

ORDINANCE NO. 1358

AN ORDINANCE OF THE CITY OF TUSTIN, CALIFORNIA,  
AMENDING PART 2 OF CHAPTER 1 OF, ADDING PART 6  
TO CHAPTER 1 OF, AND AMENDING SECTION 1112 OF,  
THE TUSTIN CITY CODE RELATING TO CODE  
ENFORCEMENT AND ADMINISTRATIVE CITATIONS

The City Council of the City of Tustin, California, ordains:

**SECTION 1.** Section 1112 is amended by adding the following definitions to the Tustin City Code:

**City Manager.** The term "City Manager" means the City Manager of the City of Tustin or the designee of the City Manager.

**Enforcement Officer.** The term "Enforcement Officer" means any officer or employee specified or described in Section 1132 of the Tustin City Code.

**Hearing Officer.** The term "Hearing Officer" means an individual who is an attorney and who is appointed by the City Manager as set forth in Section 1167 of the Tustin City Code to conduct administrative citation hearings.

**Public Safety Officer.** The term "Public Safety Officer" means a police officer, including the Police Chief or his designee, or the fire chief or the fire chief's designee, authorized under the laws of the State of California or this Code to enforce the provisions of the Tustin City Code. A "Public Safety Officer" is an "Enforcement Officer" as defined in this Section.

**Responsible Person.** The term "Responsible Person" means the owner of property upon which a violation of the Tustin City Code occurs or continues to occur. This term shall also include any non-owner, occupant, or other person or entity in control of the property who is creating, causing, or maintaining any condition in violation of the Tustin City Code. The term "Responsible Person" also includes the parents of a minor who creates, causes or maintains any condition in violation of the Tustin City Code.

**SECTION 2.** Part 2 of Chapter 1 of the Tustin City Code is amended to read:

PART 2. PENALTY PROVISIONS

1121 GENERAL PENALTY; CONTINUING VIOLATION

- a. It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of the Tustin City Code. Any person violating

any of the provisions or failing to comply with any of the mandatory requirements of the provisions of the Tustin City Code shall be guilty of a misdemeanor unless: (1) The violation is classified as an infraction in the State Vehicle Code or the Tustin City Code in which case the person shall be guilty of an infraction; or (2) The City Attorney files a complaint charging the offense as an infraction; or (3) A Public Safety Officer or an Enforcement Officer, as defined in Part 1 of Chapter 1 of this Code issues a citation charging the offense as an infraction.

- b. Any person who commits a second or subsequent violation of the same provision of this Code within one year of the commission of the first such violation shall be guilty of a misdemeanor for each such violation and shall be subject to penalties as provided in Subsection e of this Section, unless the City Attorney files a complaint charging the offense as an infraction. Each day or portion thereof that a person, firm or corporation permits a violation of this code to continue shall constitute a separate and subsequent offense.
- c. Violation of an ordinance of the City classified or charged as an infraction other than a building and safety code is punishable by: (1) A fine not exceeding one hundred dollars (\$100) for a first violation; (2) A fine not exceeding two hundred dollars (\$200) for a second violation of the same ordinance within one year; and (3) A fine not exceeding five hundred dollars (\$500) for each additional violation of the same ordinance within one year.
- d. Violation of a building and safety code in the City classified or charged as an infraction is punishable by: (1) A fine not exceeding one hundred dollars (\$100) for a first violation; (2) A fine not exceeding five hundred dollars (\$500) for a second violation of the same ordinance within one year; and (3) A fine not exceeding one thousand dollars (\$1,000) for each additional violation of the same ordinance within one year of the first violation. For purposes of this section, "building and safety code" refers to Tustin City Code sections 8100 to 8999, as the same may be amended from time to time, and all uniform and other codes adopted therein by reference as modified therein.
- e. Any person convicted of a misdemeanor under the provisions of this Code (unless otherwise provided herein) shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the Orange County jail for a period of not more than six months, or by both such fine and imprisonment.

