



# AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING  
Meeting Date: July 20, 2021

Agenda Item 12A  
Approvals:  
City Manager CDG <sup>15</sup>  
Dept. Head CDG  
Attorney \_\_\_\_\_  
Finance TAL

**Department:** Community Development  
**Prepared By:** Cecilia Gallardo-Daly, Community Development Director

**Subject:** *CONSIDERATION OF ESTABLISHING AN APPEAL HEARING FEE*

**Fiscal Impact:** Yes. At this time, the cost for all unsuccessful appeals is covered by the appeal hearing fee deposit charged to the appellants. A change from a cost-recoverable deposit to a flat fee would result in a partial coverage of the City's costs to prepare and conduct an appeal hearing. The proposed appeal hearing fee would partially cover the costs to prepare and conduct an appeal hearing, resulting in the remaining costs to be covered by the City, whether or not an appellant is successful in their appeal. Based on the average City staff-time costs per hearing and the typical number of hearing requests received each year, the average yearly fiscal impact is estimated to be \$11,672.20, should all appeals result in a hearing.

**Summary:** Staff recommends that Council adopt a Resolution establishing an appeal hearing fee of \$500.

**Background:** On June 15, 2021, the City Council introduced Ordinance No. 1715 which eliminates the full cost recovery provisions of San Clemente Municipal Code (SCMC) Chapter 1.22 and provides instead for an appeal fee for unsuccessful appeals should the City Council establish a fee by resolution. The City Council, at that meeting, directed staff to provide a proposed resolution to establish a hearing fee for the Council's consideration at the time of the Ordinance No. 1715 second reading. The City Council expressed interest in a flat fee that is not burdensome for potential appellants, but also expressed concern with establishing a fee that is too low and would not allow the City to have some recovery of the true costs of preparing for and conducting the appeal hearing.

**Discussion:** The City is authorized to charge a fee that does not exceed the estimated reasonable costs of conducting an appeal hearing. Based on the appeals filed in the preceding three years, staff's average cost estimate to provide appeal hearings was \$1,667.22, with a lowest cost estimate of \$748.43. Due to the significantly varying complexity of appeal hearings and the staff time required to conduct them, determining a minimum set fee is challenging. Attachment 3 provides examples of staff's estimated hearing fees for two appeals. These examples provide an analysis of the costs of appeals while also demonstrating the variation in their complexity.

In order to offset some of the costs of conducting appeal hearings, while also ensuring that no appellants pay more than the potential minimum cost of a hearing, staff proposes a hearing fee of \$500. This amount would cover the minimum costs of the

contracted hearing officers' time and incidentals, such as the hearing officer's mileage costs, and materials and postage. This fee is based on the minimum amount of time a hearing officer would be required for any hearing, that being three hours. The City's contracts with hearing officers stipulate an hourly rate of \$150, and three hours of their time costs \$450. With mileage, materials, and postage costs typically about \$50, the total fee would be \$500. The proposed hearing fee will result in an average cost to the City of \$1,167.22 per hearing, the amount of the \$1,667.22 average hearing cost uncovered by the proposed hearing fee. The City typically receives about 10 appeal-hearing requests per year, which would amount to an average yearly fiscal impact of \$11,672.20 should all appeals result in a hearing.

**Recommended****Action:**

STAFF RECOMMENDS THAT the City Council 1) adopt a Resolution entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ESTABLISHING A FIXED FEE FOR APPEALS UNDER CHAPTER 1.22 OF THE SAN CLEMENTE MUNICIPAL CODE, and 2) adopt Ordinance No. 1715 entitled AN ORDINANCE OF THE CITY COUNCIL OF SAN CLEMENTE, CALIFORNIA AMENDING SAN CLEMENTE MUNICIPAL CODE CHAPTER 1.22 RELATING TO FEES FOR ADMINISTRATIVE HEARINGS AND APPEALS.

**Attachments:**

1. Resolution – Appeal Hearing Fee
2. Introduced Ordinance No. 1715
3. Fee Analysis – Two Estimated Hearing Fee Calculators
4. City Council Agenda Report dated June 15, 2021 and Ordinance No. 1715.

**Notification:**

None.

