

ORDINANCE NO. 1466

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF FOUNTAIN VALLEY
ENACTING AN ADMINISTRATIVE CITATION SYSTEM**

WHEREAS, the Council has enacted a Municipal Code and other ordinances necessary to promote the health, safety and welfare; and

WHEREAS, the Council desires to encourage compliance with the Municipal Code and City ordinances; and

WHEREAS, currently, any violation of a Municipal ordinance is a misdemeanor; and

WHEREAS, Government Code Section 53069.4 provides for an alternative civil system of enforcement whereby the City may make any violation of its Municipal Code and other ordinances subject to an administrative fine or penalty; and

WHEREAS, the Council desires to enact such civil enforcement system as a remedy that can be used in addition to, or as an alternative to, criminal and all other enforcement remedies available to the City; and

WHEREAS, the Council desires to set forth the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review of the administrative fines or penalties; and

WHEREAS, the Council has determined that enactment of an administrative citation system is in the public interest.

NOW, THEREFORE, the City Council of the City of Fountain Valley does hereby ORDAIN as follows:

Section 1. That Chapter 1.13 of the Fountain Valley Municipal Code is hereby added to read as follows:

“Chapter 1.13

Administrative Citations

Section 1.13.010. Applicability.

(a) This chapter subjects any violation of the provisions of this Municipal Code and any other City ordinance to administrative fines.

(b) This chapter establishes the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review of the administrative fines pursuant to Government Code Section 53069.4.

(c) The issuance of an administrative citation under this chapter is solely at the discretion of the Enforcement Official and is one option the City of Fountain Valley has to address violations of this code. The procedures established in this chapter shall supplement and be in addition to any criminal, civil or other remedy established by law or under the provisions of this code to address violations of this Municipal Code or violations of any other Fountain Valley ordinance. Issuance of an administrative citation shall be cumulative to, and shall not limit or be deemed a waiver of, the use of any other remedy.

(d) The purpose of issuing administrative citations pursuant to this chapter is to encourage compliance with the provisions of this code.

(e) This chapter is intended to impose strict administrative liability on responsible parties for violations of this code.

Section 1.13.020. Definitions.

“Correction Condition” shall mean a code violation that pertains to a continuing building, plumbing, electrical, or other similar structural or zoning violation that does not create an immediate danger to health or safety.

“Enforcement Official” shall mean any officer, employee, agent, or independent contractor with authority to enforce the Fountain Valley Municipal Code or any other code or ordinance adopted by the City of Fountain Valley.

“Responsible Party” shall mean any of the following:

- (1) A person who causes a code violation to occur.
- (2) A person who maintains or allows a code violation to continue by his, her or its action or failure to act.
- (3) A person whose agent, employee or independent contractor causes a code violation by its action or failure to act.
- (4) A person who is the owner of, lessee or sublessee with a current right of possession of, real property where a property-related code violation occurs.
- (5) The owner, operator or other person in charge of a business where a code violation occurs.
- (6) A person who is the beneficiary under a deed of trust for property where a property-related code violation exists.

“Person” shall mean a natural person, legal entity, business, corporation, trust, or other entity and shall also include the owners, majority shareholders, corporate officers, trustees and general partners of any legal entity, business, corporation, trust or other entity.

Section 1.13.030. Administrative Citation Generally.

(a) Issuance. An Enforcement Official, upon making a determination that any provision of this Municipal Code or any other Fountain Valley Ordinance has been violated, has authority to issue an administrative citation to a Responsible Party or parties for the violation. An Enforcement Official may issue an administrative citation for a violation that is not committed in the Enforcement Official’s presence if the Enforcement Official has determined that the Responsible Party committed a code violation.

(b) Content. An administrative citation shall contain the following information:

- (1) Name of the Responsible Party.
- (2) Date of violation.
- (3) Code section or Ordinance violated.
- (4) Address or other location where the violation occurred.
- (5) Description of the violation.
- (6) Amount of the fine.
- (7) Procedure to pay the fine.
- (8) Warning that a failure to make a timely payment of the fine will result in a late payment penalty.
- (9) Description of the procedure for requesting an administrative review to contest the administrative citation.
- (10) Description of the procedure for requesting a waiver of the fine deposit.
- (11) Date the citation is issued.
- (12) Signature of the Enforcement Official issuing the citation.
- (13) A notice that unpaid fines, interest and penalties are subject to the assessment and lien collection procedures of this Chapter.

(c) Service.

An administrative citation may be served by any of the following methods:

(1) Personal Service. An Enforcement Official may personally serve the citation on the Responsible Party. If reasonably available, the Enforcement Official should obtain the signature of the Responsible Party. The failure of the Enforcement Official to request or obtain the signature of the Responsible Party shall not invalidate the service of the administrative citation and shall not invalidate the administrative citation.