## 1122 PUBLIC NUISANCE

- a. Any violation of the Tustin City Code is a public nuisance.

- b. The City Manager and all other Enforcement Officers of the City have the authority and powers necessary to abate public nuisances and gain compliance with the provisions of this Code and applicable state codes. These powers include but are not limited to the power to enter and inspect public and private property and the authority to use whatever judicial and administrative remedies are available under this code and any applicable state codes, including the issuance of administrative citations pursuant to Part 6 of this Chapter.
- c. Pursuant to California Government Code Section 38773, the City has authority to judicially abate public nuisances by filing criminal or civil actions. The City also has the authority under state law to make the expense of abatement of the nuisance a special assessment, or a lien against the property on which it is maintained and a personal obligation against the property owner, in accordance with California Government Code Section 38773.1 or 38773.5. Pursuant to California Government Code Section 38773.7, upon entry of a second or subsequent civil or criminal judgment within a two-year period for abatement of a public nuisance finding the owner, minor or other person responsible for a condition that may be abated, except for conditions abated pursuant to California Health & Safety Code section 17980, the court may order that person to pay treble the costs of abatement "Minor or other person" shall be defined as set forth in California Government Code Section 38772(d)(3).
- d. There shall be no civil liability on the part of and no cause of action shall arise against any Enforcement Officer acting pursuant to this Chapter and within the scope of his or her authority for false arrest or false imprisonment arising out of any arrest which is lawful or which the enforcement officer at the time of such arrest had reasonable cause to believe was lawful. An Enforcement Officer shall not be deemed an aggressor or lose his or her right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

## 1123 CIVIL ACTIONS

- a. In addition to all other remedies, the City Attorney on behalf of the City may bring a civil action to enforce the provisions of this Code, in which a court may impose the following remedies:
  - (1) An injunction or any other appropriate equitable remedy;
  - (2) Civil penalties in an amount not to exceed five hundred dollars (\$500) per violation for each day, payable to the city, against any

- person who commits, continues, operates, allows or maintains any violation of any provision of this Code;
- (3) Reimbursement of city administrative and abatement costs, including but not limited to investigative costs incurred in the enforcement of the provisions of this Code; and
  - (4) Award of attorneys' fees, where the city has elected at the initiation of the action to seek the recovery of such fees, in which case the prevailing party in such action shall be entitled to an award of attorneys' fees in an amount which shall not exceed the reasonable attorneys' fees incurred by the City.

**SECTION 3.** Part 6 is added to Chapter 1 of the Tustin City Code to read:

**PART 6. ADMINISTRATIVE CITATIONS**

1160 Legislative Findings and Statement of Purpose.

- a. The City Council finds that there is a need for an alternative method of enforcement for various violations of the Tustin City Code. The City Council also finds that an appropriate method for enforcement of various violations is an administrative citation program that will reduce the burden on the judicial system while providing full due process for those cited.
- b. The procedures established in this Part are in addition to criminal, civil, or other legal remedies that may be available to the City to enforce violations of the Tustin City Code or applicable State Codes.
- c. This Part establishes an administrative citation program and monetary penalties to encourage and expedite compliance with the provisions of the Tustin City Code. This Part encourages voluntary compliance through the implementation of a process that informs the Responsible Person(s) of violations by giving a written warning before taking action and allowing reasonable time lines for compliance.
- d. The City Council finds and determines that enforcement of the provisions of the Tustin City Code and conditions on entitlements or permits are municipal affairs as well as matters of purely local concern to the citizens of Tustin.
- e. The goals of this Part focus on minimizing the number of code violations made by Responsible Persons by instituting a citation process and promoting a positive city image. The City Council finds that the adoption and implementation of this Administrative Citation Program as provided in the Part will achieve the following goals:

- (1) Improve the quality of life for Tustin residents and business owners by reducing the number of code violations through the encouragement of expedient compliance.
  - (2) Promote and protect the public health, safety, and welfare of the citizens of the City of Tustin by minimizing potentially harmful municipal code violations.
  - (3) Help ensure compliance with the Tustin City Code and State Codes, ordinances, and regulations in a timely and efficient manner.
  - (4) Provide for (a) a simplified administrative process in order to encourage implementation and (b) an appeal process that will fully comport with due process and provide those cited with the right to a fair hearing without the need for legal counsel.
  - (5) Provide a method to hold parties responsible when they fail or refuse to comply with the provisions of the Tustin City Code, ordinances, agreements, or terms and conditions on entitlements in the City of Tustin.
  - (6) Reduce the burden on the judicial system and minimize the time and expense of defending the citation on the part of the person cited.
- f. Use of this Part shall be at the sole discretion of the City Manager and each Enforcement Officer.

1161 Reserved.

1162 Authority and Fines.

- a. Any person violating any provision of the Tustin City Code may be issued an administrative citation by an Enforcement Officer as provided in this Part. A violation of this Code includes, but is not limited to, all violations of the Tustin City Code, the Uniform Codes adopted by the City Council, or the failure to comply with any condition imposed by any entitlement, permit, agreement, or environmental document issued or approved pursuant to this Code.
- b. Each and every day a violation of the Tustin City Code exists constitutes a separate and distinct offense.

- c. A civil fine shall be assessed by means of an administrative citation issued by the Enforcement Officer and shall be payable directly to the Tustin City Treasurer's Office.
- d. Fines shall be assessed in the amounts specified by resolution of the City Council, or where no amount is specified:
  - 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 ordinance or permit within one year from the date of the first violation;
  - 3. A fine not exceeding five hundred dollars (\$500.00) for a third or more violation of the same ordinance or permit within one year from the date of the first violation.
- e. Whenever an Enforcement Officer charged with the enforcement of any provision of this Code determines that a violation has occurred, either by receiving a complaint or being witness to the violation, the Enforcement Officer has the authority to take the actions identified in this Part and issue an administrative citation to one or more Responsible Persons for the violation. In the event the violation is deemed to be an immediate threat to life, health or safety of persons or property, the Enforcement Officer shall refer the matter to the building official, police department, Orange County Fire Authority, or other applicable agency, depending on the nature of the violation, for immediate action. Prior to issuing an administrative citation for a violation of this Code that does not create an immediate danger to life, health or safety of persons or property, the Enforcement Officer shall serve a pre-citation or courtesy notice on the Responsible Person for the violation. A Public Safety Officer shall not be required to issue a pre-citation or courtesy notice; however, a Public Safety Officer, in the discretion of such officer, may issue such courtesy notice.

#### 1163 Service Procedures.

- a. Personal Service. An administrative citation (or pre-citation or courtesy notice) on a form approved by the City Manager may be issued to the Responsible Person by an Enforcement Officer for violations of the Tustin City Code or applicable State Code by personal service in the following manner:
  - 1. The Enforcement Officer shall attempt to locate and personally serve the Responsible Person and obtain the signature of the Responsible Person on the administrative citation.

2. If the Responsible Person served refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity of the administrative citation or of subsequent proceedings.
- b. Service of Citation by Mail. If the Enforcement Officer is unable to locate the Responsible Person, the administrative citation shall be mailed to the Responsible Person by certified mail, postage prepaid with a requested return receipt. Simultaneously, the citation may be sent by first class mail. If the citation is sent by certified mail and returned unsigned, then service shall be deemed effective pursuant to first class mail, provided the citation sent by first class mail is not returned.
  - c. Service of Citation by Posting Notice. If the Enforcement Officer does not succeed in personally serving the Responsible Person, or by certified mail or regular mail, the Enforcement Officer shall post the administrative citation on any real property within the City in which the City has knowledge that the Responsible Person has a legal interest, and such posting shall be deemed effective service.