# ATTACHMENT 1

## RESOLUTION NO.

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ESTABLISHING A FIXED FEE FOR APPEALS UNDER CHAPTER 1.22 OF THE SAN CLEMENTE MUNICIPAL CODE

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 ("SCMC"); and

WHEREAS, on July 20, 2021, the City Council of the City of San Clemente adopted Ordinance No. 1715 amending SCMC Chapter 1.22 to set a fixed fee for appeals and administrative hearings; and

WHEREAS, SCMC section 1.22.020 authorizes the City Council to establish, by resolution, payment of a fixed fee to cover costs for an administrative hearing or appeal; and

WHEREAS, these costs of processing and conducting administrative hearings and appeals, which may include, without limitation, the cost to notice the hearing or the appeal, staff analysis of the hearing or the appeal, preparation of the record, providing a hearing officer, and preparation of formal documents upholding or denying the hearing or appeal, were, prior to Ordinance No. 1715, previously paid for entirely by unsuccessful appellants; and

WHEREAS, administrative hearings and appeals are typically initiated by persons or appellants other than the City, and therefore, those persons or appellants should bear a portion of, but not in excess of, the total costs to process and conduct administrative hearings and appeals in the event the hearing or appeal is unsuccessful; and

WHEREAS, City staff has provided adequate data substantiating the costs of conducting administrative hearings and appeals that are to be covered by the proposed fixed fee and made the data available for public review; and

WHEREAS, pursuant to Government Code Section 66000, et seq., the City is empowered to impose fees covering up to 100 percent of the actual costs of providing these services; and

WHEREAS, accordingly, the City Council desires to establish a fixed fee for appeal hearings so that appellants are required to pay partial costs of the actual time and materials of the appeal hearing, except in cases where the appellant prevails in their appeal; and

WHEREAS, the City Council finds that establishing an appeal hearing fee is in keeping with prevailing practice of cities in the County and in the best interest of the City to promote its continued financial stability; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

Resolution No.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, DOES HEREBY RESOLVE, DETERMINE, FIND AND ORDER AS FOLLOWS:

Section 1. Incorporation of Recitals. The foregoing recitals are true and correct and are hereby incorporated and made an operative part of this Resolution.

Section 2. Amount of Appeals Fee. The appellant of an administrative decision in the City of San Clemente or any person requesting an administrative hearing shall pay a deposit of \$500. Within ten (10) business 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, unless the City-issued notice of violation or citation includes the amount of the hearing or appeal fee. The person requesting the hearing or appeal shall deposit the hearing fee to the City Clerk no later than fifteen (15) business days from the date of the City's notice of the hearing fee amount. Pursuant to SCMC section 1.22.020.B, if the appellant prevails in the appeal, the City shall return the appellant's entire deposit, or if the appellant partially prevails in the appeal, the City shall return one-half of the appellant's deposit.

Section 4. CEQA. The City Council finds that this Resolution is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 5. Severability. The provisions of this Resolution are severable and if any provision of this Resolution is held invalid, that provision shall be severed from the Resolution and the remainder of this Resolution shall continue in full force and effect, and not be affected by such invalidity.

Section 6. Effective Date. This Resolution shall take effect 30 days after its adoption.

Section 7. Certification. The Mayor shall sign this Resolution and the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED this 20th day of July, 2021.

ATTEST:

\_\_\_\_\_  
City Clerk of the City of  
San Clemente, California

\_\_\_\_\_  
Mayor of the City of San  
Clemente, California

Resolution No.

STATE OF CALIFORNIA     )  
COUNTY OF ORANGE     ) §  
CITY OF SAN CLEMENTE    )

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. \_\_\_\_\_ was adopted at a regular meeting of the City Council of the City of San Clemente held on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, 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

**ORDINANCE NO. 1715**

**AN ORDINANCE OF THE CITY COUNCIL OF SAN CLEMENTE, CALIFORNIA AMENDING SAN CLEMENTE MUNICIPAL CODE CHAPTER 1.22 RELATING TO FEES FOR ADMINISTRATIVE HEARINGS AND APPEALS**

**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**, currently, Chapter 1.22 of the San Clemente Municipal Code provides for the payment of the full costs of administrative hearings and appeals by the person requesting such hearings and appeals if such appellant is unsuccessful in reversing the decision in question; and

**WHEREAS**, the costs of such hearings and appeals include 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**, the City Council wishes to amend the code to provide for a fixed fee for such hearings and appeals, to be established by a separate resolution of the City Council.

