Meeting Date: 12/11/07

ACTION	TYPE OF ITEM
☐ Approved Recommendation	■ Info/Consent
☐ Ord. No(s). _____	☐ Report
☐ Res. No(s). _____	☐ Public Hearing (Info/consent)
☐ Other _____	☐ Other _____

Prepared By: Julie Doi, Deputy City Attorney _____ Agenda Item No. I-1

Reviewed By: City Manager _____ City Attorney _____ Finance SW Other *(Specify)*

DATE: November 28, 2007

TO: City Council

FROM: Julie Doi, Deputy City Attorney
City Attorney's Office

SUBJECT: **Amendment to Ordinance Regarding Civil Fines**

RECOMMENDATION

That City Council approve the first reading by title only and subsequent adoption of an ordinance that repeals and readopts sections 7-51, 7-53, 7-54, 7-57(B), 7-58(A), 7-58(F), 7-59, 7-60, 7-61(A), 7-63(B)(2), and 7-64(E) of the Oxnard City Code concerning civil fines.

DISCUSSION

Currently, if a person violates any provision of the City Code, the City may issue a civil citation to that individual who shall pay a civil fine for the violation. The civil fine sections of the City Code were adopted in May of 1999.

Recently, a review of the civil citation process by the City Attorney's office and review by the City Code Compliance Unit staff concluded that the current City Code sections concerning civil fines are outdated and require amendment.

The proposed ordinance would repeal those sections of the City Code concerning civil citation fines which require revision and would readopt those sections as amended so as to be current with industry standard.

FINANCIAL IMPACT

No financial impact.

JD

Attachment #1 - Ordinance

ORDINANCE OF THE CITY OF OXNARD

ORDINANCE NO. __

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OXNARD REPEALING AND READOPTING SECTIONS 7-51, 7-53, 7-54, 7-57(B), 7-58(A), 7-58(F), 7-59, 7-60, 7-61(A), 7-63(B)(2), AND 7-64(E) OF THE OXNARD CITY CODE CONCERNING CIVIL FINES

.....

Now, therefore, the City Council of the City of Oxnard does ordain as follows:

Part 1. Section 7-51 of the Oxnard City Code is hereby repealed and readopted to read as follows:

"**SEC. 7-51. DEFINITIONS.**

For the purpose of this article, the following words shall have the following meanings:

(A) BUILDING CODE VIOLATION – Any violation of a code adopted by the City as set forth in Chapter 14 of the Oxnard City Code."

(B) CODE VIOLATION – Any violation of the code or other ordinance.

(C) CITY MANAGER – The city manager or designee.

(D) CIVIL CITATION – A notice issued by an enforcement officer pursuant to this chapter that there has been a violation of the code.

(E) ENFORCEMENT OFFICER – An individual designated by the city manager to enforce the provisions of this chapter.

(F) HEARING OFFICER – The individual designated by the city manager to serve as the hearing officer for administrative hearings.

(G) ISSUANCE DATE – The day a civil citation is personally served on a responsible person, is mailed to a responsible person, or is posted on real property where a property related violation occurs.

(H) ISSUED – The giving, mailing, or posting of a civil citation.

(I) NOTICE OF DECISION – A notice that informs a responsible person of a decision made regarding provisions of this chapter.

(J) RESPONSIBLE PERSON – Any of the following:

(1) An individual causing or committing a code violation;

(2) An individual, by his/her action or failure to act, maintains or allows a code violation to continue;

(3) An individual whose agent, employee, or independent contractor causes or commits a code violation by his/her action or failure to act;

(4) An owner of or a lessee or sublessee with the current right of possession of real property on which a code violation occurs;

(5) An on-site manager of a business customarily working daily at the site when the business is open and responsible for the activities at such business; and

(6) A natural person or legal entity, and the owners, majority stockholders, corporate officers, trustees, and general partners of a legal entity."

Part 2. Section 7-53 of the Oxnard City Code is hereby repealed and readopted to read as follows:

"SEC. 7-53. BUILDING CODE VIOLATIONS.

(A) When a responsible person is issued a notice of a building code violation that does not create an immediate danger to health or safety, the enforcement officer shall provide a 14-day correction period to allow the responsible person time to correct the violation. Notwithstanding section 7-52, no responsible person issued a notice of a building code violation shall be issued a civil citation unless the violation continues after the 14 days allowed for its correction, including any extensions granted.

(B) A responsible person issued a notice of a building code violation may request an extension of the correction period provided that such request is filed with the city manager prior to the expiration of the original 14-day period.

(C) The city manager may grant a reasonable extension of the period of time to correct a violation if the responsible person has submitted substantial evidence showing that the correction cannot be made within the 14-day period. The city manager's decision to grant or deny the request for an extension shall be in writing and shall be final.

(D) The filing for an extension does not, unless granted, extend the 14-day correction periods.

(E) If a building code violation has not been corrected by the end of the correction period, the enforcement officer may issue a civil citation. The enforcement officer may issue additional citations and impose fines for every day the building code violation continues uncorrected from the date the civil citation is issued."