(2) Mail. An Enforcement Official may mail the administrative citation by first class mail if the Responsible Party is not present for personal service when the Enforcement Official determines there has been a violation. The administrative citation shall be mailed to the Responsible Party's address as shown on the county's last equalized assessment roll for a property-related violation, or to any address known for the Responsible Party for all other violations. Service by mail shall be deemed to have been completed at the time of deposit in the U.S. Mail in a fully addressed envelope, postage prepaid.

(3) Posting. An Enforcement Official may post a copy of the administrative citation on the property in a conspicuous place for a property-related violation when the Responsible Party resides at an unknown address. A copy of the administrative citation will also be mailed to the Responsible Party at the address of the property.

(4) Other manners of service. An administrative citation may be served on the Responsible Party in any manner provided for service of summons.

Section 1.13.040. Administrative Citation Timing.

Except as provided in Section 1.13.050, an administrative citation may be issued immediately and without a prior warning for any violation of this Municipal Code or any other City ordinance.

Section 1.13.050. Administrative Citation for Continuing Building, Plumbing, Electrical, or Other Similar Structural or Zoning Violations that Do Not Create an Immediate Hazard.

(a) Applicability of this Section. This Section shall only apply to a Correction Condition(s).

(b) Correction Period. A Responsible Party shall have thirty (30) calendar days to correct or remedy a Correction Condition prior to the issuance of an administrative citation. A correction period longer than thirty (30) calendar days may be granted if deemed necessary by the Enforcement Official.

(c) Correction Notice. Upon discovery of a Correction Condition, the Enforcement Official shall issue a written correction notice to the Responsible Party or parties. The correction notice shall refer to the code section(s) violated and describe how that code section(s) was violated. The correction notice shall also describe the action necessary to correct the violation(s) and state the final date by which the correction must be completed, which shall not be less than thirty (30)

calendar days from the date the correction notice is issued. In addition, the correction notice shall include a warning that failure to correct the violation may result in the imposition of an administrative fine and shall state the amount of the fine imposed for the violation.

(d) Procedure Upon Expiration of Correction Period. If the Responsible Party does not remedy the Correction Condition within the period set forth in the correction notice, the Enforcement Official may issue an administrative citation.

Section 1.13.060. Responsible Party's Obligations.

Within fifteen (15) calendar days from the date the administrative citation is served by any of the methods of service specified in Subsection (c) of Section 1.13.030, a Responsible Party shall (i) pay the fine amount designated on the administrative citation; or (ii) make a written request for an administrative hearing.

Section 1.13.070. Administrative Fine.

(a) Amount. Fines for administrative citations shall be assessed in the following amounts:

(1) A fine not exceeding One Hundred Dollars (\$100.00) for a first violation;

(2) A fine not exceeding Two Hundred Dollars (\$200.00) for a second violation of the same Code Section or Ordinance within one year;

(3) A fine not exceeding Five Hundred Dollars (\$500.00) for each additional violation of the same Code Section or Ordinance within one year.

(b) Continuing Violation. Each and every day during any portion of which any violation is committed, continued, maintained or permitted shall constitute a separate offense.

(c) Payments. If the Responsible Party does not make a timely request for a hearing, he, she or it must pay the administrative fine directly to the City of Fountain Valley within fifteen (15) calendar days from the date the administrative citation is served. Payment of a fine shall not excuse or discharge the failure to correct the violation(s) nor shall it bar further enforcement action by the City.

(d) No Waiver. The payment of the administrative fine shall not constitute a waiver of the responsibly party's right to a hearing. A Responsible Party may pay the administrative fine within the fifteen (15) calendar day period and also obtain a hearing to protest the imposition of the administrative fine, provided that the Responsible Party makes a timely request for a hearing.

(e) Obligation to Correct Violation. Nothing in this chapter shall be interpreted to mean that because a Responsible Party has paid the administrative fine he, she, or it is excused from correcting the violation. If the Responsible Party fails to correct the violation(s), subsequent administrative citations may be issued for the same violation(s). The amount of the fine for failure to correct the violation shall increase at a rate specified in this chapter.

Section 1.13.080. Administrative hearing.

(a) Purpose. It is the purpose and intent of the City Council to afford due process of law to any person who is issued an administrative citation.

(b) Request for Hearing. To obtain an administrative hearing, the responsibly party must make a written request for a hearing, together with an advance deposit of the fine, within fifteen (15) calendar days from the date the administrative citation is served. The written request for a hearing must be submitted to the City Clerk. Any administrative citation fine which has been deposited shall be refunded if it is determined, after a hearing, that the person charged in the administrative citation was not responsible for the violation(s) or that there was no violation(s) as charged in the administrative citation. The failure to timely request an administrative hearing shall constitute a waiver of the administrative hearing and a failure to exhaust administrative remedies.