#### 1164 Contents of Notice.

- a. Each administrative citation (or pre-citation or courtesy notice) shall contain the following information:
  1. Date, approximate time, and address or definite description of the location where the violation(s) was observed;
  2. The Code sections or conditions violated and a description of the violation(s);
  3. An order to the Responsible Person to correct the violations within the time specified, and an explanation of the consequences of failure to correct the violation(s);
  4. The amount of the fine for the violation(s);
  5. An explanation of how the fine shall be paid and the time period by which it shall be paid;
  6. Identification of rights of appeal, including the time within which the citation may be contested and the place to obtain a request for hearing form to contest the administrative citation; and
  7. The name and signature of the Enforcement Officer and if possible the signature of the Responsible Person.

Failure of a pre-citation or courtesy notice to contain all the required information shall not affect the validity of the pre-citation notice or any subsequent administrative citation.

#### 1165 Satisfaction of Administrative Citation.

- a. Upon receipt of an administrative citation, the Responsible Person must take one of the following actions to avoid additional penalties:
  1. Correct the violation, pay the corresponding fine(s), if any, and contact the city to request a re-inspection, prior to the compliance date specified in the administrative citation; or
  2. Request an extension of time in writing, which shows a reasonable hardship pursuant to subsection b of this section, prior to the compliance date specified in the administrative citation; or
  3. Request a hearing to appeal the administrative citation pursuant to Section 1166 of this Code.
- b. All requests for extensions must be made in writing, submitted to the Enforcement Officer, and describe a reasonable hardship that prevents or renders impractical the correction of the violation prior to the compliance date specified in the administrative citation. The Enforcement Officer may grant a one-time extension at his/her discretion after payment of any fine due. The extension shall not exceed thirty days unless the City Manager grants additional time. The City Manager may grant additional time as determined in the City Manager's reasonable discretion, considering all relevant facts and circumstances of the hardship. If the case has been referred or appealed to the hearing officer, extensions may not be granted.

#### 1166 Appeal of Administrative Citation.

- a. Any recipient of an administrative citation may contest that there was a violation of the Tustin City Code or that he or she is the Responsible Person or the amount of any fine imposed by completing a Request for Hearing form and returning it to the City Clerk within ten (10) days from the date of the administrative citation, together with an advanced deposit of the fine imposed. Any administrative citation fine which has been deposited by that Responsible Person 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. If the Hearing Officer determines that a lower fine should have been imposed, the amount paid in excess of the fine determined by the Hearing Officer shall be refunded.

- b. Failure of any Responsible Person to file an appeal in accordance with the provisions of this section shall constitute a waiver of that Responsible Person's rights to administrative determination of the merits of the administrative citation and the amount of the penalty. If no appeal is filed, or if the appeal is abandoned in writing or by failure to appear at a hearing without being excused, the administrative citation shall be deemed a final administrative order and a failure to exhaust the Responsible Person's administrative remedies.

1167 Hearing Officer.

- a. The Tustin City Manager shall designate the Hearing Officer for the administrative citation hearing. The Hearing Officer shall not be a Tustin City employee. The employment, performance evaluation, compensation and benefits of the Hearing Officer, if any, shall not be directly or indirectly conditioned upon the amount of administrative citation fines upheld, reduced or overturned by the Hearing Officer. Each Hearing Officer shall be subject to the provisions of the Political Reform Act of 1974 and all other laws, ordinances, or regulations of the state or the city relating to conflicts of interest.
- b. The City Manager shall establish all appropriate administrative regulations for implementing this Part, including the conduct of hearings and rendering decisions.

