

ORDINANCE NO. 30

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ADDING SECTION 1.03.080 TO THE WILDOMAR MUNICIPAL CODE PROVIDING AN ADMINISTRATIVE CITATION PROCEDURE.

THE CITY COUNCIL OF THE CITY OF WILDOMAR DOES ORDAIN AS FOLLOWS:

SECTION 1. Addition of Section 1.03.080 to the Wildomar Municipal Code. A new section 1.03.080 is hereby added to the Wildomar Municipal Code, and shall read as follows:

“1.03.080. Administrative citations and penalties.

In addition to the remedies and penalties contained in this chapter, and in accordance with Government Code Section 53069.4, an administrative citation may be issued for any violation of this Code. The following procedures shall govern the imposition, enforcement, collection and administrative review of administrative citations and penalties.

A. Notice of Violation. If the violation is not corrected within the period stated in the notice of violation, or if the violation creates an immediate danger to health or safety, an administrative citation may be issued by the enforcement officer. The notice shall specify the manner in which the Code has been violated and the actions required to correct the violation. The notice shall also state that failure to correct the violation could subject the recipient of the citation to civil, administrative and criminal penalties and could result in the imposition of a lien on the property for costs related to the enforcement of the Code and correction of the conditions. The failure of the notice to set forth all required contents shall not affect the validity of the proceedings.

B. Content of Citation. The administrative citation shall be issued on a form approved by the City Attorney and shall contain the following information:

1. Date, location and approximate time the violation was observed;
2. The ordinance violated and a brief description of the violation;
3. The amount of the administrative penalty imposed for the violation;
4. Instructions for the payment of the penalty, and the time period by which it shall be paid and the consequences of failure to pay the penalty within this time period;
5. Instructions on how to appeal the citation;

6. The signature of the enforcement officer.

The failure of the citation to set forth all required contents shall not affect the validity of the proceedings.

C. Service of Citation.

1. If the owner, occupant or other person who has violated the ordinance is present at the scene of the violation, the enforcement officer shall attempt to obtain his or her signature on the administrative citation and shall deliver a copy of the administrative citation to the violator.
2. If the owner, occupant or other person who has violated the ordinance is a business, and the business owner is on the premises, the enforcement officer shall attempt to deliver the administrative citation to him or her. If the enforcement officer is unable to serve the business owner on the premises, the administrative citation may be left with the manager or employee of the business. If left with the manager or employee of the business, a copy of the administrative citation shall also be mailed to the business owner by certified mail, return receipt requested.
3. If no one can be located at the property, then the administrative citation shall be posted in a conspicuous place on or near the property and a copy mailed by certified mail, return receipt requested to the owner, occupant or other person who has violated the ordinance. The citation shall be mailed to the property address and/or the address listed for the owner on the last county equalized assessment roll.
4. The failure of any interested person to receive the citation shall not affect the validity of the proceedings.

D. Administrative Penalties.

1. The penalties assessed for each violation shall not exceed the following amounts:
 - a. One hundred dollars (\$100.00) for a first violation;
 - b. Two hundred dollars (\$200.00) for a second violation of the same ordinance within one year; and
 - c. Five hundred dollars (\$500.00) for each additional violation of the same ordinance within one year.
2. If the violation is not corrected, additional administrative citations may be issued for the same violation. The amount of the penalty shall increase at the rate specified above.

3. Payment of the penalty shall not excuse the failure to correct the violation nor shall it bar further enforcement action.

4. The penalties assessed shall be payable to the City.

E. Administrative Appeal.

1. Time for Appeal. The recipient of administrative citation may appeal the citation by filing a written notice of appeal with the department that issued the administrative citation. The written notice of appeal must be filed within twenty (20) days of the service of the administrative citation as set forth in subsection C of this section. Failure to file a written notice of appeal within this time period shall constitute a waiver of the right to appeal the administrative citation. The notice of appeal shall be submitted on City forms and shall contain the following information:

a. A brief statement setting forth the appellant's interest in the proceedings;

b. A brief statement of the material facts which the appellant claims supports his or her contention that no administrative penalty should be imposed or that an administrative penalty of a different amount is warranted;

c. An address at which the appellant agrees notice of any additional proceeding or an order relating to the imposition of the administrative penalty may be received by mail;

d. The notice of appeal must be signed by the appellant.

