



## CITY OF COMMERCE AGENDA REPORT

**TO:** Honorable City Council

**Item No.** \_\_\_\_\_

**FROM:** City Manager

**SUBJECT:** **PUBLIC HEARING** - Consideration and Approval of a Resolution of the City Council of the City of Commerce Establishing the Administrative Citation Schedule of Fines for Violations of the City of Commerce Municipal Code

**MEETING DATE:** September 1, 2020

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### **RECOMMENDATION:**

Consideration and Approval of a Resolution of the City Council of the City of Commerce, Establishing the Administrative Citation Schedule of Fines for Violations of the City of Commerce Municipal Code.

### **BACKGROUND:**

California Government Code Section 53069.4 specifically authorizes cities to impose administrative fines or penalties for municipal code violations. In recent years, many California cities have exercised this authority, augmenting their code enforcement efforts by adopting ordinances establishing administrative fines and penalties. In April 2019, Council adopted Ordinance Number 698, modifying the City of Commerce Municipal Code to strengthen and enhance the City's code enforcement. These measures were taken to protect residents' quality of life, preserve public safety, effectuate the community's aesthetic values, and promote the City's continued economic success.

Chapter 1.13 has been added to the Municipal Code, authorizing the imposition of fines for certain code violations through the issuance of administrative citations. Section 1.13.060 states that the amount of fines for code violations imposed pursuant to Chapter 1.13 shall be set forth in a schedule of fines established by resolution of the City Council and that the City Council may impose escalating fine amounts in amounts it deems appropriate for repeat offenses of the same ordinance; a re-inspection fee shall be assessed against any responsible person in an amount established by resolution of the City Council if the responsible person does not timely and completely correct or abate a violation (with all requisite approvals, permits, licenses, and/or inspections) after having received notification from the city to correct or abate same; specify the amount of any late payment charges imposed for the payment of a fine after twenty-one (21) calendar days from the date of issuance of the administrative citation; and the city council shall impose an interest rate

established by resolution on administrative fines not paid within sixty (60) days of the issuance of a citation or order to pay by a hearing officer or judicial officer.

## **ANALYSIS:**

The proposed Resolution, with the incorporated Exhibit "A," Administrative Citation Schedule of Fines, provides for:

(1) The maximum statutory fine amounts for infractions pursuant to and consistent with recent state law (See Section 2 of the Resolution).

(2) A baseline, or default fine amount for violations of the Municipal Code not otherwise explicitly set forth in the Administrative Citation Schedule of Fines, listed as General Penalty Provision (See Section 3 of the Resolution). The fine amounts are consistent with the average fine amounts in various municipalities throughout Los Angeles County, and generally in the State of California. The fine amounts for these violations are:

- a. one-hundred dollars (\$100) for the first violation,
- b. two-hundred dollars (\$200) for the second violation, and
- c. five-hundred dollars (\$500) for the third or additional violations in any twelve-month period. (See Section 3 of the Resolution).

(3) Sets forth three schedules of fines:

- a. Schedule A provides for an initial fine amount of one hundred dollars (\$100), and increases to two hundred dollars (\$200) and five hundred dollars (\$500) for a third and subsequent violation. These amounts match the amounts allowed for violations prosecuted as an infraction.
- b. Schedule B provides for an initial fine amount of two hundred fifty dollars (\$250), and increases to five hundred (\$500) and one thousand dollars (\$1,000) for a third and subsequent violation.
- c. Schedule C provides for varied fine amounts based on the gravity of the underlying offense, with progressively higher fines due to the public safety hazards, and to significantly deter crimes that are financially motivated.

(4) To encourage prompt payment of administrative citation fines, this Resolution will establish a late penalty charge of fifty percent of the fine amount for failure to pay the fine within 21 calendar days. The penalty will increase to one hundred percent of the fine amount for failure to pay the fine within 60 calendar days. In addition to the late penalty charge, interest shall accrue on all unpaid monies due, exclusive of late payment charges, at the rate of one percent (1%) per month of the total amount due from the date the administrative citation fine amount becomes delinquent until the date that all delinquent amounts are paid to the City (See Section 4 of the Resolution).

(5) A reinspection fee shall be assessed against any responsible person in the amount of fifty dollars if the responsible person does not timely and completely correct or abate a violation (with all requisite approvals, permits, licenses, and/or inspections) after

having received notification from the City to correct or abate same. (See Section 5 of the Resolution).