1168 Hearing Procedure.

- a. 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 submitted, and the fine has been deposited in advance.
- b. A hearing before the Hearing Officer shall be set for a date that is not less than fifteen (15) and not more than sixty (60) days from the date that the request for hearing is filed in accordance with the provisions of this Part. The person requesting the hearing shall be notified of the time and place set for the hearing at least ten (10) days prior to the date of the hearing.
- c. The Hearing Officer shall only consider evidence that is relevant to whether the violation(s) occurred, whether the Responsible Person has caused or maintained the violation(s) of the Tustin City Code on the date(s) specified in the administrative citation, and regarding the amount of the fine imposed.

- d. The Responsible Person contesting the administrative citation shall be given the opportunity to testify and present witnesses and evidence concerning the administrative citation.
- e. The failure of any recipient of 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.
- f. The administrative citation and any additional documents submitted by the Enforcement Officer shall constitute prima facie evidence of the respective facts contained in those documents.
- g. 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 also shall be provided by mail to the person requesting the hearing at least ten (10) days prior to the date of the hearing.
- h. At least ten (10) days prior to the hearing, copies of the citations, reports and other documents submitted or relied upon by the Enforcement Officer shall be deposited in the mail, postage pre-paid and addressed to the recipient of the administrative citation at the address provided in the request for hearing form. No other discovery is permitted. Formal rules of evidence shall not apply.
- i. The Hearing Officer may continue the hearing and request additional information from the Enforcement Officer or the recipient of the administrative citation prior to issuing a written decision.

#### 1169 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 within ten days of the hearing to uphold, modify or deny 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 City shall be retained by the City.
- c. The Hearing Officer may modify the penalties stated in an administrative citation depending upon the circumstances of each case and the evidence presented and the Hearing Officer provides specific grounds for such modification in the written decision. The Hearing Officer has authority to reduce, conditionally reduce, or increase the amount of any penalties,

subject to the fine amounts or limits established by the Council by resolution or as otherwise provided in this Part. The Hearing Officer may impose conditions and deadlines for correction of violations or payment of outstanding penalties. If the Hearing Officer reduces the amount of penalties deposited to the City, the City shall retain the amount of the reduced fine and return the remainder of the deposit. If the Hearing Officer conditionally reduces the fine amount, the City shall retain the reduced amount of the reduced fine and, upon satisfaction of all conditions of the reduction, shall return the remainder of the deposit. If the Hearing Officer increases the amount of the penalties, then the City shall retain the fine amount on deposit with the City and the person requesting the hearing shall pay to the City Clerk the amount of the increase within ten (10) days after the hearing, unless a different deadline is established by the Hearing Officer,

- d. The recipient of the administrative citation shall be served with a copy of the Hearing Officer's written decision. Such notice may be given either by personal delivery thereof to the person to be notified or by deposit in the United States mail, in a sealed envelope, postage prepaid, addressed to such person to be notified, at his last known business or residence address as the same appears in the public records of the City or other records pertaining to the matter to which such notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in the post office.
- e. If the Hearing Officer dismisses the administrative citation, all fines and appeal fees shall be refunded to the Responsible Person/appellant within thirty (30) calendar days.

#### 1170 Failure to Pay Fines.

- a. The failure of any person to pay a fine assessed by administrative citation within the time specified on the administrative citation constitutes a debt to the City. To enforce that debt, the City Manager may file a civil action, impose a special assessment as set forth below, or pursue any other legal remedy to collect such debt, including reasonable costs of collection and attorneys' fees.
- b. The City Council may impose a special assessment against the property that is the subject of a citation if the citation has been issued to the property owner. If the citation concerns property not owned by the Responsible Person, the City Council may impose a special assessment against property owned by the Responsible Person. The City Manager shall record a notice of lien in the office of the county recorder of the county in which the property is located when the special assessment

procedure is used. When so made and confirmed, the cost shall constitute a lien on that property for the amount of the assessment.

