



STAFF REPORT

Date: February 8, 2017
To: Mayor and City Councilmembers
From: William R. Galstan, Special Counsel *William R. Galstan*
Cc: Bryan Montgomery, City Manager; Derek Cole, City Attorney; Troy Edgell, Code Enforcement Manager; Libby Vreonis, City Clerk/Paralegal
Subject: Ordinance Amending Oakley Municipal Code Section 1.5.209(b), dealing with Administrative Appeal Hearings

FOR CONSIDERATION AT THE CITY COUNCIL MEETING ON MARCH 14, 2017

Summary and Recommendation

Waive the reading and introduce an ordinance amending Sec. 1.5.209(b) of the Oakley Municipal Code, dealing with administrative appeal hearings.

Fiscal Impact

Slight additional cost because of one additional mailing (possibly avoided if notice is given by email).

Background and Analysis

The Code Enforcement Department is authorized to issue "administrative citations" for violation of provisions of the Municipal Code, primarily dealing with nuisance and quality-of-life issues. Fines for a first offense are \$100.00. These citations do not go through the court system. A person who is issued a citation can appeal to an "administrative hearing officer" appointed by the Council.

Sec. 1.5.209(b) of our Code requires a person to pay the \$100 fine prior to being scheduled for an appeal. This process discourages frivolous appeals and also assists the City with collection.

A recent federal appellate case, *Yagman v. Garcetti* (January 20, 2017) 2017 DJDAR 547 approves the requirement of paying a fine prior to an appeal hearing, but says that there should be an informal "initial review" by the agency to ensure that a party doesn't have to pay a fine for a citation that was erroneously issued. This ordinance will insert language containing this "initial review" requirement.

Our procedure would work like this: a person wishing to appeal a citation would file an appeal form, as is done at present. Upon receipt of the appeal, the Code Enforcement Manager would read the appeal (and not hold a hearing) to determine whether the citation was issued in

error. If issued erroneously, the Manager would cancel the citation. Otherwise, a notice would be sent that the initial review had determined that the citation was correctly issued, but that an appeal can be heard before the independent hearing officer if the fine is prepaid or if the person files a request for waiver based on financial hardship.

This procedure will formalize and codify what is informally done at present, but it is best to amend our Code to specify the "initial review" in case anyone were to challenge us on this point in the future.

Conclusion

The proposed ordinance will formally bring us into compliance with the new *Yagman* case.

Attachment

Ordinance amending Sec. 1.5.209(b) of the Oakley Municipal Code.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OAKLEY AMENDING SECTION 1.5.209(b) OF THE OAKLEY MUNICIPAL CODE, DEALING WITH ADMINISTRATIVE HEARINGS

Section 1. Section 1.5.209(b) of the Oakley Municipal Code is hereby amended to read as follows:

(b) To be effective and complete, the request must be received by the City Clerk's Office within ten (10) regular business days of the date the citation was issued. Upon receipt of the request, the Code Enforcement Manager shall conduct an initial review of the matter by examining the written request and the citation and determine whether issuance of the citation was erroneous. If the Manager determines the issuance of the citation was erroneous, the Manager shall cause the citation to be cancelled and shall so inform the citee. Otherwise, the Manager shall cause a notice to be sent to the citee stating that an initial review has determined that the citation was not erroneously issued and that an administrative hearing will be scheduled upon payment of the fine or a determination of the citee's inability to pay the fine. Payment of the fine or application for waiver of fine must be received by the City within ten (10) regular business days of the notice regarding the initial review of the matter. All requests shall be date-stamped upon receipt. If the deadline to request a hearing or fine payment falls on a weekend or City holiday, then the deadline shall be extended until 5:00 p.m. on the next regular business day.

Section 2. California Environmental Quality Act (CEQA) Finding.

This Ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), Review for Exemption, because it can be seen with certainty that the project will not have a significant effect on the environment; therefore the project is not

Section 3. Severability.

In the event any section or portion of this Ordinance shall be determined to be invalid or unconstitutional, such section or portions shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

Section 4. Effective Date and Publication.

This ordinance shall take effect and be in force and effect thirty (30) days from and after the date of its passage. The City Clerk shall cause the ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation, or by publishing a summary of the

proposed ordinance, posting a certified copy of the proposed ordinance in the office of the City Clerk at least five (5) days prior to the City Council meeting at which the ordinance is to be adopted, and within fifteen (15) days after its adoption, publishing a summary of the ordinance with the names of the Council Members voting for and against the ordinance.

The foregoing ordinance was adopted with the reading waived at a regular meeting of the Oakley City Council on _____, 2017 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

Sue Higgins, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date