

ORDINANCE NO. 2749

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE
AMENDING CHAPTER 22 OF TITLE 1 OF THE GARDEN GROVE MUNICIPAL CODE
RELATING TO ADMINISTRATIVE CITATIONS AND FINES FOR VIOLATIONS OF THE
MUNICIPAL CODE

City Attorney's Summary

This Ordinance expands the scope of the City of Garden Grove's administrative citation program applicable to the violations of the City's Municipal Code. This Ordinance authorizes administrative citations to be issued for violation of any provision of the Municipal Code, including violation of any permit, land use entitlement or other approval issued by the City. The program authorizes administrative fines up to one thousand dollars (\$1,000.00) per violation and provides for administrative fine appeal and collection processes.

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DOES HEREBY ORDAIN
AS FOLLOWS:

Section 1. Chapter 1.22 of the Garden Grove Municipal Code shall be replaced in its entirety as follows:

"CHAPTER 1.22

ADMINISTRATIVE CITATIONS

Sections:

- 1.22.010 Authority and Fines
- 1.22.020 Service of Citation
- 1.22.030 Appeal of Administrative Citation
- 1.22.040 Hearing Officer
- 1.22.050 Hearing Procedure
- 1.22.060 Hearing Officer Decision
- 1.22.070 Failure to Pay and Collection of Fines
- 1.22.080 Right to Judicial Review
- 1.22.090 Notices
- 1.22.100 Definitions
- 1.22.110 Application to Permits and Approvals
- 1.22.120 Collection by Lien
- 1.22.130 Miscellaneous Provisions

Section 1.22.010 Authority and Fines

- (a) Any person violating any provision of the Garden Grove Municipal Code may be issued an administrative citation by an enforcement officer and shall thereby be subject to an administrative fine as provided for in this chapter. For purposes of this chapter, a violation of the Garden Grove Municipal Code shall include any violation of the Municipal Code, any code adopted by reference by the City Council, including but not limited to all codes adopted by reference in Title 18 of the Municipal Code, and the failure to comply with any condition of approval imposed pursuant to any land use entitlement, any permit, license or other authorization issued or approved pursuant to City Council adopted ordinances, including but not limited to those violations specified in Section 1.22.110 herein. The violations referred to in this subsection are collectively referred to in this chapter as Municipal Code violations. For purposes of this chapter, an administrative citation for an administrative fine may be issued to any responsible person for any violation referred to in this chapter.
- (b) Each and every day a violation of the Municipal Code exists constitutes a separate and distinct offense.
- (c) An administrative fine shall be assessed by means of an administrative citation issued by an enforcement officer and shall be payable directly to the City of Garden Grove through the Finance Director's office. Except as set forth in subsection 1.22.010(d), a citation may be issued by an enforcement officer upon the determination by such officer that a violation of the Municipal Code exists.
- (d) When a continuing violation exists pertaining to a building, plumbing, electrical, or other similar structural or zoning issue that does not create an immediate danger to health or safety, a citation for such a violation shall not be issued pursuant to this chapter unless the responsible person has first been provided with a reasonable period as determined by the enforcement officer, but in no event less than five (5) calendar days, in which to correct or otherwise remedy the violation. When such a violation creates an immediate danger to health or safety, a citation may be issued immediately.
- (e) Except as otherwise specified for those Municipal Code violations referred to in subsections 1.22.010 (f) and (g), in the case of administrative citations issued for violation of the Municipal Code, administrative fines shall be assessed in the amount of one thousand dollars (\$1,000.00) for each violation.

- (f) For each violation of the Municipal Code that would otherwise be determined to be an infraction, administrative fines shall be in the following amounts:
 - 1. A fine of one hundred dollars (\$100.00) for a first violation;
 - 2. A fine of two hundred dollars (\$200.00) for a second violation of the same Municipal Code provision within one (1) year from the date of the first violation;
 - 3. A fine of five hundred dollars (\$500.00) for each additional violation of the same Municipal Code provision within one (1) year from the date of the first violation.

- (g) In the case of an administrative citation issued for violation of Sections 030, 040 or 050(a) of chapter 8.64 or any provision of chapter 8.84 of this Code, administrative fines shall be assessed in the following amounts:
 - 1. A fine a three hundred dollars (\$300.00) for a first violation;
 - 2. A fine of six hundred dollars (\$600.00) for a second violation of the same provision within one (1) year from the date of the first violation;
 - 3. A fine of one thousand dollars (\$1,000.00) for each additional violation of the same provision within one (1) year from the date of the first violation.

