

**Council Meeting: July 20, 2010**

SUBJECT: Ordinance to Amend Sunnyvale Municipal Code Chapter 1.05 to Authorize the Placement of Unpaid Administrative Citations on the County of Santa Clara Property Tax Roll

BACKGROUND

On March 5, 2002, the City Council approved broadening Neighborhood Preservation's authority to issue administrative citations from eight violations to all violations under its purview. In October 2008, the City Council increased administrative citation dollar amounts to the maximum allowable by state law. This was done as part of the City Council's desire for a more aggressive code enforcement program. In addition, Fire Prevention started issuing administrative citations in FY07-08.

Sunnyvale Municipal Code Chapter 1.05 allows enforcement of code violations by the issuance of an administrative citation. The administrative citation fine schedule is set forth in the City's fee schedule. The fine amount is increased for failure to correct the code violation or for repeat violations of the same code provisions.

The current fine schedule is as follows:

First violation:	\$100
Second violation within a 12 month period:	\$200
Third and subsequent violation within a 12 month period:	\$500

Most violations are corrected after the first warning. However, some property owners fail to correct the violation and are consequently assessed several administrative citations resulting in thousands of dollars in fines. The current process entails the issuance of a bill to the property owner for the administrative citation. If unpaid after 30 days, interest is assessed. If the account remains unpaid after 90 days, a final demand for payment is made by the City. If the account remains unpaid, it is referred to the City's collection agency.

The current collection rate on administrative citations paid to the City without having to be referred to the collection agency is approximately 20%. The remaining 80% are referred to the City's outside collection agency for collection. The collection agency's current collection rate is approximately 15%.

The collection rate is low because many property owners dispute the collection agency's notices, which limits the action the collection agency can take. Under the current process, even if a lien is placed on the property, the City may not get paid unless the property is sold or refinanced.

It is important to note that the administrative citation process has been very successful as far as obtaining compliance is concerned. Property owners generally correct the code violation. However, they do not always pay the administrative citation(s). This report addresses how the City may want to go about increasing the collection rate of unpaid citations.

EXISTING POLICY

Government Code Section 53069.4 authorizes local agencies to enact administrative citation procedures and provides that unpaid fines or penalties may be collected pursuant to the procedures set forth in its ordinance.

Administrative citations are issued under Chapter 1.05 of the Sunnyvale Municipal Code. Section 1.05.110 allows the City to collect any past-due administrative citation by use of all available legal means. However there is no specific provision that allows this fine to be placed on the County's secured tax roll. Staff is requesting an ordinance to specifically allow administrative citations to be placed on the County property tax roll.

The City has placed other debts for collection on the County of Santa Clara tax roll. For example, Sunnyvale Municipal Code Sections 8.20.060 to 8.20.090 inclusive and 9.26.80 allow for the placement and collection of costs relating to weed or nuisance abatement on the County's tax roll. Some property owners who have had their properties abated by the City have resisted reimbursing the City for the abatement costs. Past experience has shown, however, that once the abatement costs are placed on the tax roll with property taxes, these costs were paid. Once collected, the County then forwards the abatement portion of the taxes paid to the City of Sunnyvale. Placing these fees on the tax roll has been very successful in terms of ensuring the City is paid.

Staff would like to pursue placing unpaid administrative citations on the County property tax roll as well. The County would essentially become the City's collection agency and will pursue the property owners for payment using their normal means for collection (sale of property for unpaid property taxes).

DISCUSSION

The primary objective of enforcement for both Neighborhood Preservation and Fire Prevention is to achieve voluntary compliance through education. Citations are only issued after repeated attempts at voluntary compliance have failed. The use of the administrative citation has proven to be a necessary and effective tool in

achieving compliance with Sunnyvale Municipal Code requirements. It also serves as a critical tool in deterring future code violations.

Neighborhood Preservation staff opens approximately 3,000 code enforcement cases per year and more than half of the cases are proactive. Approximately 85 to 90 percent of code enforcement cases are resolved, by compliance, within 30 days.

In FY 2009/2010, Neighborhood Preservation staff issued approximately 225 administrative citations totaling \$80,000. Also, since Fire Prevention started issuing administrative citations in FY07-08, they have issued an average of ten citations per year.