(c) Hearing Officer.

1. The City Manager shall serve as the Hearing Officer or may appoint a person or persons who shall serve as Hearing Officer.

2. The employment, performance, evaluation, compensation and benefits of the Hearing Officer, if any, shall not be directly or indirectly conditioned upon the amount of the administrative citations or fines upheld by the Hearing Officer.

3. Any person designated to serve as a Hearing Officer is subject to disqualification for bias, prejudice, interest, or for any other reason for which a judge may be disqualified pursuant to Code of Civil Procedure Section 170.1. The Responsible Party may challenge the Hearing Officer's impartiality by filing a statement with the City Manager objecting to the Hearing before the Hearing Officer and setting forth the grounds for disqualification.

(d) Administrative Hearing Procedures.

1. No hearing to contest an administrative citation before a Hearing Officer shall be held unless and until a request for hearing form has been completed and timely submitted and the fine has been deposited in advance. The fine deposit may be waived by the City Manager upon a showing of financial hardship.

2. The administrative citation and any additional documents submitted by the Enforcement Official shall constitute prima facie evidence of the respective facts contained in those documents and the Enforcement Official shall not be required to attend the administrative hearing but may attend the hearing in his or her discretion.

(e) Administrative Order.

1. Within fifteen (15) calendar days of the conclusion of the hearing, the Hearing Officer shall provide the Responsible Party with a decision in writing ("administrative order"). The Hearing Officer shall provide the Responsible Party with the administrative order by personal service or by registered or certified mail to the Responsible Party's last known address.

2. The administrative order shall contain the Hearing Officer's findings of fact and conclusions and the procedure described in Section 1.13.090 for seeking judicial review.

3. A decision in favor of the Responsible Party shall constitute a dismissal of the administrative citation. The City shall return any monies paid by the Responsible Party towards the dismissed administrative citation.

4. The Hearing Officer's administrative order is final.

(f) Failure to Attend Administrative Hearing.

1. Waiver of Right to Hearing. The Responsible Party's failure to appear at a hearing shall constitute a waiver of the right to a hearing and shall be presumed an admission of guilt to the code violation(s) indicated on the administrative citation.

2. Good Cause. Upon a showing of good cause by the Responsible Party, the Hearing Officer may excuse the Responsible Party's failure to appear at the hearing and reschedule the hearing. Under no circumstances shall the hearing be rescheduled more than once unless the Responsible Party pays a deposit in the amount of the administrative fine. Nothing in this subsection shall be interpreted to mean the Responsible Party is excused from the requirement of paying the administrative fine or appearing at a hearing.

Section 1.13.090. Judicial review.

If an administrative order is rendered in favor of the City, the Responsible Party may seek judicial review of the administrative order in the Orange County Superior Court, West Justice Center, by doing one of the following:

1. Appeal the administrative order pursuant to California Government Code Section 53069.4 within twenty (20) calendar days after service of the administrative order. Pursuant to Section 53069.4, the appealing party shall serve a copy of the appeal notice in person or by first class mail upon the City. Appeal notices shall be sent to the City Clerk.

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

If a Responsible Party fails to timely seek judicial review as provided for in this section, the decision shall be deemed confirmed.

Section 1.13.100. Failure to comply.

(a) Event Defined. As used in this Section the term "event" shall mean any of the following occurrences:

1. The Responsible Party fails to either pay the administrative fine or request a hearing within fifteen (15) calendar days from the date the administrative citation is served.

2. The Responsible Party requests a hearing and fails to appear.

3. The Responsible Party fails to either comply with the administrative order or seek judicial review of the administrative order.

(b) Penalty Fine. The occurrence of an event may result in the City increasing the administrative fine, not to exceed the maximum amounts set forth in Section 1.13.070 ("penalty fine").

(c) Account Receivable. Upon the occurrence of an event, the City may treat the administrative fine or penalty fine, whichever is applicable, as an account receivable subject to the City's policy for delinquent accounts receivable.

(d) Misdemeanor. An event shall constitute a misdemeanor punishable as provided in Section 1.16.010.

(e) Public Nuisance. An event shall constitute a public nuisance.

Section 1.13.110. Collection of Unpaid Fines.

(a) The City, at its discretion, may pursue any and all legal and equitable remedies for the collection of unpaid fines, interest and penalties. Pursuit of one remedy does not preclude the pursuit of any other remedies until the total fines, interest and penalties owed by a person under this chapter have been collected.