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

**SECTION 1.** Chapter 1.22 of the San Clemente Municipal Code is hereby amended to read as follows:

**"1.22.010 - Purpose.**

The purpose of this chapter is to establish a process for imposing and collecting costs associated with administrative hearings and administrative appeals authorized by the San Clemente Municipal Code.

**1.22.020 - Hearing Fee.**

- A. Whenever an administrative hearing or administrative 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, if such a fee is established by City Council resolution, which shall be refunded if the person so requesting the hearing or appeal prevails in the hearing or appeal, as set forth in Subdivision B below.

- 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 of the hearing fees.
  2. If challenges to multiple administrative citations are consolidated into one hearing pursuant to Section 1.20.080.C, 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 of the hearing fees.

**1.22.030 - Deposit of Hearing Fee.**

- A. The City-issued notice of violation or citation shall include the amount of the hearing or appeal fee, or within 10 business 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. The person requesting the hearing or appeal shall deposit the estimated hearing fee with the City Clerk no later than 15 working 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. Advance deposit hardship waiver.
1. A person requesting the hearing or appeal who is financially unable to make the advance deposit of any applicable fine, hearing fee, or appeal fee may file a request for an advance deposit hardship waiver form, available from the City Clerk within fifteen (15) calendar days from the date of service of the notice of violation or citation. The Director of Finance, with the concurrence of the City Manager, shall be authorized to establish a reasonable policy, including criteria, for determining financial ability to pay the applicable fine and hearing or appeal fee.
  2. The requirement of depositing the full amount of the fine, hearing fee, or appeal fee shall be stayed unless or until the Director of Finance makes a determination not to issue the advance deposit hardship waiver.
  3. The Director of Finance may waive the requirement for advance deposit only if the filer submits to the Director evidence that shows to the Director's reasonable satisfaction

that such party is financially unable to deposit the total amount of the fine, hearing fee, or appeal fee, or Hearing Officer costs in advance of the hearing.

4. If the Director of Finance determines not to issue an advance deposit hardship waiver, the filer shall remit the fine, hearing fee, or appeal fee to the City within five (5) days of the date of that decision.
5. The Director of Finance shall provide his or her reasons for granting or not granting an advance deposit hardship waiver in writing and serve it on the violator. The Director's decision shall be final.

**SECTION 2.** This Ordinance shall become effective 30 days after its adoption.

APPROVED AND ADOPTED this \_\_\_ day of \_\_\_\_\_, 2021.

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

## Hearing Fee Calculator Example #1

	Hours	Rate/hour	Line Item Cost
<b>City Staff Costs</b>			
		*	
Schedule Hearing	0.50	\$54.11	\$27.06
Notice the Hearing	0.50	\$54.11	\$27.06
Staff Analysis (Prepare staff report)	1.50	\$61.92	\$92.88
Document Preparation	0.50	\$61.92	\$30.96
Attend Hearing	1.50	\$61.92	\$92.88
			\$0.00
<b>City Counsel Costs</b>			
		**	
Research City Records	N/A	\$195.00	\$0.00
Review City Documents	N/A	\$195.00	\$0.00
Attend Hearing	N/A	\$195.00	\$0.00
			\$0.00
<b>Hearing Officer Costs</b>			
		***	
Review Staff Report and Documents	1.00	\$150.00	\$150.00
Attend Hearing	1.00	\$150.00	\$150.00
Prepare Disposition	1.00	\$150.00	\$150.00
Typical Mileage Cost	1.00	\$25.00	\$25.00
Typical Mailing Cost	1.00	\$6.50	\$6.50
<b>Total Estimated Hearing Fee</b>			<b>\$752.33</b>

\*Based on Fully-Loaded (benefited), median salary of Code Compliance staff or Admin. Assistant

\*\*Based on Legal Counsel invoiced hourly rate

\*\*\*Based on City's approved pay rate, typical mileage charged, and current rate for certified mailings