- (h) In addition to the administrative fine schedule as set forth above, and pursuant to Government Code section 38773.5(b), the City may recover at its discretion, attorneys fees and costs in any action, administrative proceeding, or special proceeding to abate any nuisance arising out of a Municipal Code violation. The recovery of attorneys fees and costs shall be by the prevailing party and limited to those individual actions or proceedings in which the City elects, by direction of the City Manager at the initiation of that individual action or proceeding, to seek recovery of its own attorneys fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys fees to the prevailing party exceed the amount of reasonable fees incurred by the City in such matters.

- (i) Nothing in this chapter shall require the City to proceed with an administrative citation and fine in lieu of the penalty provisions set forth in chapter 1.04 or any other legal options available to the City.

An administrative citation may be utilized in place of, or in addition to, any other remedy allowed by the Municipal Code or state law.

Section 1.22.020 Service of Citation

- (a) An administrative citation may be served upon the recipient either by personal delivery or by first class mail through the United States Postal Service. If served by first class mail, the citation shall be sealed in an envelope with postage prepaid and addressed to the recipient of an administrative citation at his/her last-known business or residence address as the same appears in public records of the City. Service by mail shall be deemed to have been completed on the date of deposit with the United States Postal Service. The date of personal service or the date a citation is deposited with the United States Postal Service shall constitute the issuance date of a citation.
- (b) If an agent, manager or representative of a responsible person is personally served with a citation, a copy thereof shall also be served by first class mail on the responsible person at his/her last-known business or residence address as the same appears in public records of the City. In such instances, the date a copy of the citation is deposited with the United States Postal Service shall constitute the issuance date of a citation.
- (c) If service cannot be accomplished personally or by mail for citations involving a real property-related violation of the Municipal Code, the enforcement officer shall post the citation on such real property in the City in which the person cited is known to have a legal interest in, or possession, dominion and control of, such property, or a portion thereof. The date of posting shall constitute the issuance date of the citation.
- (d) Any notice or order given pursuant to any provision of this chapter shall be served in the manner provided for in this section, unless otherwise stated.
- (e) Failure of a recipient of an administrative citation to receive a citation or notice by mail, shall not invalidate any fine, late charge, action or proceeding, if service was given in a manner stated in this section.
- (f) An administrative citation should contain the following information:
 - 1. Name of the person who is cited for the violation(s);
 - 2. Date, approximate time, and address or brief description of the location where the violation(s) was observed;

3. The Code section(s) or condition(s)/provision(s) violated and a brief description of 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.

Failure of an administrative citation to contain all the required information shall not affect the validity of the administrative citation.

Section 1.22.030 Appeal of Administrative Citation

- (a) Any recipient of an administrative citation may contest that there was a violation of the Garden Grove Municipal Code, or that he or she is the responsible person, or may contend that the amount of the fine is disproportionate in light of mitigating factors, by completing a Request for Hearing form, together with an advance deposit of the fine, and returning both to the City Clerk within fifteen (15) days from (1) service of the administrative citation, if personally served, or (2) the date of the administrative citation if served by mail. Any administrative citation fine that 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 alleged in the administrative citation or any amendments thereto. The hearing officer may reduce the fine amount if the hearing officer finds, based on the totality of the circumstances, the fine is clearly disproportionate to the violation in light of mitigating factors. Any administrative citation fine that has been deposited shall be reduced, and the difference refunded, if it is determined, after a hearing, that the amount of the fine is clearly disproportionate to the violation in light of mitigating factors.
- (b) A request for a hearing shall contain the following:
 1. The citation number;
 2. The name, address, telephone and any facsimile numbers of each person contesting the citation;

