

REPORT FROM

## OFFICE OF THE CITY ADMINISTRATIVE OFFICER

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Council File No. 10-0085

Council District: --

To: The Mayor  
The Council

From: Miguel A. Santana, City Administrative Officer



Subject: **REPORT BACK ON DRAFT ORDINANCE TO ESTABLISH AN ADMINISTRATIVE CITATION ENFORCEMENT PROGRAM & CREATION OF A CODE COMPLIANCE FUND**

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### SUMMARY

The Budget and Finance Committee requested this Office to report back on a proposed draft ordinance that would create a citywide Administrative Citation Enforcement (ACE) program under the management of the Office of the City Attorney. The Ordinance would amend the Los Angeles Municipal Code and the Los Angeles Administrative Code to provide authority for city enforcement officers to issue administrative citations and would establish a special fund entitled the Code Compliance Fund. The Committee requested that a report be provided by this Office related to the development of the ACE program including discussion of collaboration with associated departments; an administrative plan relative to staffing and related costs associated with implementation; administration of the special fund; and the basis for penalty creation.

### Background

The Office of the City Attorney has prepared a draft ordinance which includes recommendations for the development and implementation of an administrative citation program to be utilized by departments who provide code enforcement services. Over the past year, various Council Committees have discussed the need for better citywide code enforcement tools (C.F. 09-2105, 10-0085) and in the Fiscal Year 2010-11 budget process, the Office of the City Attorney was instructed to prepare a draft ordinance creating an Administrative Citation Program. Specifically, the City Attorney was requested to complete a study on the challenges, operational issues, opportunities and feasibility of establishing an Administrative Citation Enforcement Program and present an enabling ordinance required for such a program.

### Purpose, Intent and Authority of Proposed Ordinance

The purpose of the Ordinance is to provide City enforcement officers an alternative enforcement method to issue administrative citations within their normal scope of work rather than issuing a verbal warning, a written Notice to Comply or other type of citation (e.g. Excessive Noise or Open Container violations) in order to protect and ensure public health and safety. The intent of the Ordinance is to deter code violation behavior and repeat offenders.

The authority to develop and implement an Administrative Hearing process already exists within current State law per the City Attorney's Office. Current State law authorizes municipalities to subject any violation of any ordinance enacted by the local agency to an administrative fine or penalty, provided that administrative procedures are created to "govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties".<sup>1</sup>

The Ordinance applies to any violation of the LAMC, including any violation of any order issued by a City Board or Commission and any violation of any condition or requirement imposed by the City.

### Department Collaboration

During consideration of this Ordinance at the Budget & Finance Committee meeting, Committee members raised concerns relative to the potential impact of this Ordinance on departments. The City Attorney's report indicated that copies of the proposed Ordinance were transmitted to the affected departments and requested that department's provide comment directly to Council or the appropriate Committees when considered. However, at the Committee meeting minimal feedback was provided and it was unclear how this Ordinance might benefit department enforcement caseloads. The City Attorney's Office identified the following City departments in their report as those that could benefit from utilizing the ACE program based on past code enforcement legal referrals: Animal Services, Building and Safety, Department of Transportation, Fire, Police, Housing and Planning.

This Office requested feedback from said departments, specifically as to how the ACE program would benefit their current code enforcement programs. Most departments anticipate some usage of administrative citations, however issuance will be determined on a case by case basis. Departments expressed concerns with training issues and the mechanism to be used to ensure full reimbursement of enforcement costs. Absent these concerns, most departments will use to address repeat offenders. A summary of the respective department responses are provided in Attachment A. The City Attorney further advises that should departments continue to use their current process there is nothing that precludes them from issuing an administrative citation at a later date.

### **Benefits of a Administrative Citation Program**

The development of a comprehensive administrative citation program will provide an additional tool for enforcement officers, which encourages code compliance thereby enhancing public health and safety. The City Attorney's Office intends to develop uniform standards, clear cut procedures and training relative to implementation. The following items are potential benefits of implementing such a program:

- *Creation of greater efficiencies and faster compliance* – Currently the process to enforce low level violations is labor intensive and time consuming. However, under the ACE program, enforcement officers, police officers and inspectors will have the ability issue administrative citations for low level violations, while achieving real-time compliance. For example, Animal Services will have the ability to enforce violations immediately rather than issue a Notice to Comply for circumstances where public safety is a concern. It is anticipated the issuance of

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<sup>1</sup> California Government Code Section 53069.4

an administrative citation will deter behavior and repeat violations thereby reducing the amount of time and effort spent on enforcement.