## Hearing Fee Calculator Example #2

	Hours	Rate/hour	Line Item Cost
<b>City Staff Costs</b>			
		*	
Schedule Hearing	0.50	\$54.11	\$27.06
Notice the Hearing	0.50	\$54.11	\$27.06
Document Preparation/Review	3.00	\$61.92	\$185.76
Set-up Hearing	1.00	\$54.11	\$54.11
Attend Hearing (2 staff)	6.00	\$61.92	\$371.52
<b>City Counsel Costs</b>			
		**	
Research City Records	0.50	\$195.00	\$97.50
Review City Documents	0.50	\$195.00	\$97.50
Staff Analysis (Prepare staff report)	1.00	\$195.00	\$195.00
Attend Hearing	2.00	\$195.00	\$390.00
<b>Hearing Officer Costs</b>			
		***	
Review Staff Report and Documents	3.00	\$150.00	\$450.00
Attend Hearing	3.00	\$150.00	\$450.00
Prepare Disposition	3.00	\$150.00	\$450.00
Typical Milage Cost	1.00	\$25.00	\$25.00
Typical Mailing Cost	1.00	\$6.50	\$6.50
<b>Total Estimated Hearing Fee</b>			<b>\$2,827.00</b>

\*Based on Fully-Loaded, median salary of Code Compliance staff or Admin. Assistant

\*\*Based on Legal Counsel invoiced hourly rate

\*\*\*Based on City's approved pay rate, typical mileage charged, and current rate for certified mailings



# AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING

Meeting Date: June 15, 2021

**Department:** City Attorney  
Community Development Department

**Prepared By:** Scott C. Smith, City Attorney  
Cecilia Gallardo-Daly, Community Development Director

**Subject:** *CONSIDERATION OF AN ORDINANCE AMENDING SAN CLEMENTE MUNICIPAL CODE CHAPTER 1.22 TO SET A FIXED FEE FOR APPEALS AND ADMINISTRATIVE HEARINGS*

**Fiscal Impact:** The fiscal impact of this amendment is dependent upon the appeal hearing fee cost. At this time, the cost for all unsuccessful appeals is covered by the appeal hearing fees charged to the appellants. Any set appeal hearing fee that does not cover the cost of some or all hearings will have a negative impact on the City's finances, as those currently unbudgeted costs will then be paid for by the general fund.

**Background:** In 2018, the City Council amended Chapter 1.22 of the San Clemente Municipal Code ("SCMC") to authorize full recovery of costs of administrative hearings and appeals from individuals seeking those hearings and appeals ("appellants") when their appeals are unsuccessful. At its meeting on June 1, 2021, the City Council asked that staff prepare and present an ordinance repealing that full cost recovery and providing instead for a fixed fee.

**Discussion:** The current version of SCMC Chapter 1.22 contains basic provisions relating to fees for administrative hearings and appeals ("appeals"). Sections 1.22.010 through 1.22.030 provide for payment of the costs of unsuccessful appeals from unsuccessful appellants rather than coverage of them by the general fund. At its June 1, 2021 meeting, the City Council asked staff to return with (1) an ordinance amending Chapter 1.22 to provide instead that appeals be subject to a fixed fee, which would be recoverable by successful appellants, with the inclusion of a provision to allow a hardship waiver, and information on a fixed fee amount.

The attached draft Ordinance eliminates the full cost recovery provisions of Chapter 1.22 and provides instead for an appeal fee for unsuccessful appeals as set by resolution of the City Council. (The provisions of Section 1.22.040 providing for fee refunds from unsuccessful appellants are now consolidated into Section 1.22.020.) If Council were to introduce this draft Ordinance for first reading, it could simultaneously give instruction of what, if any appeals fee should follow. Staff could then prepare and notice a resolution adopting an appeals fee for subsequent Council consideration. The fee could be set to take effect concurrently with the effective date of the Ordinance. The remainder of

Chapter 1.22 would remain intact. The current information related to fees is based on the actual amount of fees collected for the cost of the appeal hearings held.

<b>Appeal Hearing</b>	<b>Fee Collected</b>
Highest appeal hearing fee collected	\$3,597.27
Lowest appeal hearing fee collected	\$1,614.37
Average of hearing fees collected	\$2,501.85

Appeals tend to involve complicated cases that require additional staff time for the preparation of the report and supporting documentation. In addition, the hearing may take up to a full day of staff and the Administrative Hearing Officer's time. Prior to the appeal hearing fee, the cost of the Administrative Hearing Officer was covered by the General Fund. The last budgeted amount for the hearings to cover the cost of the Administrative Hearing Officer was \$10,000. The consideration of a flat fee for an appeal hearing in the amount of \$250 to \$500 per appeal would likely not be cost recoverable. In comparison, the fee to appeal a Planning Permit by a hearing body is a flat fee of \$1,250.99.

