

**Council Meeting: May 7, 2013****SUBJECT: Discussion and Possible Action to Amend Sunnyvale Municipal Code Chapters 1.04 and 1.05 Related to Criminal and Administrative Citations for Violations of the Municipal Code****REPORT IN BRIEF**

The City Attorney is requesting that City Council approve minor “clean-up” amendments to Sunnyvale Municipal Code Sections 1.04.010, 1.04.050, and 1.05.020 related to criminal and administrative citations. In addition, the City Attorney requests that City Council approve “wobbler” language in Section 1.04.010 that will provide authority to reduce misdemeanor citations to infractions in appropriate cases.

**EXISTING POLICY**

Council Policy 4.1.1. Provide a safe and secure environment for people and property in the City of Sunnyvale.

**DISCUSSION**

Violations of the Sunnyvale Municipal Code are either misdemeanors or infractions, as designated by Section 1.04.010. It was recently noted that a few violations which are deemed infractions in other sections of the Code are not listed in 1.04.010 and should be added.

In addition, Section 1.04.050 lists the City employees who have the authority to issue criminal citations for violations of specific Municipal Code sections. California Penal Code Section 836.5 provides that a city must adopt an ordinance in order to empower employees other than sworn peace officers to issue criminal citations. Section 1.04.050 of the Sunnyvale Municipal Code was enacted in the early 1990’s as a way of expanding code enforcement authority by departments outside of Public Safety. Subsequently, however, the City adopted Chapter 1.05 of the Municipal Code, which creates a non-criminal process for issuing administrative citations as an alternative to criminal prosecution. Currently, Public Safety is the only department in the City which uses non-sworn staff (Community Services Officers, Animal Control Officers, Fire Prevention Officers, etc.) to issue misdemeanor and infraction citations.

The list of code sections in 1.04.050 is out of date and does not accurately reflect current department responsibilities or staff assignments. Therefore, the City Attorney recommends amending 1.04.050 to provide simply that non-sworn staff in the Public Safety Department may issue citations as designated by the Director of Public Safety, and that other employees in the City with such authority may be designated by the City Manager.

Because of this change to 1.04.050, language also needs to be added to the definition of “enforcement authority” for administrative citations under 1.05.020, clarifying that the City Manager may designate employees with authority to issue administrative citations. Staff have previously relied on the list of citation authority in 1.04.050 to determine who has authority to issue administrative citations under 1.05.020.

Finally, the Sunnyvale Municipal Code does not currently provide any flexibility to Public Safety or the City Attorney to reduce misdemeanor charges to infractions. Occasionally, misdemeanor prosecutions can be resolved by allowing the defendant to plead guilty to an infraction and pay a fine. Many individuals who receive a Municipal Code citation for a minor regulatory-type offense (e.g., using amplified music without a permit), are generally law-abiding citizens who have never been in trouble with the law and simply want to accept their punishment, pay a fine, and move on with their lives, but do not want a criminal record. The addition of so-called “wobbler” language in the Code will provide greater flexibility in prosecuting minor or first-time offenses so that resources can be dedicated to addressing more serious and repeat violations.

A copy of the proposed ordinance is attached as Attachment A.

**FISCAL IMPACT**

None.

**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. Introduce an ordinance to amend Sunnyvale Municipal Code Section 1.04.010, 1.04.050, and 1.04.020.
2. Make no changes.

**RECOMMENDATION**

Staff recommends Alternative #1: Introduce an ordinance to amend Sunnyvale Municipal Code Section 1.04.010, 1.04.050, and 1.04.020.

Reviewed by:

Joan A. Borger, City Attorney

Prepared by: Rebecca L. Moon, Assistant City Attorney

Approved by:

Frank Grgurina, Chief of Public Safety

Approved by:

Gary M. Luebbbers

City Manager

**Attachments**

A. Proposed Ordinance amending Sections 1.04.010, 1.04.020, and 1.05.020.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE AMENDING SECTIONS 1.04.010 AND 1.04.050 OF CHAPTER 1.04 (GENERAL PENALTY) AND SECTION 1.05.020 OF CHAPTER 1.05 (ADMINISTRATIVE CITATIONS) OF TITLE 1 (GENERAL PROVISIONS) OF THE SUNNYVALE MUNICIPAL CODE, RELATING TO CITATION AUTHORITY**

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

SECTION 1. SECTION 1.04.010 AMENDED. Section 1.04.010 of Chapter 1.04 (General Penalty) of Title 1 (General Provisions) of the Sunnyvale Municipal Code is hereby amended to read as follows:

**1.04.010. Violation—Misdemeanor or infraction.**

- (a) [Text unchanged]
- (b) Violations of the following provisions are infractions:
  - (1) Title 5: Chapters 5.16, 5.24, 5.26, 5.28, ~~and~~ 5.32, and 5.38;
  - (2) Title 6: Entire title except Sections 6.08.100 through 6.08.130 and Section 6.16.060;
  - (3) Title 8;
  - (4) Title 9: Chapter 9.24, except Section 9.24.180; Chapters 9.26, 9.28, 9.42, 9.52, 9.54, 9.60, 9.62, 9.64, 9.66, and 9.84;
  - (5) Title 10: Chapters 10.08 through 10.60, with the exception of sections set forth in subsection (c) herein;
  - (6) Title 13: Chapter 13.16;
  - (7) Title 16, except Chapters 16.52, 16.53 and 16.54;
  - (8) Title 18: Section 18.20.080;
  - ~~(8)~~ (9) Title 19: Entire title except Chapters 19.67 and 19.69.
- (c) [Text unchanged]
- (d) Notwithstanding the above, a violation shall be deemed an infraction if it is deemed an infraction by any other provision of this code; if a citation is issued specifying that the violation is an infraction; if the city attorney files a complaint in the superior court specifying that the offense is an infraction; or if the city attorney makes a motion to reduce a misdemeanor charge to an infraction prior to trial on the matter.

SECTION 2. SECTION 1.04.050 AMENDED. Section 1.04.050 of Chapter 1.04 (General Penalty) of Title 1 (General Provisions) of the Sunnyvale Municipal Code is hereby amended to read as follows:

**1.04.050. Citation authority.**

- (a) A violation of the Sunnyvale Municipal Code may be enforced by a peace officer in any manner authorized by law.
- (b) Pursuant to California Penal Code Section 836.5, non-sworn public safety employees designated by the director of public safety are authorized to make

arrests for violations of such sections of the Sunnyvale Municipal Code and other city ordinances that they are charged with enforcing as determined by the director of public safety, and may issue citations for misdemeanors and infractions for said violations pursuant to California Penal Code Title 3, Chapter 5C (commencing with Section 853.5).

(c) The city manager shall have the power to designate by written order that particular officers and employees, in addition to those specified in this section, shall have the power to issue misdemeanor or infraction citations for violations of specified chapters of this code.

~~—(a)— The following designated officers and employees are delegated the authority to issue citations without a warrant to any person whenever the officer or employee has reasonable cause to believe that the person to be cited has committed an act in his or her presence which is a violation of the provisions of this code:~~

~~—(1)— Director of community development and housing officer: Chapters 6.30, 8.16, 8.20, 9.26, 9.28, 9.30, 9.60, 16.20, 16.44 and Title 19.~~

~~—(2)— Director of community development and building inspection superintendent: Chapters 16.12 through 16.41, 16.46, 16.58.~~

~~—(3)— Director of parks and recreation and department employees designated by director: Chapter 9.62.~~

~~—(4)— Director of public safety and public safety officers: Chapters 5.16, 5.24, 5.28, 5.32, Title 9 except for Chapters 9.72, 9.74 and 9.76, Title 10, Chapters 16.52 through 16.54, Title 20 and Title 21.~~

~~—(5)— Director of public works and department employees designated by director: Chapter 8.16, Chapter 9.30, Title 12, Chapter 13.08 and Chapter 13.16.~~

~~—(6)— Health department of Santa Clara County: Title 6, Title 8, Chapter 16.56.~~

~~—(7)— The city manager shall have the power to designate by written order that particular officers and employees, in addition to those specified in this section, shall have the power to issue citations for violations of specified chapters of this code.~~

SECTION 3. SECTION 1.05.020 AMENDED. Section 1.04.020 of Chapter 1.05 (Administrative Citations) of Title 1 (General Provisions) of the Sunnyvale Municipal Code is hereby amended to read as follows:

**1.05.020. Definitions.**

For the purposes of this chapter, “enforcement officer” means any city employee or agent of the city with the authority to enforce any provision of this code, as designated by the city manager or department director.

SECTION 4. 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 5. 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 6. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 7. 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 \_\_\_\_\_, 2013, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on \_\_\_\_\_, 2013, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk  
Date of Attestation: \_\_\_\_\_

\_\_\_\_\_  
Mayor

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
Joan A. Borger, City Attorney