained by filing a petition with the Superior Court of Orange County in accordance with the timelines and provisions set forth in California Government Code Section 53069.4.

Date: May 2, 2012


Rodell R. Fick, Esq. Hearing Officer