(b) The City may refuse to issue, extend, or renew any permit, license, or other approval to any person who has unpaid delinquent fines, interest, penalties, liens or assessments due under this chapter related to the permit, license, or approval.

(c) The City may suspend any permit, license, or approval issued to a person who has unpaid fines related to the permit, license, or approval totaling Five Hundred Dollars (\$500.00) or more that have been delinquent for over thirty (30) calendar days. The suspension shall become effective twenty (20) calendar days after the notice of suspension is placed in the U.S. mail, postage prepaid, addressed to the person and shall continue until the delinquency is paid in full. Continuing to operate under a suspended permit, license or approval shall be grounds for revocation of the permit, license or approval.

(d) Any violation of this chapter, including the failure to pay an administrative fine when due, shall constitute a public nuisance. To compel compliance, the City may seek to abate the nuisance and collect the costs incurred by means of a nuisance abatement lien and/or special assessment against the property where a property-related violation occurred. Any unpaid delinquent fines, interest and penalties may be recovered as part of any such lien or special assessment against the property of the Responsible Party who is the owner of the property where the violation occurred.

(1) To pursue an abatement of a code violation as a nuisance and recover the costs, including any delinquent civil fines, interest and penalties as an abatement lien or special assessment, the City may take the following steps:

a. Submit to and receive from the City Council a resolution certifying the amounts of the liens and special assessments sought to be collected from each property owner;

b. Request the Orange County Recorder to record a notice of any liens, or special assessments, and send the Recorder the resolution certifying the amounts;

c. Request the Orange County Tax Collector collect any special assessments certified by the City Council; and

d. Take any other necessary action to enforce collection of any liens, or special assessments provided for in this chapter.

(2) The City may pursue the lien and special assessment remedies whether or not the City is pursuing any other action to terminate an ongoing code violation that was the basis for the fine.

(3) The lien and assessment shall be imposed on the date the citation for the Code violation is issued to the responsible person and becomes effective upon the recording of a Notice of Lien and/or Assessment by the County Recorder. This notice shall satisfy the notice requirements when an administrative citation is personally served on the Responsible Party. In addition, the City shall send notice by first class mail stating the date, time and location of the meeting to each property owner listed in the proposed resolution at least ten (10) days before the City Council considers the resolution and certifies the amounts of the liens and special assessments.

(4) A Responsible Party may contest the amount and/or validity of any lien or assessment for a civil fine at the public hearing to certify the amount of the lien or assessment by the City Council. Such contests shall be limited to the issue of the amount and/or validity of the lien or assessment and may not consider whether the underlying Code violation occurred. Pursuit of such a contest by a Responsible Party is necessary to exhaust the administrative remedies concerning a legal challenge to the validity of any such lien or assessment.

(e) The parent or legal guardian of a Responsible Party who is a minor shall be liable for any fines imposed upon the minor pursuant to the provisions of this chapter. Any such fines may be collected from the minor, parent or guardian."

Section 2. Should any part, clause or section of this Ordinance be declared by any Court of competent jurisdiction to be invalid, the remaining provisions of this Ordinance shall nevertheless be and remain in full force and effect and the City Council of the City of Fountain Valley hereby declares that each and every section, clause, provision or part of this Ordinance would have been adopted and made a part of this Ordinance without the adoption of any portion thereof and that the invalidity of any part or provision hereof shall not in any way affect the validity or enforcement of the remaining provisions of this Ordinance that may stand on their own.

Section 3. The City Clerk shall certify the adoption of this Ordinance and cause it to be published as required by law.

PASSED and ADOPTED this day of August 16, 2011

ATTEST:

Kathleen Heard
Deputy City Clerk

Steve A. Nagel
Mayor

APPROVED AS TO FORM:

Alan H. James
City Attorney

VOTE

STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.
CITY OF FOUNTAIN VALLEY }

I, Kathleen Heard, Deputy City Clerk of the City of Fountain Valley, do hereby certify that the foregoing Ordinance was introduced to the Council at its regular meeting held on the **19th day of July 2011**, and was adopted at its regular meeting held on the **16th day of August 2011**, by the Council by the following roll call votes, during each meeting to wit:

AYES: Council Members: Collins, Crandall, Vo, Nagel
NAYES: Council Members: McCurdy
ABSENT: Council Members: None
ABSTAIN: Council Members: None


Deputy City Clerk

AFFIDAVIT

STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.
CITY OF FOUNTAIN VALLEY }

I, Kathleen Heard, Deputy City Clerk of the City of Fountain Valley, California, do hereby certify that I did cause the foregoing ordinance to be posted and published in an adjudicated paper of general circulation pursuant to law.

WITNESS my hand and seal this 17th day of August 2011.


Deputy City Clerk