

ORDINANCE NO. 9263 (N.S.)

AN ORDINANCE ADDING DIVISION 8 TO TITLE 1 OF THE SAN DIEGO COUNTY CODE, AND MAKING MISCELLANEOUS AMENDMENTS TO THE COUNTY CODE, ZONING ORDINANCE, AND ADMINISTRATIVE CODE, RELATING TO ADMINISTRATIVE CITATIONS

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. The Board of Supervisors finds and determines that there is a need to strengthen code enforcement in the County of San Diego with a more efficient civil enforcement remedy. This ordinance will implement an administrative citation program as authorized by Government Code section 53069.4 which will provide County staff with an additional enforcement tool for addressing County ordinance violations.

Section 2. Division 8 is hereby added to Title 1 of the San Diego County Code to read as follows:

DIVISION 8. ADMINISTRATIVE REMEDIES

CHAPTER 1

ADMINISTRATIVE CITATIONS

SEC. 18.101. APPLICABILITY.

(a) This Chapter provides for administrative citations and fines which are in addition to all other legal remedies, criminal or civil, which may be pursued by the County to address any violation of the San Diego County Code, the San Diego County Zoning Ordinance, the San Diego County Administrative Code, or any other ordinance adopted by the County Board of Supervisors.

(b) The use of this Chapter shall be at the sole discretion of the County.

(c) County staff may prepare a procedures manual which provides additional guidance for implementation of the administrative citation program in a manner consistent with the provisions of this ordinance.

SEC. 18.102. DEFINITIONS.

Notwithstanding the definitions found in Division 2 of Title 1 of the San Diego County Code, for purposes of this Chapter, the following definitions shall apply:

"Code" shall mean the San Diego County Code, the San Diego County Zoning Ordinance, the San Diego County Administrative Code, and/or any other ordinance adopted by the County Board of Supervisors.

"Director" shall mean the Director of the County department which has issued an administrative citation or on whose behalf an administrative citation has been issued.

"Enforcement officer" shall mean the Director of a County department or any County employee or agent of the County with the authority to enforce any provision of a Code.

"Hearing officer" shall mean the person or persons appointed by the Chief Administrative Officer to preside over an administrative hearing provided for in this Chapter.

SEC. 18.103. WARNING OF AN ADMINISTRATIVE CITATION

Whenever an enforcement officer charged with the enforcement of any provision of a Code determines that a violation of that provision has occurred, the enforcement officer may issue a warning of an administrative citation to any person responsible for the violation. A warning shall be served as a prerequisite to the issuance of a first administrative citation. The warning shall identify the Code section(s) violated and provide a description of the violation and how it can be corrected. The warning shall specify a time and date by which the violation shall be corrected, after which an administrative citation may be issued if the violation is not fully corrected. The enforcement officer shall provide for a reasonable period of time to correct the violation after considering the circumstances of the case, except that at least 24 hours shall be allowed from the time and date of the warning for the Code violation to be corrected. A warning shall not be required before the issuance of a second or any subsequent administrative citation for a continuing or repeated violation.

SEC. 18.104. ADMINISTRATIVE CITATION.

(a) Whenever an enforcement officer charged with the enforcement of any provision of a Code determines that a violation of that provision has occurred, the enforcement officer may issue an administrative citation to any person responsible for the violation provided that any warning required by Section 18.103 has first been issued. Each and every day during a portion of which a violation of a Code is committed, continued or permitted is a separate and distinct violation for which an administrative citation may be issued.

Each administrative citation shall contain the following information:

- (1) The date of the violation;
- (2) The address or a definite description of the location where the violation occurred;
- (3) The Code section(s) violated and a description of the violation;
- (4) A description of how the violation can be corrected;
- (5) The amount of the fine for the Code violation;
- (6) A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;
- (7) An order prohibiting the continuation or repeated occurrence of the Code violation described in the administrative citation;
- (8) A description of the administrative citation review process, including the time within which the administrative citation may be contested by submitting a request for hearing form; and
- (9) The name and signature of the citing enforcement officer.

(a) Service of a warning or an administrative citation may be accomplished by any of the following methods:

(1) Personal Service. The enforcement officer, or an authorized designee, may obtain the signature of the person responsible for the Code violation on the administrative citation. If the responsible person refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity of the citation and subsequent proceedings.