In addition, cases currently referred to the City Attorney's Office for review and filing with the court can take up to one year before being scheduled before a criminal court and adjudicated. This delay is due to other higher level cases being prioritized within the court system. With the ACE program, all contested citations have the potential ability to be reviewed and resolved within 60 to 90 days once it is referred to the City Attorney's Office and administratively adjudicated.

- *Cost Benefit* – Due to on-going fiscal concerns, additional budget balancing measures may include reduced citywide code enforcement services. The ACE program will allow for the ability to charge administrative fines for any municipal code violation along with the ability to recapture enforcement and administrative costs for departments where none may currently exist.
- *Better use of legal resources* –The Office of the City Attorney is mandated to prosecute all misdemeanors and other criminal violations of the Charter and ordinances within the jurisdiction of the City. This mandate ties up resources which might be used more effectively elsewhere. The ACE program would free up resources (city enforcement officers and city attorney staff) for more serious criminal and civil actions. For example, under an administrative process, the burden of proof is reduced versus a criminal filing which can be costly and labor intensive.
- *Additional Revenues* – Under the current process the City receives 90 percent of the base fine, while the additional statutory penalty assessments and any additional fees resulting from a misdemeanor conviction go to various County and State funds. Under the ACE program, the City could receive 100 percent of the administrative fine.

### **Potential Program Implementation**

The City Attorney's Office has started working towards developing the framework for program implementation, however key areas still need further development. Below are some areas which have been discussed with City Attorney's Office relative to potential implementation:

- *City Attorney Staffing Needs* - The City Attorney's Office would be responsible for the administrative citation and appeals process. No additional staffing is being requested to begin immediate implementation of this program. The workload may be minimal in the early stages of implementation and may be done within current resources. However because this program is an optional tool for departments, workload and associated staffing needs can vary and additional resources may be required at a later date. The City Attorney estimates that a total of six existing administrative and attorney staff who are already assigned to code enforcement activities will form the ACE division. In addition, preliminary discussions with the Superior Court indicate that Pro-Tem judges (attorneys who volunteer for the courts) may be utilized as the Administrative Hearing Officers at no cost to the City. This anticipated partnership with the Superior Court is highly beneficial since it clears up court dockets and enables court rooms to

be used for higher level cases while providing a cost savings to the City. All hearing decisions would be subject to further judicial review (Los Angeles County Supreme Court) per State Code and would continue to be handled by the City Attorney's Office.

- *Department Operations* – Under this proposed ordinance departments would have the authority to issue administrative citations as deemed appropriate. Code enforcement officers would be trained by the City Attorney's Office in the preparation of these citations including how to report relevant observations and the reasons for issuing a citation. Departments would follow the service procedures as outlined by the City Attorney's Office and would be responsible for tracking and collecting administrative fines for all non-contested citations. Departments would also be responsible for reporting all revenues received from such citations per guidelines to be established at a later date.
- *Hearing Office Location* – The location of a potential Hearing Office is being discussed within the City Attorney's Office. At this time we cannot estimate if any costs will be associated with this component.
- *Technology* – The City Attorney's Office is evaluating several technology options which would assist them in the tracking, collecting, and reporting of citations citywide along with the scheduling of administrative hearings. Specifically, they are reviewing the use of an automated citation tracking system similar to the Housing Department's centralized database or may consider the use of an outside vendor for citation processing. It is recommended that should this Ordinance be approved, that the City Attorney develop viable technology options and report back on potential costs, program implementation and source of funds relative to such options.
- *Administration of Code Compliance Fund* - The ordinance authorizes the City Attorney direct administrative oversight of the Code Compliance Fund and to further receive and make "advance deposits" into the Fund for those who wish to contest a citation thereby requesting an administrative hearing process. At the conclusion of an administrative hearing either a refund to the responsible party or a reimbursement to issuing department will be made. The amount will be based upon the disposition of the case as determined by the Hearing Officer. Details surrounding the mechanism to effectuate this process are pending further discussion.