2. Appeal Hearing. Upon a timely written request by the recipient of the administrative citation, an administrative hearing shall be held as follows:

a. Notice of Hearing. Notice of the administrative hearing shall be given at least ten (10) days before the hearing to the person requesting the hearing. The notice may be delivered to the person or may be mailed to the address listed in the notice of appeal.

b. Hearing Officer. The administrative hearing shall be held before the director of the issuing agency or his or her designee. The hearing officer shall not be the enforcement officer who issued the administrative citation or his or her immediate supervisor. The director may contract with a qualified provider to conduct administrative hearings or to process administrative citations.

c. Conduct of the Hearing. The enforcement officer who issued the administrative citation shall not be required to participate in the administrative hearing. The contents of the enforcement officer's file

in the case shall be admitted as prima facie evidence of the facts stated therein. The hearing officer shall not be limited by the technical rules of evidence. If the person requesting the appeal fails to appear at the administrative hearing, the hearing officer shall make their determination based on the information contained in the notice of appeal.

d. Hearing Officer's Decision. The hearing officer's decision following the administrative hearing may be personally delivered to the person requesting the hearing or sent by mail. The hearing officer may allow payment of the administrative penalty in installments, if the person provides evidence satisfactory to the hearing officer of an inability to pay the penalty in full. The hearing officer's decision shall contain instructions for obtaining review of the decision by the superior court.

F. Review of Administrative Hearing Officer's Decision.

1. Notice of Appeal. Within twenty (20) days of the date of the delivery or mailing of the hearing officer's decision, a person may contest that decision by filing an appeal to be heard by the superior court. The filing fee for the appeal shall be in the amount provided for in Government Code section 70615. The failure to file the written appeal and to pay the filing fee within this period shall constitute a waiver of the right to an appeal and the decision shall be deemed confirmed. A copy of the notice of appeal shall be served in person or by first class mail upon the issuing agency by the contestant.

2. Conduct of Hearing. The conduct of the appeal is a subordinate judicial duty and may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court. The appeal shall be heard de novo, except that the contents of the issuing agency's file in the case shall be received in evidence. A copy of the document or instrument of the issuing agency providing notice of the violation and imposition of the administrative penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. The court shall request that the issuing agency's file on the case be forwarded to the court, to be received within fifteen (15) days of the request.

3. Judgment. The court shall retain the filing fee regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the local agency. Any deposit of the fine or penalty shall be refunded by the issuing agency in accordance with the judgment of the court. If the fine or penalty has not been deposited and the decision of the court is against the contestant, the issuing agency may proceed to collect the penalty pursuant to the procedures set forth in this chapter, or in any other manner provided by law."

SECTION 2. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 3. Effective Date. This ordinance shall take effect thirty (30) days after its passage by the City Council.

SECTION 4. Publication. The City Clerk shall cause this ordinance to be published or posted in accordance with California law.

PASSED, APPROVED, AND ADOPTED this 27th day of May, 2009.



Scott Farnam, Mayor

ATTEST:



Debbie A. Lee, CMC, City Clerk

APPROVED AS TO FORM:



Julie Hayward Biggs, City Attorney
Thomas D. Jex, Assistant

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, Debbie A. Lee, CMC, City Clerk of the City of Wildomar, California, do hereby certify that the foregoing Ordinance No. 30 was introduced at a regular meeting of the City Council of the City of Wildomar, California, on May 13, 2009, and was duly adopted at a regular meeting held on May 27, 2009, by the City Council of the City of Wildomar, California, by the following vote:

AYES: Mayor Farnam, Mayor Pro Tem Moore, Council Members Ade, Cashman, Swanson

NOES: None

ABSTAIN: None

ABSENT: None



Debbie A. Lee, CMC
City Clerk
City of Wildomar, California