(2) First Class Mail. Service may be provided by deposit in the United States Mail, in a sealed envelope sent first class postage prepaid, addressed to the person to be notified at the last-known business or residence address as the same appears in the public records or other records pertaining to the matter to which the notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in any official United States postal box. The failure of the responsible person to receive a properly addressed administrative citation shall not affect the validity of the citation and subsequent proceedings.

(3) Posting. If personal service or service by first class mail cannot be completed as specified in Sections 18.105(a)(1) or (a)(2) above, or as an additional method of notice at the discretion of the County, the administrative citation may be posted in a conspicuous place on or near the property on which the violation is located. Failure of a posted notice to remain in place after posting shall in no way affect the validity of the citation and subsequent proceedings.

SEC. 18.106. AMOUNT OF FINES.

(a) The fine for a Code violation imposed pursuant to this Chapter shall be one hundred dollars for the first citation, two hundred dollars for the second citation, five hundred dollars for the third citation, and one thousand dollars for the fourth or subsequent citation issued for a repeat violation of the same ordinance provision by the same person within one year from the date of an administrative citation. Notwithstanding the provisions of this section, the maximum fine for a fourth or subsequent citation shall be five hundred dollars in cases where

the applicable Code only authorizes the violation to be charged as an infraction. The fine amounts shall be cumulative where multiple citations are issued, however, the maximum amount of accumulated fines, excluding any late payment charges or other costs, shall not exceed ten thousand dollars per parcel or structure for any related series of violations.

(b) A late payment charge shall be paid to the County in the amount specified in Section 18.113 if a fine has not been paid in full to the County on the date on which it is due.

SEC. 18.107. PAYMENT OF THE FINE.

(a) The fine shall be paid to the County within thirty days from the date of the administrative citation in accordance with the payment instructions printed on the citation form.

(b) Any administrative citation fine paid pursuant to Section 18.107(a) shall be refunded in accordance with Section 18.112 if it is determined, after a hearing, that the person charged in the administrative citation was not responsible for the violation or that there was no violation as charged in the administrative citation.

(c) Payment of a fine under this Chapter shall not excuse or discharge any continuation or repeated occurrence of the Code violation that is the subject of the administrative citation.

SEC. 18.108. REQUEST FOR HEARING.

(a) Any person receiving an administrative citation may contest that there was a violation of the Code or that he or she is the responsible party by completing a request for hearing form and returning it to the County within ten days from the date of the administrative citation, together with an advance deposit of the full amount of the fine or notice that a request for an advance deposit hardship waiver has been filed pursuant to Section 18.109. The failure of any person to properly file a request for hearing within the time specified in this section shall constitute a waiver of the right to an administrative hearing and adjudication of the administrative citation or fine or any portion thereof.

(b) A request for hearing form may be obtained from the County department issuing the administrative citation. Any person requesting a hearing may provide the County with a mailing address to which any notice required under Section 18.116 may be served.

(c) A hearing before the hearing officer shall be set for the earliest practicable date after a request for hearing has been properly filed in accordance with the provisions of this Chapter.

(d) The person requesting the hearing shall be notified of the time and place set for the hearing at least ten days prior to the date of the hearing.

(e) If the enforcement officer submits an additional written report concerning the administrative citation to the hearing officer for consideration at the hearing, then a copy of this report shall also be served on the person requesting the hearing at least five days prior to the date of the hearing.

SEC. 18.109. ADVANCE DEPOSIT HARDSHIP WAIVER.

(a) Any person who intends to request a hearing to contest that there was a violation of a Code or that he or she is the responsible party and who is financially unable to make the advance deposit of the fine as required in Section 18.108 may file a request for an advance deposit hardship waiver.

(b) The request shall be filed with the Director of the County department issuing the administrative citation on an advance deposit hardship waiver application form, available from the County department, within ten days of the date of the administrative citation.

(c) The requirement of depositing the full amount of the fine as described in Section 18.108 shall be stayed unless or until the Director makes a determination not to issue the advance deposit hardship waiver.

(d) The Director may waive the requirement of an advance deposit set forth in Section 18.108 and issue the advance deposit hardship waiver only if the person receiving the administrative citation submits to the Director a sworn

affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the Director the person's actual financial inability to deposit with the County the full amount of the fine in advance of the hearing.