3. A statement of any and all reasons why the citation is being contested, including any mitigating factors;
 4. The date and signature of the person(s) cited.
- (c) A timely request for a hearing shall not excuse a recipient of an administrative citation from the duty to immediately abate a violation of the Municipal Code, nor from any other responsibility or legal consequences for a continuation or repeated occurrence(s) of a violation of the Municipal Code.
- (d) Waiver of Advanced Deposit of Fine.
1. A recipient of an administrative citation who is financially unable to deposit the administrative fine with his/her request for a hearing may complete a City-approved application form for an advance deposit hardship waiver (hereafter the "hardship waiver"). This form and all required accompanying records, shall be tendered, along with a request for a hearing, to the office of the City Clerk within fifteen (15) calendar days from the issuance date of a citation.
 2. To be considered for a hardship waiver, the application form must be complete, signed, and must be accompanied by documents that enable the City to reasonably determine that the recipient of an administrative citation has a present inability to deposit the fine. Documents suitable for consideration, may include, without limitation, accurate, complete and legible copies of state and federal income tax returns and all schedules for the preceding tax year; financial statements, loan applications, bank account records, income and expense records for twelve months preceding submittal of the waiver form, as well as other documentation demonstrating the financial hardship of the recipient of an administrative citation. The City may, at a time chosen in its sole discretion and after a citation is final or confirmed, destroy or discard the documents submitted by a recipient of an administrative citation for a hardship waiver without prior notice to the recipient of an administrative citation.
 3. In the absence of advance payment of the fine pursuant to subsection (a) above, the failure to submit a completed, signed hardship waiver form, along with records that support a claim of financial hardship, shall render the request for hearing incomplete and untimely. In this event, the recipient of an

administrative citation shall have waived the right to a hearing and the citation shall be deemed final.

4. The City shall issue a written decision specifying the reasons for issuing or not issuing the hardship waiver. This decision is final and nonappealable. The decision shall be served upon the person requesting the hardship waiver by first class mail.
5. Approval of a hardship waiver shall result in the City setting a hearing pursuant to this section.
6. If the City determines that the recipient of an administrative citation is not entitled to a hardship waiver, he/she shall tender the full amount of the administrative fine to the office of the City Clerk within seven (7) calendar days of the date the decision is deposited with the United States Postal Service. In the event the City Clerk does not receive the full amount of the fine in the required period: (i) a late charge shall be imposed; (ii) the request for a hearing shall be deemed incomplete and untimely; and (iii) the recipient of an administrative citation shall have waived the right to a hearing and the citation shall be deemed final.

Section 1.22.040 Hearing Officer

The City Manager shall designate, in accordance with applicable law, the hearing officer for the administrative citation hearing. 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.

Section 1.22.050 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 to the City Clerk, and, except as set forth in Section 1.22.030(d), 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 chapter. 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. The date for the hearing may be continued beyond sixty (60) days from the date of the Request for Hearing is

filed upon written stipulation of both the City and the person requesting the hearing.

- (c) The hearing officer shall only consider evidence that is relevant to whether the violation(s) occurred and whether the person cited has caused, maintained or is otherwise responsible for the violation(s) of the Municipal Code on the date(s) specified in the administrative citation, and the existence of mitigating factors, if any.
- (d) 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 his/her administrative remedies.
- (e) Administrative hearings are informal and rules of evidence and discovery do not apply. The City bears the burden of proof to establish a violation and responsibility thereof by a preponderance of evidence. The citation is prima facie evidence of the violation and the enforcement officer who issued the citation is not required to attend or participate at the hearing. The recipient of any administrative citation and enforcement officer or other City official, if present, shall have an opportunity to testify, present witnesses and evidence and to cross-examine witnesses presented by the City in support of the administrative citation. The hearing officer may question any person who presents evidence or who testifies at the hearing.
- (f) At least ten (10) days prior to the hearing, the recipient of an administrative citation shall be served by mail with copies of any reports and other documents submitted or relied upon by the enforcement officer.
- (g) If the enforcement officer or other City official 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 served by mail on the person requesting the hearing at least five (5) days prior to the date of the hearing.
- (h) The hearing officer may continue the hearing and request additional information from the enforcement officer, another City official or the recipient of the administrative citation prior to issuing a written decision.

Section 1.22.060 Hearing Officer Decision

- (a) After considering all of the relevant evidence submitted at the hearing, the hearing officer shall issue a written decision within ten (10) days of the hearing to uphold, reduce or overturn the administrative

citation/fine 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/fine should be upheld, then the fine amount on deposit with the City shall be retained by the City.
- (c) If the hearing officer determines that the administrative citation/fine should be reduced, then the fine amount on deposit with the City shall be retained by the City, except that the difference between the deposit and the reduced fine shall be promptly refunded.
- (d) If the hearing officer determines that the administrative citation/fine should be overturned and the fine was deposited with the City, then the City shall promptly refund the amount of the deposited fine.
- (e) The recipient of the administrative citation shall be served with a copy of the hearing officer's written decision by first class mail.