Part 3. Section 7-54 of the Oxnard City Code is hereby repealed and readopted to read as follows:

"SEC. 7-54. CONTENTS OF CIVIL CITATIONS.

Every civil citation shall contain the following:

(A) Name of the responsible person;

(B) Date on which the code violation is observed or determined to have been caused or committed by the responsible person, if different from the date of issuance;

(C) The code section violated;

(D) Address where the code violation occurred;

(E) Description of the code violation;

(F) The amount of the fine;

(G) Procedures to pay the fine;

(H) Description of the procedure for requesting a waiver of fine deposit and administrative hearing to contest a civil citation;

(I) A statement that the code violation is a public nuisance and that collection of any unpaid fines and/or nuisance abatement costs may be placed as a special assessment or lien against the property of the responsible person;

(J) Signature of the enforcement officer issuing the civil citation;

(K) Date of issuance; and

(L) Any other information deemed necessary by the city attorney for enforcement or collection purposes."

Part 4. Section 7-57(B) of the Oxnard City Code is hereby repealed and readopted to read as follows:

"(B) Fines shall be paid in a manner as specified on the civil citation issued to the responsible person."

Part 5. Sections 7-58(A) and 7-58 (F) of the Oxnard City Code are hereby repealed and readopted to read as follows:

"(A) If the request is made within 14 days of the date the civil citation is issued, any responsible person issued a civil citation may request a preliminary review."

"(F) A request for preliminary review shall not extend any time periods for compliance, the due date of any fine imposed, or the time to request an administrative hearing."

Part 6. Section 7-59 of the Oxnard City Code is hereby repealed and readopted to read as follows:

"SEC. 7-59. WAIVER OF FINE DEPOSIT.

(A) A responsible person requesting an administrative hearing may also request a waiver of the fine deposit. The request for waiver of fine deposit must be received by the city manager within 30 days of the issuance of the civil citation. The city manager shall designate an address to submit or mail requests for waivers of fine deposits.

(B) The hearing officer shall set the date, time, and location for hearings regarding requests for waivers of fine deposits. A responsible person requesting a waiver of a fine deposit bears the burden of establishing by substantial evidence that he/she does not have the financial ability to deposit the fine. Unless the hearing is otherwise continued, failure of the responsible person to attend the hearing shall constitute an abandonment of the request for a waiver of the fine deposit.

(C) All requests for waiver of the fine deposit shall be granted or denied by the hearing officer at the hearing. At the conclusion of the hearing, the hearing officer shall set the date for the administrative hearing which shall be within 45 days of the conclusion of the hearing regarding the request for waiver of the fine deposit. A copy of the notice of decision shall be delivered or mailed to the responsible person within five working days of the conclusion of the hearing.

(D) If the waiver is denied, the responsible person shall deposit the fine amount within 30 days of the date on the notice of decision. Failure of a responsible person to make the deposit within the time required shall be deemed an abandonment of the administrative hearing.

(E) A request for a waiver of the fine deposit does not extend any time periods set forth in this chapter, except the time for deposit of the fine. The hearing officer's decision shall be final and is not subject to judicial review."

Part 7. Section 7-60 of the Oxnard City Code is hereby repealed and readopted to read as follows:

"SEC. 7-60. ADMINISTRATIVE HEARINGS.

(A) A responsible person receiving a civil citation may request an administrative hearing. Any request for an administrative hearing shall be filed with the city manager within 30 days of the issuance of the civil citation. The city manager shall designate an address to submit or mail requests for administrative hearings.

(B) A request for an administrative hearing shall be made on an administrative hearing request form and shall include the grounds for requesting an administrative hearing. The request shall be accompanied by a deposit of the fine amount imposed in the civil citation.

(C) The hearing officer shall set the date, time, and location for administrative hearings. Unless the hearing is otherwise continued, a responsible person requesting an administrative hearing shall attend the hearing on the date, time, and location set by the hearing officer. Failure to attend the hearing shall constitute an abandonment of the request for an administrative hearing."

Part 8. Section 7-61(A) of the Oxnard City Code is hereby repealed and readopted to read as follows:

"(A) The administrative hearing shall be conducted by a hearing officer on the date, time, and location set by the hearing officer."

Part 9. Section 7-63(B)(2) of the Oxnard City Code is hereby repealed and readopted to read as follows:

"(2) An administrative decision regarding a request to extend the 14-day correction period for building code violations;"

Part 10. Section 7-64(E) of the Oxnard City Code is hereby repealed and readopted to read as follows:

"(E) Any delinquent fines, interest and penalties may be recovered as a lien or special assessment against the property of the responsible person."

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Part 11. Within 15 days after passage, the City Clerk shall cause this ordinance to be published one time in a newspaper of general circulation within the city. Ordinance No. ____ was first read on _____, 20__ and finally adopted on _____, 20__ to become effective thirty days thereafter.

AYES:

NOES:

ABSENT:

_____
Dr. Thomas E. Holden, Mayor

ATTEST:

_____
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

Gary Gilbig 11-28-07
Gary Gilbig, City Attorney