(e) If the Director determines not to issue an advance deposit hardship waiver, the person shall remit the deposit to the County within ten days of the date of that decision or thirty days from the date of the administrative citation, whichever is later.

(f) The Director shall issue a written decision listing the reasons for his or her determination to issue or not issue the advance deposit hardship waiver. The written decision of the Director shall be final.

(g) The written decision of the Director shall be served upon the person who applied for the advance deposit hardship waiver.

SEC. 18.110. HEARING OFFICER.

The Chief Administrative Officer shall appoint a hearing officer to preside over an administrative citation hearing which has been properly requested under the provisions of this Chapter.

SEC. 18.111. HEARING PROCEDURE.

(a) No hearing to contest an administrative citation before a hearing officer shall be held unless the fine has been deposited in advance in accordance with Section 18.108 or an advance deposit hardship waiver has been issued in accordance with Section 18.109.

(b) At the hearing, the party contesting the administrative citation shall be given the opportunity to testify and to present evidence concerning the administrative citation.

(c) The failure of any person receiving an administrative citation to appear at the administrative citation hearing shall constitute a forfeiture of the fine and a failure to exhaust their administrative remedies.

(d) The administrative citation and any additional report submitted by the enforcement officer shall constitute prima facie evidence of the respective facts contained in those documents. The enforcement officer may, but shall not be required to, appear at an administrative citation hearing.

(e) The hearing officer may continue the hearing and request additional information from the enforcement officer or the person receiving the administrative citation prior to issuing a written decision.

SEC. 18.112. HEARING OFFICER'S DECISION.

(a) After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision to uphold or cancel the administrative citation and shall list in the decision the reasons for that decision. The decision of the hearing officer shall be final.

(b) If the hearing officer determines that the administrative citation should be upheld, then the fine amount on deposit with the County shall be retained by the County.

(c) If the hearing officer determines that the administrative citation should be upheld and the fine has not been deposited pursuant to an advance deposit hardship waiver, the hearing officer shall set forth in the decision a payment schedule for the fine.

(d) If the hearing officer determines that the administrative citation should be canceled and the fine was deposited with the County, then the County shall promptly refund the amount of the deposited fine.

(e) The person receiving the administrative citation shall be served with a copy of the hearing officer's written decision.

SEC. 18.113. LATE PAYMENT CHARGES.

Any person who fails to pay to the County any fine imposed pursuant to the provisions of this Chapter on or before the date that fine is due shall also be liable for the payment of a late payment charge in the amount of fifty percent of the total fine amount owed.



SEC. 18.114. RECOVERY OF ADMINISTRATIVE CITATION FINES, LATE PAYMENT CHARGES, AND COLLECTION COSTS.

(a) The County may collect any past due administrative citation fine or late payment charge, and may also recover its collection costs, by use of all available legal means. The failure of any person to pay a fine assessed by an administrative citation, or a late payment charge or collection costs related to an administrative citation, by the due date shall constitute a debt to the County. The County may seek payment of the debt by use of all available legal means, including but not limited to the following:

(1) The County may refer the debt to the Auditor and Controller for collection.

(2) The County may file a civil action in the Superior Court or the Small Claims Court to recover the debt.

(3) The County may impose a code enforcement lien upon the real property upon which the violation is located. The lien shall continue until all fines, late payment charges, and other costs owed are fully paid. Any lien imposed pursuant to this Chapter shall attach upon the recordation of a notice of code enforcement lien in the Office of the County Recorder.

SEC. 18.115. RIGHT TO JUDICIAL REVIEW.

Any person aggrieved by the administrative decision of a hearing officer on an administrative citation may obtain review of the administrative decision by filing a petition for review with the San Diego County Superior Court in accordance with the timelines and provisions set forth in California Government Code section 53069.4.

SEC. 18.116. SERVICE.

(a) Except as otherwise specified in Section 18.105, all decisions or notices required to be served by this Chapter shall be provided by deposit in the United States Mail, in a sealed envelope sent first class postage prepaid, addressed to the person to be notified at any mailing address provided to the County by that person for receipt of service, or at the last-known business or residence address as the same appears in the public records or other records pertaining to the matter to

which the service is directed. Service by mail shall be deemed to have been completed at the time of deposit in any official United States postal box. The failure of the person to receive a properly addressed service shall not affect the validity of the proceedings.