Section 1.22.070 Failure to Pay and Collection of Fines

- (a) In the absence of a timely appeal, the due date for the City's receipt of a administrative fine shall be thirty (30) calendar days from the issuance date of a citation. Thereafter, a late charge shall be due and owing.
- (b) Failure to pay an administrative fine within the period required from the issuance date of a citation shall result in a late charge as established by a resolution of the City Council. The amount of a late charge may be modified from time to time by a resolution of the City Council.
- (c) Administrative fines and any late charges due shall be paid to the City at such location or address as stated in the citation, or as may otherwise be designated by the City Manager.
- (d) Payment of an administrative fine shall not excuse or discharge a recipient of an administrative citation from the duty to immediately abate a violation of the Code, nor from any other responsibility or legal consequences for a continuation or repeated occurrence(s) of a violation of the Code.
- (e) Abatement of a violation shall not excuse the obligation of a recipient of an administrative citation to pay an administrative fine, or any late charge.

- (f) Unpaid administrative fines and/or late charges shall constitute a debt that may be collected in any manner allowed by law.
- (g) If, pursuant to subsection 1.22.030(d), a hardship waiver is granted and the fine is not deposited prior to the appeal hearing, the fine shall be due and payable in full thirty (30) days following the hearing officer's mailing of the written decision if the citation is upheld, unless review is timely sought pursuant to Section 1.22.080. The failure of any person to pay the administrative fine assessed by an administrative citation within the time specified on the citation or otherwise required by this chapter may result in the matter being referred to the Garden Grove Finance Director to file a claim in small claims court. Alternatively, the City may pursue any other legal remedy to collect the past due administrative fines and related costs.
- (h) Any person who fails to pay any fine shall be liable in any action or collection procedure brought by the City for all costs incurred to obtain payment of the delinquent amount, including, but not limited to, administrative costs, collection costs, and attorneys fees.
- (i) Collection costs shall be in addition to any penalties, interest and late charges imposed upon the delinquent obligation. Interest on overdue fines and on late charges shall accrue at the rate of six percent (6%) per annum.
- (j) Commencement of an action to collect a delinquent fine shall not preclude issuance of one or more additional citations to the legally responsible party if the violation or violations persist.

Section 1.22.080 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 an appeal with the Orange County Superior Court within twenty (20) days after service of the administrative decision, in accordance with the provisions of California Government Code Section 53069.4. The Superior Court is the sole reviewing authority and a hearing officer's decision is not appealable to the City Council.

Section 1.22.090 Notices

- (a) All notices to be given by this chapter shall be served on the responsible person either by personal delivery or by first class mail.
- (b) Failure to receive any notice specified in this chapter shall not affect the validity of proceedings conducted hereunder.

Section 1.22.100 Definitions

- (a) "Enforcement officer" means all police officers, code enforcement officers, community service officers, the building official, building inspectors, the community development director, the City engineer, the fire marshal and all persons designated by the City Manager, community development director or Fire Chief to serve as enforcement officers.
- (b) "Person" means and includes any individual, partnership of any kind, corporation of any kind, limited liability company, association, joint venture or other organization or entity, however formed, as well as fiduciaries, trustees, heirs, executors, administrators or assigns, or any combination of such persons. "Person" also includes any public entity or agency that acts as a property owner in the City.
- (c) "Responsible person" means any person, whether as a real property owner or otherwise, that allows, causes, creates, maintains or permits a violation of the Municipal Code to occur, exist or continue in existence. Responsible person shall include the parent or legal guardian of any person under the age of eighteen (18) years who allows, causes, creates, maintains or permits a violation of the Municipal Code to occur, exist or continue in existence.

Section 1.22.110 Application to Permits and Approvals

Notwithstanding any other provision of this Municipal Code, a violation of any condition of any permit or approval issued by the City, including but not limited to any conditional use permit, site plan, specific plan, planned unit development, special event or community event permit shall be subject to the penalty provisions of this chapter, which provisions shall not be the exclusive remedy for such violations.

Section 1.22.120 Collection by Lien

- (a) If the fine owed by a cited party is for one or more Municipal Code violations on the cited party's property, and the citation was issued to abate a nuisance as defined by the Municipal Code or City ordinance, and the amount has been delinquent ninety (90) days or more, the delinquent amount shall become a lien on the property on which the violation(s) occurred.
- (b) Notice of Lien Hearing. The City shall give written notice to the cited party of a hearing before the City Council regarding the delinquent fine

amount and related costs. The notice shall be mailed by first class mail at least fourteen (14) days before the hearing. The notice shall state:

1. The citation or citations resulting in the delinquent fine amount;
2. The total of the delinquent fine amount and related costs;
3. The date the delinquent fine amount was due;
4. The street address, assessor's parcel number and legal description of the property upon which the violations occurred;
5. The date, hour and place of the hearing;
6. A statement that the cited party or other legally responsible person may appear and be heard;
7. A statement that unless the fine amount is paid by the date specified in a resolution by the City Council, the total amount due will become a lien and special assessment on the property.