**Recommended**

**Actions:** STAFF RECOMMENDS THAT the City Council:

1. Consider introducing for first reading an Ordinance entitled:

AN ORDINANCE OF THE CITY COUNCIL OF SAN CLEMENTE, CALIFORNIA AMENDING SAN CLEMENTE MUNICIPAL CODE CHAPTER 1.22 RELATING TO FEES FOR ADMINISTRATIVE HEARINGS AND APPEALS

2. Give staff direction on the possibility of bringing back a resolution establishing an appeals fee pursuant to this Ordinance.

- Attachments:**
- 1) Proposed Ordinance
  - 2) Agenda Report from June 1, 2021

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF SAN CLEMENTE, CALIFORNIA AMENDING SAN CLEMENTE MUNICIPAL CODE CHAPTER 1.22 RELATING TO FEES FOR ADMINISTRATIVE HEARINGS AND APPEALS**

**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**, currently, Chapter 1.22 of the San Clemente Municipal Code provides for the payment of the full costs of administrative hearings and appeals by the person requesting such hearings and appeals if such appellant is unsuccessful in reversing the decision in question; and

**WHEREAS**, the costs of such hearings and appeals include 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**, the City Council wishes to amend the code to provide for a fixed fee for such hearings and appeals, to be established by a separate resolution of the City Council.

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

**SECTION 1.** Chapter 1.22 of the San Clemente Municipal Code is hereby amended to read as follows (additions shown in underline and deletions shown in ~~strikethrough~~):

**"1.22.010 - Purpose.**

The purpose of this chapter is to establish a process for imposing and collecting costs associated with administrative hearings and administrative 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 administrative 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~~ which shall be refunded if 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 administrative 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 administrative 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 of the hearing fees.
  2. If challenges to multiple administrative citations are consolidated into one hearing pursuant to Section 1.20.080.C, 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 of the hearing fees.

**1.22.030 - Deposit of Hearing Fee.**

- A. The City-issued notice of violation or citation shall include the amount of the hearing or appeal fee, or ~~W~~within 10 business 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 Staffs 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 15 working 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. Advance deposit hardship waiver.

1. A person requesting the hearing or appeal who is financially unable to make the advance deposit of any applicable fine, hearing fee, or appeal fee may file a request for an advance deposit hardship waiver form, available from the City Clerk within fifteen (15) calendar days from the date of service of the notice of violation or citation. The Director of Finance, with the concurrence of the City Manager, shall be authorized to establish a reasonable policy, including criteria, for determining financial ability to pay the applicable fine and hearing or appeal fee.
2. The requirement of depositing the full amount of the fine, hearing fee, or appeal fee shall be stayed unless or until the Director of Finance makes a determination not to issue the advance deposit hardship waiver.
3. The Director of Finance may waive the requirement for advance deposit only if the filer submits to the Director evidence that shows to the Director's reasonable satisfaction that such party is financially unable to deposit the total amount of the fine, hearing fee, or appeal fee, or Hearing Officer costs in advance of the hearing.
4. If the Director of Finance determines not to issue an advance deposit hardship waiver, the filer shall remit the fine, hearing fee, or appeal fee to the City within five (5) days of the date of that decision.
5. The Director of Finance shall provide his or her reasons for granting or not granting an advance deposit hardship waiver in writing and serve it on the violator. The Director's decision shall be final.

~~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 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 15 working 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 of the hearing fee to such person within 15 working days of the date of the hearing decision."~~

**SECTION 2.** This Ordinance shall become effective 30 days after its adoption.

PASSED 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 unanimately 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:

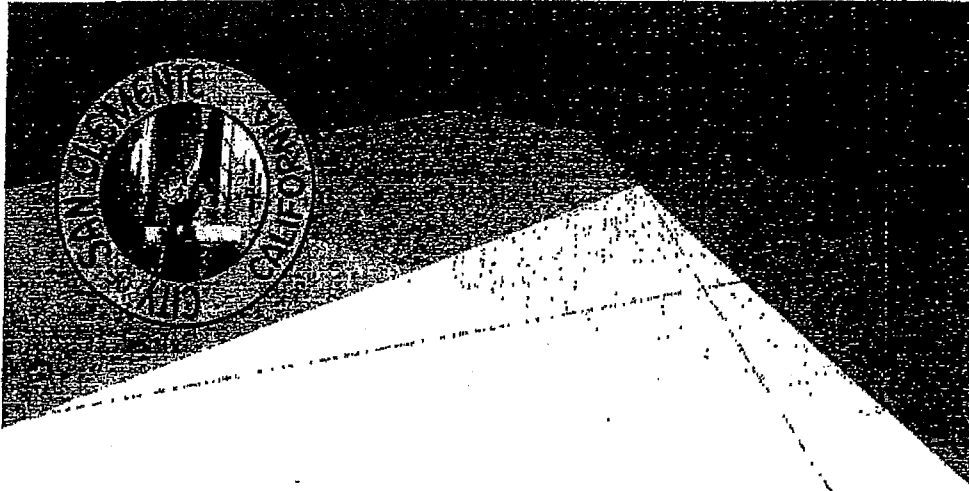
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
CITY CLERK of the City of  
San Clemente, California

Approved as to form:

\_\_\_\_\_  
City Attorney

6-1-21/9C



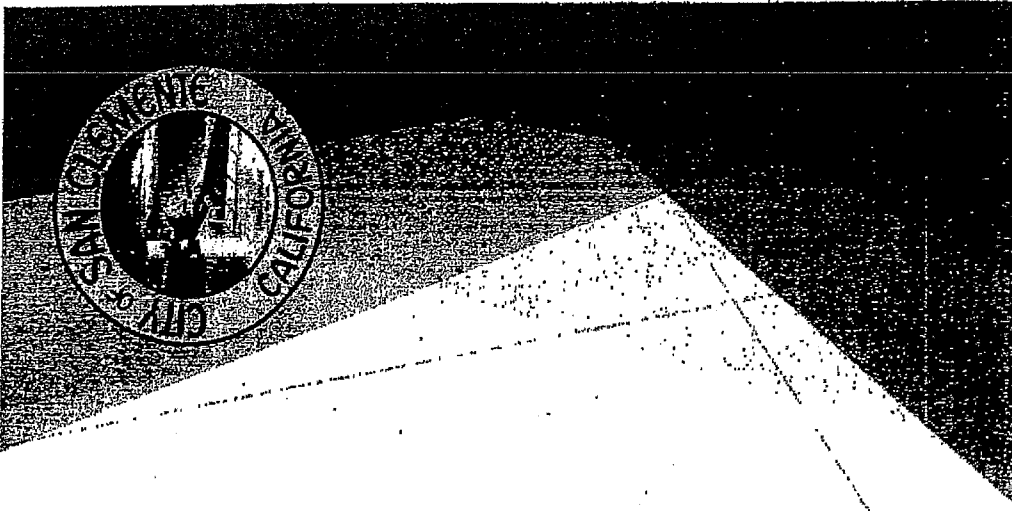
**ADMINISTRATIVE HEARING  
FEE DEPOSIT REVIEW**

**City Council Meeting  
June 1, 2021**

6-1-21/9C-1

6-15-21/9B-8

7-20-21/12A-19



## **BACKGROUND**

### **Ordinance 1655:**

- Requires appellants to submit hearing fee deposit to cover cost of the appeal.
- Non-prevailing party pays hearing fees.
- Successful appellants receive deposit back, unless only partially successful, then both parties pay 50% of hearing costs.
- Effective on June 14, 2018.