Section 3. Subsection h. is hereby added to Section 7703 of the Zoning Ordinance to read as follows:

h. Administrative Remedies. In addition to all other legal remedies, criminal or civil, which are available to the County to address any violation of the Zoning Ordinance, the County may use the Administrative Remedies found at Division 8 of Title 1 of the County Code.

Section 4. Section 11.116 of the County Code is hereby amended to read as follows:

SEC. 11.116. VIOLATIONS - PENALTY. It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this Code. Any person violating any of the provisions or failing to comply with any of the requirements of this Code shall be guilty of an infraction except where provision is otherwise herein specifically provided. Any person convicted of an infraction under the provisions of this Code shall be punishable by (1) a fine not exceeding one hundred dollars for a first violation; (2) a fine not exceeding two hundred dollars for a second violation of the same ordinance within one year; (3) a fine not exceeding five hundred dollars for each additional violation of the same ordinance within one year.

Section 5. Section 11.121 is hereby added to the County Code to read as follows:

SEC. 11.121. VIOLATIONS - ADMINISTRATIVE REMEDIES. In addition to all other legal remedies, criminal or civil, which are available to the County to address any violation of the County Code, the County may use the Administrative Remedies found at Division 8 of Title 1 of the County Code.

Section 6. Section 81.6 is hereby added to the Administrative Code to read as follows:

SEC. 81.6. VIOLATIONS - ADMINISTRATIVE REMEDIES. In addition to all other legal remedies, criminal or civil, which are available to the County to address any violation of the Administrative Code, the County may use the Administrative Remedies found at Division 8 of Title 1 of the County Code.

Section 7. Section 652 of the Administrative Code is hereby amended to read as follows:

SEC. 652. QUALIFICATIONS OF HEARING OFFICER. In order to qualify for the position of hearing officer pursuant to this Article, a person must be an attorney at law admitted to practice before the courts of the State of California for at least five years prior to his appointment. Notwithstanding the provisions of this section, a hearing officer appointed to hear an administrative citation under the procedures set forth in Chapter 1 (commencing at Section 18.101) of Division 8 of Title 1 of the County Code need not be an attorney at law.

Section 8. Section 653 of the Administrative Code is hereby amended to read as follows:

SEC. 653. APPLICATION FOR AND APPOINTMENT AS HEARING OFFICER. Applications for appointment to the position of hearing officer shall be submitted with proof of qualification under Section 652. Each member of the Board of Supervisors shall be responsible to nominate one person for appointment as a hearing officer. Hearing officers shall be appointed by an affirmative vote of a majority of the members of the Board of Supervisors, from those persons nominated. Notwithstanding the provisions of this section, a hearing officer appointed to hear an administrative citation under the procedures set forth in Chapter 1 (commencing at Section 18.101) of Division 8 of Title 1 of the County Code need not be appointed under the procedures set forth in this section.

Section 9. Section 656 of the Administrative Code is hereby amended to read as follows:

SEC. 656. TERM OF HEARING OFFICER. Each hearing officer shall serve a term which shall run concurrently with the term of the member of the Board of Supervisors who nominated that

hearing officer. The term shall expire on the date of expiration of the term of the nominating member of the Board of Supervisors, or at such time as said Supervisor ceases to hold office, whichever first occurs. Any hearing officer whose term has expired hereunder shall continue to discharge the duties as a hearing officer until a successor has been appointed and qualified. A hearing officer who is in the process of hearing a matter when his/her term expires shall continue to discharge the duties as a hearing officer for that matter until the matter is completed. The reelection of a member of the Board of Supervisors for a succeeding term shall not automatically extend the term of any hearing officer.

Maintenance of the qualifications provided in Section 652 hereof shall, however, be a continuing condition to continued service as a hearing officer, and a hearing officer shall advise the Board of Supervisors immediately upon the loss or suspension of such qualifications. Notwithstanding the provisions of this section, a hearing officer appointed to hear an administrative citation under the procedures set forth in Chapter 1 (commencing at Section 18.101) of Division 8 of Title 1 of the County Code need not meet the qualifications provided in Section 652 or comply with the term requirements set forth in this section.

Section 10. This ordinance shall take effect and be in force thirty days after its passage, and before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of this Board voting for and against it in the San Diego Daily Commerce, a newspaper of general circulation published in the County of San Diego.

PASSED, APPROVED AND ADOPTED this 24<sup>th</sup> day of October, 2000.

