



AGENDA REPORT
 SAN CLEMENTE CITY COUNCIL MEETING
 Meeting Date: May 1, 2018

Agenda Item 9-A
 Approvals:
 City Manager [Signature]
 Dept. Head [Signature]
 Attorney [Signature]
 Finance [Signature]

Department: City Attorney
Prepared By: Scott Smith, City Attorney

Subject: ORDINANCE AMENDING MUNICIPAL CODE TO RECOVER COSTS OF ADMINISTRATIVE HEARINGS AND APPEALS

Fiscal Impact: If adopted, together with a resolution establishing reasonable fees, the City will be able to recover the costs associated with conducting administrative hearings and appeals in those cases where the City prevails in the proceeding.

Summary: Staff recommends that the City Council a) introduce the attached ordinance which authorizes the recovery of fees for administrative hearings and appeals, gives the City sole discretion to consolidate multiple administrative citation challenges by the same person into one hearing, limits the number of times a hearing may be continued, and makes some minor corrections to the code relating to administrative citations, and b) direct staff to notice a public hearing pursuant to Government Code Sections 66016 and 66018 to adopt a resolution establishing reasonable hearing fees.

Background: The City Manager requested that an ordinance be prepared to allow the City to recover the costs associated with conducting administrative hearings and appeals in those cases where the City prevails in the proceeding.

Discussion: Currently when the City conducts an administrative hearing or appeal, it bears the financial burden of processing and conducting these proceedings, including all staff time, materials and the fees and costs for a hearing officer, with the exception of hearings conducted pursuant to Municipal Code section 8.60.020 relating to shopping carts. Since these proceedings are typically initiated by persons seeking review of an administrative decision or challenging the imposition of a fine, the cost of the proceedings should be borne by such persons, unless they prevail in the proceeding.

New Chapter 1.22 provides that any person seeking an administrative hearing or filing an appeal under any provision of the Municipal Code shall be required to pay the costs associated with the hearing, and deposit those costs with the request for hearing/notice of appeal, unless such person prevails in the hearing/appeal. In the event that a person seeking the hearing or appeal prevails on some of the claims, it shall be responsible for only 1/2 of the costs.

In addition to the cost recovery provisions of new Chapter 1.22, the ordinance amends Municipal Code Section 1.20.080C to give the City sole discretion to

consolidate challenges to multiple administrative citations by the same person into a single hearing, and limits the number of continuances that may be granted for administrative hearings and appeals, and make several other modifications in Chapter 1.20 to be consistent with the new provisions relating to cost recovery. The proposed ordinance also amends Section 1.20.090 relating to judicial review of administrative citations to correct a reference to the California Government Code and to update the address of the Orange County Superior Court where appeals from administrative citation determinations are filed.

Lastly, in order to comply with Government Code Sections 66016 and 66018, it is recommended that the City Council direct staff to provide notice for a public hearing to be held before the City Council to adopt, by resolution, the new fees for appeals, which will be on a time and materials recovery basis.

Recommended

Action:

STAFF RECOMMENDS THAT the City Council a) introduce the attached ordinance which 1) adds a new Chapter 1.22 to the Municipal Code relating to fees for administrative hearings and appeals and 2) amends Section 1.20.090 relating to judicial review of administrative citations to correct a reference to the Government Code and update the address for the Orange County Superior Court, and b) direct staff to notice a public hearing pursuant to Government Code Sections 66016 and 66018 to establish reasonable hearing fees.

Attachments:

1. ORDINANCE NO. _____, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ADDING A NEW CHAPTER 1.22 TO TITLE 1 OF THE SAN CLEMENTE MUNICIPAL CODE RELATING TO FEES FOR ADMINISTRATIVE HEARINGS AND APPEALS AND AMENDING SECTIONS 1.20.080 AND 1.20.090 OF CHAPTER 1.20 OF TITLE 1 OF THE MUNICIPAL CODE RELATING TO JUDICIAL REVIEW OF ADMINISTRATIVE CITATIONS.

Notification:

Notice of fee to be published as noted above.

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ADDING A NEW CHAPTER 1.22 TO TITLE 1 OF THE SAN CLEMENTE MUNICIPAL CODE RELATING TO FEES FOR ADMINISTRATIVE HEARINGS AND APPEALS AND AMENDING SECTIONS 1.20.080. AND 1.20.090 OF CHAPTER 1.20 OF TITLE 1 OF THE MUNICIPAL CODE RELATING TO JUDICIAL REVIEW OF ADMINISTRATIVE CITATIONS

WHEREAS, the City of San Clemente ("City") is authorized to conduct administrative hearings and appeals pursuant to various Chapters of the San Clemente Municipal Code; and

WHEREAS, because the City has not established a fee for such administrative hearings, the City currently bears the burden of processing and conducting administrative hearings and appeals, which costs include, without limitation, the costs to notice the hearing or appeal, staff analysis of the matter which is the subject of the hearing or appeal, the cost of a hearing officer, preparation of the record, and preparation of formal documents upholding or denying the administrative hearing or appeal; and

WHEREAS, administrative hearings and appeals are typically initiated by persons other than the City, and therefore, those persons should bear the costs to process and conduct administrative hearings and appeals in the event the hearing results in a decision upholding the City's determination; and

WHEREAS, the current municipal code provisions relating to the judicial appeal of hearings held to appeal administrative citations should be revised to correct the statutory reference to the California Government Code and to update the address for the Orange County Superior Court at which such judicial appeals are to be filed.