Many cities issue administrative citations and experience similar problems with collecting administrative citation fines through routine billing practices. Neighborhood Preservation surveyed other jurisdictions in 2009 through the California Association of Code Enforcement. That survey indicated that some other cities utilize the property tax collection process. California cities currently following this practice of collecting administrative citations through the County tax roll include: Paradise, Clearlake, San Ramon, Gilroy, and Los Altos.

If this ordinance is approved by Council, staff will make changes to the administrative citation form to notify the recipient of the citation that the City may place any unpaid citation on the County of Santa Clara property tax roll for collection. Any citations issued previous to the adoption of this ordinance will not be sent to the County for collection. Only citations issued after adoption of this ordinance, where adequate disclosure has been provided to the responsible party, will be eligible to be sent to the County for collection.

The County of Santa Clara accepts items for placement on the County tax roll from July to approximately the first week of August every year. The annual deadline for submitting items for collection to the County is August 10. In order to get the information to the County prior to August, staff would present a report to Council at a public hearing in June or July stating the amounts due and owing of any unpaid citation, the date(s) of the administrative order, the street address, legal description and assessor's parcel number, and the name and address of the recorded owner of the property. Property owners with unpaid administrative citations will receive notice from Finance that their unpaid balance will go before the City Council for approval to be placed on the property tax roll at this public hearing.

That report, as approved by Council, would be forwarded to the County for collection as a special assessment. The County charges a 1% collection fee, which would be added to the amount owed by the debtor and sent to the County for

collection. The administrative charge assessed by the County would therefore be paid by the debtor.

As previously mentioned, in order to provide due process to citation recipients, only citations issued after Council adopts this ordinance will be eligible for placement on the tax roll. Therefore, Council will not be asked to approve the report of unpaid citations until approximately June 2011 for placement on the 2011/2012 tax roll.

Council should expect that some people will make an attempt to have their cases heard at the public hearing in an effort to get Council to rescind the citations before they are put on the property tax roll. It is important to note that Council will not be serving as the administrative hearing officer at this public hearing. The appeal period for rescinding any of the administrative citations will have already passed.

Every person who receives an administrative citation has the right to appeal it before a hearing officer. There is a 15 day appeal deadline from the date the citation was issued. Furthermore, if the person appealing the citation is unsatisfied with the hearing officer's decision, they may appeal that decision to Superior Court. Administrative citations are rarely appealed; in FY08-09, only 1% of the citations issued were appealed.

If the Council has questions at the public hearing regarding any administrative citations that were issued, Neighborhood Preservation and/or Fire Prevention staff can research the details of each specific case and respond back to the Council at a later date.

FISCAL IMPACT

The revenue impact of adopting this ordinance is dependent on the number of citations issued by Public Safety. Public Safety issued \$136,950 in citations in FY 2009. Historically, 20% of these citations are paid directly to the City. Of the remaining 80%, staff estimates that approximately 50% (or \$54,780) would be paid through the County property tax collection process. It is anticipated that the remaining balance would remain unpaid because the property had been sold or foreclosed upon since the citations were issued.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

ALTERNATIVES

1. Adopt an ordinance to amend Sunnyvale Municipal Code Chapter 1.05 to Authorize the Placement of Unpaid Administrative Citations on the County of Santa Clara Property Tax Roll.
2. Do not adopt an ordinance to amend Sunnyvale Municipal Code Chapter 1.05 to Authorize the Placement of Unpaid Administrative Citations on the County of Santa Clara Property Tax Roll.

RECOMMENDATION

Staff recommends alternative 1, adopt an ordinance to amend Sunnyvale Municipal Code Chapter 1.05 to Authorize the Placement of Unpaid Administrative Citations on the County of Santa Clara Property Tax Roll.