- c. After confirmation and recordation, a copy shall be turned over to the tax collector for the county in which the property is located. At that point, it will be the duty of the tax collector to add the amounts of the respective assessments to the next regular property tax bills levied against the lots and parcels of land for municipal purposes. Those amounts shall be collected at the same time and in the same manner as ordinary property taxes are collected, and shall be subject to the same penalties and procedures under foreclosure and sale as provided for with ordinary municipal taxes. In the alternative, after recording, the lien may be foreclosed by judicial or other sale in the manner and means provided by law in the county and state in which the property is located.
- d. Non-payment of fines which the city has made reasonable effort to collect shall be deemed a misdemeanor for which the Responsible Person may be prosecuted.
- e. Administrative citation fines collected pursuant to this Part shall be deposited into an appropriate fund to be administered in furtherance of the purposes of this Part and to fund such code enforcement and public nuisance abatement actions and proceedings, including but not limited to funds to reward reporters of graffiti and other code violations, as the City Council may identify or proscribe.

#### 1171 Right to Judicial Review.

Any person aggrieved by an 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 Orange County Superior Court in accordance with the timelines and provisions as set forth in California Government Code Section 53069.4.

#### 1172 Notices.

- a. The administrative citation and all notices to be given by this Part shall be provided to the Responsible Person in accordance with the provisions of this Part. Unless different provisions herein are otherwise specifically made, such citation or notice may be given either by personal delivery thereof to the person to be notified or by deposit in the United States mail, in a sealed envelope, postage prepaid, addressed to such person to be notified, at his last known business or residence address as the same appears in the public records of the City or other records pertaining to the matter to which such notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in the post office.

- b. Failure to receive any notice specified in this Part does not affect the validity of proceedings conducted hereunder.

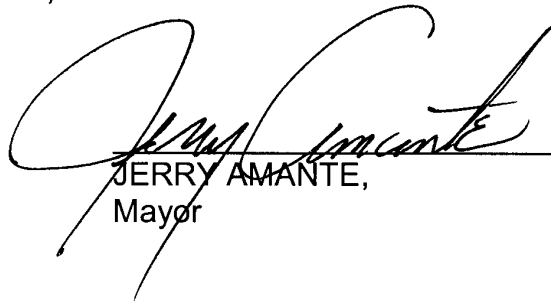
1173 Civil or Criminal Actions Not Affected.

Any administrative citations pursuant to this Part shall not prejudice or adversely affect any other action, civil or criminal, that may be brought to abate the public nuisance or violation or to seek compensation for damages suffered. A civil or criminal action may be brought concurrently with any other process regarding the same public nuisance or violation.

**SECTION 4.** This Ordinance shall become effective at 12:01 a.m. on the thirty-first day after passage.


**SECTION 5.** If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this Ordinance or any part thereof is for any reason, held to be unconstitutional or invalid, or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, subdivision, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, or phrases be declared unconstitutional.

PASSED AND ADOPTED by the City Council of the City of Tustin, at a regular meeting on the 4<sup>th</sup> day of November, 2008.



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JERRY AMANTE,  
Mayor




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PAMELA STOKER  
City Clerk

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) SS  
CITY OF TUSTIN )

PAMELA STOKER, City Clerk and ex-officio Clerk of the City Council of the City of Tustin, California, does hereby certify that the whole number of the members of the City Council of the City of Tustin is 5; that the above and foregoing Ordinance No. 1358 was duly and regularly introduced at a regular meeting of the Tustin City Council, held on the 7<sup>th</sup> day of October, 2008 and was given its second reading, passed, and adopted at a regular meeting of the City Council held on the 4<sup>th</sup> day of November, 2008 by the following vote:

COUNCILMEMBER AYES:	<u>Amante, Davert, Bone, Kawashima, Palmer (5)</u>
COUNCILMEMBER NOES:	<u>None (0)</u>
COUNCILMEMBER ABSTAINED:	<u>None (0)</u>
COUNCILMEMBER ABSENT:	<u>None (0)</u>

  
PAMELA STOKER  
CITY CLERK