Before the creation of any new trust fund, specific criteria must be considered based on current City Financial Policies (C.F. 04-1822-S5). The Financial Policies state that all City offices and departments requesting establishment of a new fund shall first request a report and recommendation from the Controller on the necessity of the new fund and include the Controller's report with any communication to City Council on the matter. Based on discussions with the Controller's Office, the necessity of a new fund is uncertain and that departments who issue citations also have the ability to manage "advance deposits" rather than having the City Attorney's Office manage them. It is recommended that the Controller's Office review the request and report back on the necessity to establish the new fund or recommend alternative administrative options.

Pending the outcome of the Controller's findings, we further recommend that an alternate department administer the special fund, including the reimbursement function. This type of

citywide administrative activity should reside with a department whom already performs similar functions. In addition, this would prevent the potential appearance of a conflict of interest from the general public relative to potential reimbursements should a citation be upheld. We have discussed these concerns with the City Attorney and they are open to having an alternate department administer the fund. Preliminary discussions have ensued with Office of Finance, however additional evaluation by Finance will need to occur relative to operational and system needs.

### Proposed Administrative Fines

The Budget and Finance Committee requested that additional information be provided relevant to the fine amounts set forth and the basis for such amounts. It is important to note, that if a violation is contested, the City Attorney's Office will conduct an "initial review" to determine the validity of the citation and the appropriate remedy. If following the "initial review" the City Attorney does not dismiss the citation and determines that the administrative remedy being sought is appropriate, the Responsible Person(s) may pay the fine or contest the violation and request an Administrative Hearing. At the hearing, the independent hearing officer may consider other factors and can deviate from the penalty schedule (by either increasing or reducing the fine) should the violation warrant such action. Based on discussions with the City Attorney, the proposed Administrative Fines are outlined into four categories as referenced in Ordinance Section 11.2.04 Administrative Fines:

1. Administrative Violations which are designated as infractions, the maximum fine or penalty will be the amount set forth in the appropriate LAMC Code for that particular infraction. If no amount is specified in such Code, the amount of the Administrative Fine shall not exceed subsections (b) and (c) of the California Government Code Section 36900.
2. Administrative Violations involving improvements to, or the use of buildings, structures, or land for which permits or approval are required but not obtained:
  - In developing these proposed Administrative Fine amount(s) per Day the City Attorney's Office contends that these fines are unique and that no other jurisdictions have such a penalty table. The City Attorney attempted to quantify the factors involved in such violations and created Administrative Fine amounts which would deter future code violations or repeat violations.
3. Administrative Violations involving sign regulations;
  - The proposed Administrative Fine amount(s) per Day are already effective and were approved by the Planning and Land Use Management (PLUM) Committee in May 2009.
4. All other Administrative Violations; have a four tier structure.
  - a) Two Hundred and fifty (\$250) dollars for the first violation;
  - b) Five Hundred dollars (\$500) for a second violation of the same code provision, statute, ordinance, order, condition or requirement;
  - c) One Thousand dollars (\$1,000) for a third or any subsequent violation of the same provision, statute, ordinance, order, condition or requirement;

- d) Nothing in this Section shall preclude or limit the Administrative Hearing Officer's authority to impose a greater Administrative Fine, not to exceed one thousand dollars (\$1,000), in accordance with Subsection (B) of Section 11.2.08.

The proposed Administrative Fine structure is comparable to that of the cities of Santa Ana, Del Mar and San Diego with current penalties ranging from One Hundred Dollars (\$100) up to One Thousand dollars (\$1,000). In addition, the City Attorney reports that the cities of San Diego, Fresno and Riverside County all provide for recovery of enforcement and administrative costs through their administrative citation programs.

### **Program Revenue**

The 2010-11 Adopted Budget recognized \$125,000 in revenue relative to the implementation of the Administrative Citation Program for the Animal Services Department. However, the Department states that it is unlikely any revenue will be realized this fiscal year due to other impacted animal service ordinances which will need to be subsequently amended, should this ordinance be approved. In addition, as part of the City Attorney's Operational Plan, approximately \$25,000 was included as anticipated salary reimbursements for administrative hearing work to be completed prior to the end of the 2010-11 Fiscal Year.