Reviewed by:

Grace Leung, Acting Director of Finance
Prepared by: Therese Balbo, Finance Manager

Approved by:

Gary M. Luebbbers
City Manager

Attachments

- A. Ordinance to Amend Chapter 1.05 of the Sunnyvale Municipal Code Relating to Placement of Unpaid Administrative Citations on the County of Santa Clara Property Tax Roll

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE AMENDING SECTION 1.05.110 OF CHAPTER 1.05 (ADMINISTRATIVE CITATIONS) OF TITLE 1 (GENERAL PROVISIONS) OF THE SUNNYVALE MUNICIPAL CODE RELATING TO PLACEMENT OF UNPAID ADMINISTRATIVE CITATIONS ON THE COUNTY OF SANTA CLARA PROPERTY TAX ROLL

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. SECTION 1.05.110 AMENDED. Section 1.05.110 of Chapter 1.05 (Administrative Citations) of Title 1 (General Provisions) of the Sunnyvale Municipal Code is hereby amended to read as follows:

1.05.110. Recovery of administrative citation fines and costs.

(a) The city may collect any past-due administrative citation fine or late payment charge by use of all available legal means. The city also may recover its collection costs pursuant to this code.

(b) Whenever the amount of any administrative penalty and/or administrative cost imposed pursuant to this chapter in connection with real property has not been satisfied in full within ninety (90) days and/or has not been successfully challenged by a timely appeal pursuant to California Government Code Section 53069.4, this obligation may constitute a lien or, in the alternative, a special assessment against the real property on which the violation of the city code occurred.

(c) Lien Procedure.

(1) Whenever the amount of any administrative citation imposed pursuant to this chapter in connection with real property has not been satisfied in full within ninety days and/or has not been successfully challenged by a timely appeal under California Government Code Section 53069.4, this obligation may constitute a lien against the real property on which the violation occurred.

(2) The lien provided herein shall have no force and effect until recorded with the county recorder. Once recorded, the administrative order shall have the force and effect and priority of a judgment lien governed by the provisions of Sections 697.340 of the Code of Civil Procedure and may be extended as provided in Sections 683.110 to 683.220, inclusive, of the Code of Civil Procedure.

(3) Interest shall accrue on the principal amount of the judgment remaining unsatisfied pursuant to law.

(4) Prior to recording any such lien, the director of finance shall prepare and file with the city clerk a report stating the amounts due and owing.

(5) The city clerk shall fix a time, date and place for hearing such report and any protests or objections thereto by city council.

(6) The director of finance shall cause written notice to be served on the property owner not less than ten days prior to the time set for the hearing. Such notice shall be served as provided in Section 1.08.100.

(c) Special assessment procedure.

(1) As an alternative to the lien procedure authorized by Section 1.05.110(c), there is hereby established a procedure for making the administrative citation imposed pursuant to this chapter and related administrative costs a special assessment against the subject real property.

(2) Whenever the amount of any administrative citation imposed pursuant to this chapter in connection with real property has not been satisfied in full within ninety days and/or has not been successfully challenged by a timely appeal, the finance director shall prepare and file with the city council a report stating the amounts due and owing, the date of the administrative order or abatement order, the street address, legal description and assessor's parcel number of the subject property, and the name and address of the recorded owner of the property.

(3) Prior to the imposing of the special assessment, the enforcement officer shall serve a copy of the report provided under subsection (2) of this section on the property owner, along with notice that the property may be sold by the county of Santa Clara tax collector for unpaid delinquent assessments. Such notice shall be served by certified mail to the property owner. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in a newspaper of general circulation published in Santa Clara County. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice.

(4) At the time and place fixed for receiving and considering the report provided under subsection (2) of this section, the city council shall hear the same together with any objections which may be raised by any of the property owners liable to be assessed. Upon such hearing, the council may make such modifications in the proposed assessment thereof as it may deem necessary, after which such report and assessment list shall be confirmed by resolution.

(5) The director of finance shall cause the amount of the assessment to be entered on the city assessment roll opposite the description of the particular property, and the amount shall be collected together with all other taxes thereon upon the property. Thereafter such amounts shall be collected at the same time, and in the same manner, as general city taxes are collected and shall be subjected to the same penalties and interest, and the same procedure and sale in case of delinquency as provided for city taxes. All laws and ordinances applicable to the levy, collection and enforcement of city taxes are hereby made applicable to such special assessment.

SECTION 2. CEQA EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

SECTION 3. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision or decisions 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, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared invalid.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 5. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication of a notice once in The Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on _____, 2010, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2010, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
Date of Attestation: _____

Mayor

SEAL

APPROVED AS TO FORM AND LEGALITY:

David E. Kahn, City Attorney