NOW, THEREFORE, the City Council of the City of San Clemente, California, hereby ordains as follows:

Section 1: New Chapter 1.22 of Title 1 of the Municipal Code of the City of San Clemente is hereby added to read in its entirety as follows:

Chapter 1.22 – FEES FOR ADMINISTRATIVE HEARINGS AND APPEALS

1.22.010 Purpose

The purpose of this Chapter is to establish a process for imposing and collecting costs associated with administrative hearings and appeals authorized by the San Clemente Municipal Code. The provisions of this chapter ensure that the City is not unduly burdened by the cost to defend unsuccessful, and often frivolous, appeals of the City's administrative remedies, including those imposed in order to protect the public from dangerous buildings and structures, nuisances, and to enhance established residential neighborhoods, commercial, industrial and public districts, open space and recreational amenities.

1.22.020 Hearing Fee

A. Whenever an administrative hearing or appeal is authorized under any provision of the Municipal Code, and except as otherwise provided by this Municipal Code or state law, the person requesting the hearing or appeal shall pay a hearing fee, which may be established by City Council resolution, except where the person so requesting the hearing or appeal prevails in the hearing or appeal, as set forth in subdivision B below. Any hearing fee shall not exceed the actual costs to the City of conducting the hearing, including, but not limited to staff time to notice the hearing and prepare an analysis of the matter which is the subject of the hearing or appeal, the preparation of any records or documents used in the hearing, including the formal documents upholding or denying the administrative hearing or appeal, attendance at the hearing or appeal by City staff, consultants, and attorneys, and the full fees and costs of the hearing officer retained by the City to conduct the administrative hearing or appeal.

B. As used in this section, the term "prevail" shall mean the decision or action of the City for which the hearing or appeal is requested is overturned or reversed in its entirety.

1. If the person requesting the hearing or appeal is successful in modifying only a portion of the City's decision or action, then the person requesting the hearing or appeal shall pay one-half (1/2) of the hearing fees.

2. If challenges to multiple administrative citations are consolidated into one hearing pursuant to Section 1.20.080C, and the person requesting the hearing is successful on one or more, but not all citations, then the person requesting the hearing shall pay one-half (1/2) of the hearing fees.

1.22.030 Deposit of Hearing Fee

A. Within ten (10) working days of the receipt of a request for a hearing or appeal, the City shall notify the person requesting the hearing or appeal of the hearing fee, which shall be based on City Staff's estimate of the costs of the hearing or appeal and complexity of the hearing at the time of the filing of the request for hearing or notice of appeal. The person requesting the hearing or appeal shall deposit the estimated hearing fee with the City Clerk no later than fifteen (15) business days from the date of the City's notice of the hearing fee. If such hearing fee is not deposited by such time, the right to the hearing or appeal shall be deemed waived.

B. Actual cost of hearing exceeds estimate.

1. In the event that the actual hearing fee is more than the deposit paid, and the person requesting the hearing or appeal does not prevail or is successful in modifying only a portion of the City's action or decision, the additional costs, if any, shall become a debt owed to the City by the appellant, and such additional costs shall be due and payable to the City upon the issuance of a decision by the hearing officer denying the offender's appeal, if no judicial review is sought within the time limits specified in Section 1.20.080; or at such time as a court of proper jurisdiction finds for the City on a judicial review of an administrative order.

2. Payment of any additional costs owed to the City is delinquent thirty (30) days after the costs become due and payable. Delinquent costs shall be treated as an account receivable by the City and shall be subject to the City's established policy for delinquent accounts receivable. Furthermore, the offender shall also be required to pay to the City its actual costs of collection.

C. In the event that the actual hearing fees are less than the deposit paid, and the person requesting the hearing or appeal does not prevail or is successful in modifying only a portion of the City's action or decision, the City shall refund any excess costs to such person as set forth in Section 1.22.050 of this Chapter.

1.22.040 Refund of fines and hearing fee to prevailing party

A. In the event that the person requesting the administrative hearing or appeal prevails, the City shall refund the hearing fee, in its entirety, to such person within fifteen (15) business days of the date of the hearing decision.

B. In the event that the person requesting the administrative hearing or appeal is successful in modifying only a portion of the City's action or decision, the City shall refund one-half (1/2) of the hearing fee to such person within fifteen (15) business days of the date of the hearing decision.