(6) The Resolution also authorizes the City Manager, or his or her designee, to review and consider a written request by a person whose been cited to partially waive or reduce an administrative fine, on a case-by-case, subject to limitations, including the following (See Section 6 of the Resolution):

- a. At no time shall a fine, or related fees, be partially waived or reduced by the City Manager, or his or her designee, if the underlying offenses have not been lawfully corrected or abated, or if the underlying illegal offense has not been permanently ceased.
- b. If the total amount of fines exceeds \$1,000, at no time shall the City Manager, or his or her designee, reduce the fine amount to less than \$1,000.

Also attached are draft forms for the comprehensive implementation of this program: Administrative Citation Form and Rights and Responsibilities, Request for Administrative Citation Appeal Form, Request to Establish Financial Hardship Form, and Application to Reduce Fine Amount. The Administrative Citation Form includes directions to the responsible person to visit the City's website or City Hall to obtain a Request for Administrative Citation Appeal. The Request for Administrative Citation Appeal Form includes information regarding the administrative citation appeal process. The Request to Establish Financial Hardship Form will also be available on the City's website and at City Hall. Finally, all responsible persons requesting an administrative appeal hearing shall also be required to read and sign a notice of their rights and responsibilities regarding the hearing and to bring the signed notice to the hearing itself.

The fine amounts, late penalty charge, interest amount, and reinspection fee amount are based on a review of peer jurisdictions. In these jurisdictions, fine amounts range from fifty dollars to ten thousand dollars for a first violation. Late penalty charges range from ten percent to one hundred percent of the fine amount, with some cities escalating the penalty after a certain period of nonpayment. Interest amounts range from one half of one percent to the legal maximum of ten percent, with most cities opting for one percent per month. A reinspection fee, or administration fee, ranged from fifty dollars to eighty dollars. The above information may be found in the attached Table.

Also, in light of the recent Ninth Circuit Court of Appeals ruling issued in July 2020, in the recent case of Pimentel v. City of Los Angeles, these fine amounts have also been analyzed to ensure compliance with the Excessive Fines Clause of the U.S. Constitution and its State Constitution counterpart. Each of the fine amounts is not "grossly disproportional to the underlying offense." Further, the initial late fee of only fifty percent of the original fine amount is significantly less than the one hundred percent late fee in Pimentel, which is still pending review by the Court as to whether or not it is an "excessive fine." For this reason, even if the Pimentel Court were to determine a one hundred percent late fee is "excessive," the 50% increase here is in far less danger of meeting the same fate.

Finally, personnel from City departments initially provided feedback as to the most common offenses encountered by their respective departments, with the attached Resolution reflecting a comprehensive enumeration of violations of the Commerce Municipal Code with ordinances passed through August 2020, in order to provide complete notice to City staff enforcing the City's laws, and members of the public. The City's Executive Management, Public Safety, and Code Enforcement also had the opportunity to review the proposed Resolution, Schedule of Fines, and forms to provide feedback, and the attached documents reflect same.

#### **FISCAL IMPACT:**

While it is the City's goal to deter members of the public from committing violations of the Municipal Code by imposing a fine to said offenses, it is reasonably foreseeable that revenue will be generated as a result of enforcing Municipal Code violations through the issuance of administrative citation fines, which said related fine amounts are directly payable to the City of Commerce. Considering the substantial economic impact of the COVID-19 pandemic on the City, same is an additional revenue stream.

#### **CONCLUSION:**

The adoption of the Resolution and the Administrative Citation Schedule of Fines is consistent with Chapter 1.13 of the Municipal Code, and will protect residents' quality of life, preserve public safety, effectuate the community's aesthetic values, and promote the City's continued economic success. The attached Resolution will establish a schedule of fines for violations of the Municipal Code in accordance with Ordinance No. 698, payable to the City of Commerce.

#### **ALTERNATIVES:**

1. Approve staff's recommendation;
2. Make amendments to staff's recommendation;
3. Decline staff's recommendation;
4. Provide alternative and/or further direction.

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| Prepared by:            | Norma Copado, Assistant City Attorney<br>Mark Murray, Deputy City Attorney |
| Approved as to form:    | Noel Tapia, City Attorney  |
| Respectfully submitted: | Vilko Domic, Assistant City Manager  |
| Recommended by:         | Edgar P. Cisneros, City Manager  |

#### **ATTACHMENTS:**

[Proposed] Resolution and Administrative Citation Schedule of Fines (Exhibit A)  
Table of Peer Jurisdiction Administrative Citation Related Fees  
[Draft] Administrative Citation Form and Rights and Responsibilities Form  
[Draft] Request for Administrative Citation Appeal  
[Draft] Financial Hardship Waiver  
[Draft] Application for Fine Reduction