- (c) Lien Hearing. At the lien hearing, the City Council shall hear and consider all competent evidence about the delinquent fine amount. If it finds the amount is delinquent, it shall make a finding of fact confirming that the delinquent fine amount and related costs are due the City as costs of nuisance abatement. If the delinquent amounts are affirmed, the total amount due is to be paid to the City within five (5) days, after which the amount due will become a lien on the property.
- (d) Recorded Lien. If the amount due is not paid within five (5) days after the City Council confirms it and orders it paid, the amount due shall constitute a lien upon the real property upon which the nuisance violations existed and shall be a special assessment against the property. The lien shall continue until the amount due and interest, computed at six percent (6%) per annum from the date of the City Council's confirmation, is paid or until it is discharged of record. If the amount due is not paid as required by the City Council's order, a notice of lien shall be recorded in the office of the county recorder and delivered to the county tax collector. The notice of lien shall substantially be in the following form:

NOTICE OF LIEN
CLAIM OF THE CITY OF GARDEN GROVE

By the authority of chapter 22 of Title 1 of the Garden Grove Municipal Code, an administrative citation or citations were issued regarding

nuisance abatement at the real property described below. Fines were assessed for the nuisance. By action of the City of Garden Grove City Council, recorded in its official minutes, the fines and related costs were confirmed as delinquent and assessed against the property as costs of nuisance abatement.

The delinquent amount was not paid, therefore the City of Garden Grove claims a lien on the real property for the costs of abatement in the amount of \$ _____, which shall be a lien on the real property until it is paid, with interest at the rate of 6% per annum from the _____ day of _____, 2____ [insert the date the City Council confirmed the delinquent fines and related costs]. The lien shall continue until paid in full and discharged of record. It shall also be a personal obligation against [insert name of property owner].

The real property upon which a lien is claimed is that certain parcel of land in the City of Garden Grove, County of Orange, State of California, described as follows:

[Insert legal description.]

Dated this _____ day of _____, 2_____.

City of Garden Grove

By: _____
City Manager

(e) Special Assessment.

1. After the lien is confirmed and recorded, a certified copy of it shall be filed with the county auditor/recorder. The description of the parcel reported to the auditor/recorder shall be the one used by the county assessor's map book for the current year. The county auditor/recorder shall enter each assessment on the county tax roll for the reported parcel of land. The amount of the assessment shall be collected at the time and in the manner of ordinary municipal taxes.
2. If delinquent, the amount is subject to the same penalties and procedure of foreclosure provided for ordinary municipal taxes. As an alternative method, the county tax collector, in his/her discretion, may collect the assessment without reference to the general taxes, by issuing separate bills and receipts for the assessment. Laws relating to the levy, collection and

enforcement of county taxes shall apply to such special assessment.

3. The City may receive the amount due on the abatement costs and issue receipts at any time after the confirmation of the statement, before August 1st of that current year. The City Council may order a refund of any lien or assessment paid under this section if it finds that all or part of the assessment has been erroneously levied. An assessment or part thereof shall not be refunded unless a claim is filed with the City Clerk on or before March 1st after taxes become due and payable. The claim shall be verified by the person who pays the tax, or his/her guardian, executor, or administrator.

Section 1.22.130 Miscellaneous Provisions

The City Manager is authorized to promulgate procedural rules and regulations governing the civil administration citation and hearing process consistent with this chapter and applicable law.”

Section 2. Severability. If any section, subsection, subdivision, sentence, clause, phrase, word or portion 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 section, subsection, subdivision, sentence, clause, phrase, word or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

Section 3. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after adoption.

The foregoing Ordinance was passed by the City Council of the City of Garden Grove on the ____ day of _____.

ATTEST:

MAYOR

CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, KATHLEEN BAILOR, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Ordinance was introduced and presented on June 9, 2009, with a vote as follows:

AYES: COUNCIL MEMBERS: (3) BROADWATER, JONES, DALTON
NOES: COUNCIL MEMBERS: (2) DO, NGUYEN
ABSENT: COUNCIL MEMBERS: (0) NONE