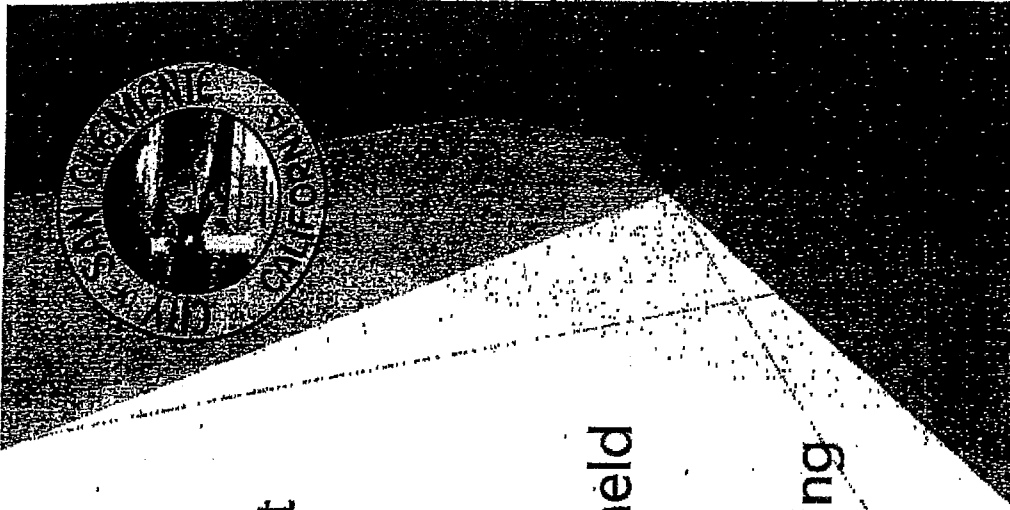
6-1-21 / 9C-2

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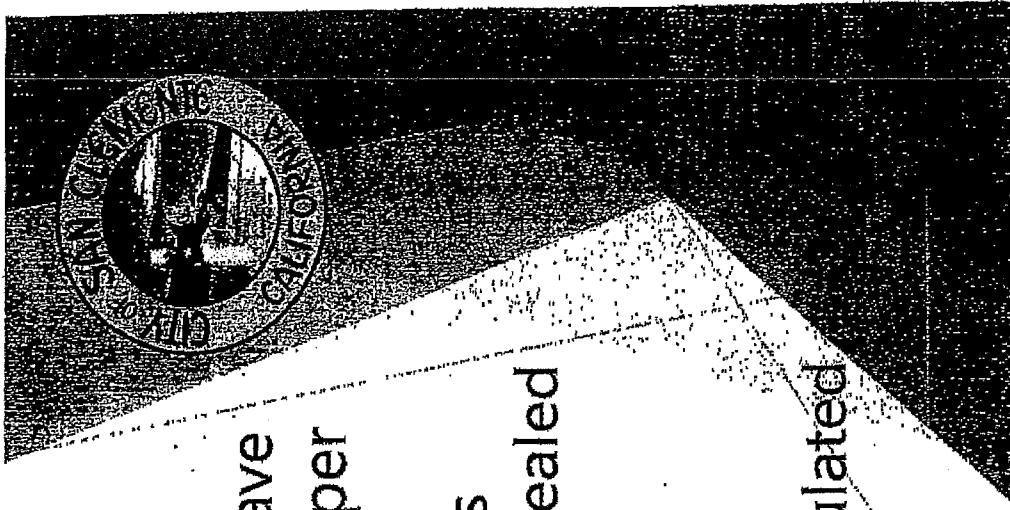
## APPEAL STATISTICS

- Since effective date, 22 appeals submitted that required a hearing fee deposit.
- 21 appeals related to citations, 1 appealed a business license revocation.
- Of the 22 appeals, 9 submitted deposits.
- Of the 9 deposits, only 3 hearings have been held (1 currently scheduled).
- The remaining 5 appellants withdrew their appeals or entered into a settlement after paying the deposit.



## **FEE DEPOSIT STATISTICS**

- The 22 appeal hearing fee deposits would have totaled \$36,678.85, an average of \$1,667.22 per hearing.
- The total amount of the citations appealed is \$28,600.00, an average of \$1,361.90 per appealed citation.
- Total finalized hearing fees levied to date is \$3,908.29, for the two hearings held.
- 1 recent hearing's final fee is still being calculated (anticipated to be appx. \$1600).



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8-16-21 / 9B-11



This Staff report from 2018 as provided as an historical reference from Council as it considers Agenda Item 9C relating to possible repeal of Ordinance No. 1655 that requires unsuccessful appellants to pay the hearing cost associated with Administrative Hearings.

## AGENDA REPORT

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

Agenda Item

9-A

Approvals:

City Manager

Dept. Head

Attorney

Finance

*[Handwritten signatures and initials for City Manager, Dept. Head, Attorney, and Finance]*

**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 1.20.080 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 1.20.080 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.

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7-20-21 / 12A-24



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:

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6-15-21 / 9B-14

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## 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

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6-15-21 / 9B-15

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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.

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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 1.20.080. 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.

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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

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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

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7-20-21 / 12A-30

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

I, JOANNE BAADÉ, 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

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