Section 2: Section 1.20.040.B.7. of Chapter 1.20 of Title 1 of the Municipal Code is hereby amended in its entirety to read as follows:

7. Explain the procedure for obtaining an administrative hearing, specifically, notice that the appellant must make a written request within ten (10) working days from the date the administrative citation is issued, pay the applicable hearing fee, and that the appellant will be notified by mail of the date of the hearing; and

Section 3: Section 1.20.070.D of Chapter 1.20 of Title 1 of the Municipal Code is hereby amended in its entirety to read as follows:

D. No Waiver. Under no circumstances shall the payment of the administrative fine constitute a waiver of the offender's right to a hearing. Therefore, an offender may pay the administrative fine within the ten (10) working day period and also obtain a hearing to protest the imposition of the administrative fine, provided that the offender makes a timely request for a hearing and timely deposits the required hearing fee, as described in Section 1.22.030.

Section 4: Section 1.20.080C of Chapter 1.20 of Title 1 of the Municipal Code is hereby amended in its entirety to read as follows:

- C. Notification of Hearing. At least ten (10) working days prior to the date of the hearing, the City shall, by registered or certified mail or personal service, give notice to the person requesting the administrative hearing or appeal of the time, date, and location of the hearing. In the event a person seeks to challenge multiple citations, the City, in its sole discretion, may consolidate all such citation challenges into a single hearing.

Section 5: Section 1.20.080.G. of Chapter 1.20 of Title 1 of the Municipal Code is hereby amended in its entirety to read as follows:

G. Failure to Attend Administrative Hearing.

1. Waiver of Right to Hearing; Fine and Hearing Fee Immediately Due and Payable. The appellant's failure to appear at a hearing shall constitute a waiver of the right to a hearing, a forfeiture of the hearing fee deposit, as well as a waiver of a right to judicial review of the imposition of the administrative fine pursuant to Section 1.20.090. An appellant's failure to appear at the hearing shall be presumed an admission of guilt to the municipal code violation charges as indicated on the administrative citation. The administrative fine applicable to the administrative citation, and additional hearing fees, if any, shall be immediately due and payable unless an extension is granted pursuant to subsection 2 of this Section 1.20.080.

2. Good Cause. Upon a showing of good cause by the appellant, the Hearing Officer may excuse the appellant's failure to appear at the hearing and reschedule the hearing. Under no circumstances shall the hearing be rescheduled more than one (1) time; provided, however, that if, after the first rescheduled hearing, the appellant pays a deposit in the amount of the administrative fine, or fines, and all applicable hearing fees, the hearing may be rescheduled one (1) additional time. Nothing in this subsection shall be interpreted to mean the appellant is excused from the requirement of paying the administrative fine, hearing fee or fees, or appearing at a hearing.

Section 6: Section 1.20.080 of Chapter 1.20 of Title 1 of the Municipal Code is hereby amended by adding a new subdivision H to read as follows:

H. Continuance of Hearing.

1. Any person requesting an administrative hearing or appeal may request a continuance of his/her hearing date, provided, however, that the person requesting the appeal shall be responsible for hearing officer and City staff, consultant and attorney's expenses, if any, incurred as a result of the continuance.

2. No more than two (2) continuances of an administrative hearing or appeal shall be granted, unless the City approves a further continuance for good cause, which shall be determined in the sole discretion of the City Manager or his designee. Any person who fails to appear at a hearing, as described in Section 1.20.080G, shall not be entitled to a continuance as provided herein; such person's relief, if any, from failure to appear shall be limited to the provisions set forth in Section 1.20.080G.2.

3. The City Manager, or his designee, shall have the sole discretion to waive the payment of hearing officer and/or staff expenses incurred by the City as the result of a continued administrative hearing or appeal, in the event the continuance is the result of exigent circumstances, including, but not limited to illness or other unforeseen circumstance.

Section 7: Section 1.20.090 of Chapter 1.20 of Title 1 of the Municipal Code is hereby amended in its entirety to read as follows:

If an administrative order is rendered in favor of the City, the offender may seek judicial review of the administrative order by doing one of the following:

A. Appeal the administrative order pursuant to Government Code Section 53069.4 within twenty (20) calendar days after service of the administrative order. Such an appeal shall be made by filing a notice of appeal with the Clerk of the Civil Division of the Orange County Superior Court, Central Justice Center located at 700 Civic Center Drive West, Santa Ana, CA, 92701 along with applicable filing fees and a copy of the

administrative order. The appealing party shall also serve a copy of the notice of appeal on the City of San Clemente at that time by delivering the same in person or mailing the same by first class mail, postage pre-paid, return receipt requested to: San Clemente City Clerk, 910 Calle Negocio, San Clemente, California 92673. If no appeal notice is filed within the twenty (20) calendar day period, the decision shall be deemed final; or

B. File a petition for a writ of mandate pursuant to Code of Civil Procedure Section 1094.5 within ninety (90) calendar days after service of the administrative order.

Section 8: The City Clerk shall certify to the passage of this ordinance and cause the same to be published as required by law, and the same shall take effect as provided by law.

APPROVED AND ADOPTED this _____ day of _____,

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of San
Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF SAN CLEMENTE)

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. _____ having been regularly introduced at the meeting of _____, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the _____ day of _____, _____, and said ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this _____ day of _____, _____.

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:

CITY ATTORNEY