### **Further Analysis and Fiscal Concerns**

Although this Office recognizes the potential of this new program, it is not possible to determine at this time if this program will achieve full cost recovery given that additional unidentified costs have yet to be identified. We recommend that a six month pilot program be implemented with the Department of Animal Services. The pilot program would commence subsequent to the posting requirements and upon adoption of the ordinance. Implementation with the Department of Animal Services is recommended as they can benefit most readily from this program and have already anticipated more consistent usage of this program versus other departments (C.F. 09-2105). A pilot program will allow the City Attorney's Office the ability to evaluate the initial framework, make adjustments as necessary and provides additional time to explore alternative technology options as needed. It is recommended that the City Attorney's Office report back in six months on the status of implementation, program effectiveness and cost recovery. Thereafter, additional analysis by this Office will be conducted as to the feasibility of program expansion citywide.

### **RECOMMENDATIONS**

That the Council, subject to the approval of the Mayor:

1. Request the City Attorney amend the draft Ordinance establishing an Administrative Citation Enforcement Program, dated July 30, 2010 relative to the following: Section 11.2.04 Administrative Fines (2) square footage language so that it's use is permissible with all Building and Safety violations;

2. Approve the amended Ordinance establishing a six month Administrative Citation Enforcement Pilot Program limited to Animal Services;
3. Hold the request to establish the Code Compliance Trust Fund and request the Controller's Office to review the City Attorney's request and report back in sixty days on the necessity to establish the new fund or recommend alternative administrative options;
4. Request the City Attorney to amend related Animal Services ordinances to facilitate program implementation;
5. Request the City Attorney to report back in six months on the status of program implementation; and if applicable, identification of viable technology options, additional operational costs, program implementation and the potential source of funds.

## **FISCAL IMPACT STATEMENT**

The General Fund impact associated with this new program cannot be determined at this time. The Administrative Citation Enforcement program is estimated to generate approximately \$25,000 in new revenue for 2010-11 within the City Attorney's Office. In addition, \$125,000 in full-year budgeted revenue for Animal Services Department citation enforcement is not likely to be received and will impact the General Fund. Other potential costs associated with implementation such as technology and spacing issues have not been identified and may result in a future General Fund impact.

*MAS:IR:04110026c*

*Attachment*

Attachment A

Department	Violation	Feedback
Animal Services	Leash laws, barking dogs, no license, tethering, roosters, transfer permits	Department will consider usage on a case by case basis when determining which violations are better suited for the proposed ACE program and most likely will be used to address repeat offenders. If approved, the department reports other ordinances relative to the humane treatment of animals and human-animal safety will subsequently be amended. In addition, this program will allow for the collection of an administrative fine or penalty, and cost recovery for enforcement and administrative services which currently is not feasible. The department states they have limited staffing and do not have additional resources to track, bill or collect fines on an on-going basis.
Building and Safety	Building and zoning	Department will consider usage on a case by case basis when addressing violations through the proposed ACE program versus the current enforcement and appeals process. This program will most likely be used to address repeat offenders. Training by City Attorney's Office will be critical. In addition to the proposed ACE program, a Code Violation Inspection Fee approved by Council will also effectively provide reimbursement to recover costs of initial inspections.
Transportation	Taxi cab bandits and unlicensed vehicles, Ambulance violations	Hearings are held for these cases but violations are often repeated. Should fines or penalties be severe enough to deter the activity, this ordinance would be meaningful. Department further recommends a vehicle release fee associated with impounds, which should be considered as a separate matter.
Fire	Brush Clearance, Fire System Maintenance	Department is reviewing ordinance and will provide CAO feedback at a later date.
Police	Vice related items; Noise violations, drinking in public, party houses, hotel registries.	Police Commission states they may be able to use this process for noise violations. The Los Angeles Police Department will review ordinance and will provide CAO feedback at a later date.
Housing (Systematic Code Enforcement Program)	Unapproved construction and zoning violations for multi-family rental properties	Current cases remain with Housing case management for extended periods and are referred to City Attorney based on severity of non-compliance. The ACE program will be an efficient alternative for these cases and community blight issues. Training program implemented by City Attorney will be crucial to the success of this proposal.
Planning	Conditional use permits or planning requirements	All enforcement is handled by Building and Safety