

ORDINANCE NO. 2021-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING SECTION 1.05.020, SECTION 1.05.060, AND SECTION 1.12.020 OF THE NEWPORT BEACH MUNICIPAL CODE TO INCREASE FINES FOR VIOLATIONS OF THE MUNICIPAL CODE AND SHORTEN THE ADMINISTRATIVE CITATION APPEAL PERIOD

WHEREAS, Section 200 of the Charter of the City of Newport Beach ("Charter") vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitutions, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California; and

WHEREAS, the City Council finds and declares that it is the intent of this ordinance to protect the public health, safety, general welfare, and provide for the public enjoyment of the City and that violations of the Newport Beach Municipal Code are a public nuisance, a threat to the public health, safety and general welfare and prevent the public from enjoying the City.

NOW THEREFORE, the City Council of the City of Newport Beach ordains as follows:

Section 1: Section 1.05.020 (Authority and Administrative Citation Fines) of Chapter 1.05 (Administrative Code Enforcement Program) of Title 1 (General Provisions) of the Newport Beach Municipal Code is hereby amended to read as follows:

1.05.020 Authority and Administrative Citation Fines.

A. Any responsible person violating any provision of this Code may be issued an administrative citation by an Enforcement Officer as provided in this chapter. A violation of this Code includes, but is not limited to, all violations of the Newport Beach Municipal Code, any codes adopted by the City Council (i.e., Building Code, Fire Code, etc.), and the failure to comply with any condition imposed by any entitlement, permit, agreement or environmental document issued or approved pursuant to this Code or State law.

B. Each and every day a violation of this Code exists constitutes a separate and distinct offense.

C. An administrative fine shall be assessed by means of an administrative citation issued by the Enforcement Officer and shall be payable directly to the City.

D. Where the violation is designated an infraction, the administrative fine shall be the same as set forth in Section 1.04.010(A). Where the violation is not designated an infraction, and no administrative fine amount is specified, established by resolution of the City Council, or established by any other provision of this Code, administrative fines shall be assessed in the following amounts:

1. A fine not exceeding two hundred dollars (\$200.00) for a first violation;
2. A fine not exceeding three hundred dollars (\$300.00) for a second violation of the same ordinance or permit within one year from the date of a prior violation;
3. A fine not exceeding six hundred dollars (\$600.00) for a third violation, or any subsequent violation, of the same ordinance or permit within one year from the date of the prior violations.

E. In the case of administrative citations issued for violations in a Safety Enhancement Zone established pursuant to Section 1.04.060 of this Code which are designated an infraction, administrative fines shall be the same as set forth in Section 1.04.010(B). In the case of administrative citations issued for violations in a Safety Enhancement Zone established pursuant to Section 1.04.060 of this Code which are not designated an infraction, administrative fines shall be assessed in the following amounts:

1. A fine of four hundred dollars (\$400.00) for a first violation;
2. A fine of seven hundred dollars (\$700.00) for a second violation of the same ordinance or permit within one year from the date of a prior violation;
3. A fine not exceeding one thousand dollars (\$1,000.00) for a third violation, or any subsequent violation, of the same ordinance or permit within one year from the date of the prior violations.

F. In the case of administrative citations issued for violations of Chapter 5.28 [Live Entertainment Establishments]; Chapter 5.32 [Cafe Dances]; Chapter 5.95 [Short Term Lodging Permit]; Section 10.50.020(H) [violation of terms or conditions of a use permit issued by the City]; Section 14.36.030 resulting in bay or beach closure [Illicit Connections and Prohibited Discharges]; California Fire Code Section 107.5 (as adopted by Code Section 9.04.010); California Fire Code Section 107.5.1 (as adopted by Code Section 9.04.010); 17.45.030 [Waste and Refuse]; or Chapter 17.10 [Marine

Activities Permit], administrative fines shall be assessed in the following amounts when authorized by the City Manager or his or her designee:

1. A fine not exceeding one thousand dollars (\$1,000.00) for a first violation;
2. A fine not exceeding two thousand dollars (\$2,000.00) for a second violation of the same ordinance or permit within one year from the date of the prior violation;
3. A fine not exceeding three thousand dollars (\$3,000.00) for a third violation, or any subsequent violation, within one year from the date of the prior violations.

G. All fines imposed under this section shall be due and payable to the City's Finance Department within thirty (30) days from the service of an administrative citation.

H. The fines imposed under this section shall be in addition to any other fines, penalties, and/or fees imposed for violations of this Code or local, State, and/or Federal law.

Section 2: Section 1.05.060 (Appeal of Administrative Citation) of Chapter 1.05 (Administrative Code Enforcement Program) of Title 1 (General Provisions) of the Newport Beach Municipal Code is hereby amended to read as follows:

1.05.060 Appeal of Administrative Citation.

A. Any recipient of an administrative citation may contest that there was a violation of the Code or that he or she is the responsible person by completing a request for hearing form and returning it to the City's Finance Department within twenty-one (21) calendar days from the date of service of the administration citation, together with an advanced deposit of the fine or a notice that a request for an advance deposit hardship waiver pursuant to subsection (B) of this section has been filed. Any administrative citation fine which 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 charged in the administrative citation.

B. Any responsible person who requests a hearing to contest that there was a violation of the Code or that he or she is the responsible person for the violation and who is financially unable to make the advance deposit of the fine as required may file a request for an advance deposit hardship waiver within fifteen (15) calendar days from the date of service of the citation. The failure of any person to timely file a written request for an advance deposit hardship waiver with the City's

Finance Director, or his or her designee, shall be deemed a failure to exhaust the person's administrative remedies with regard to the advance deposit hardship waiver.

1. The request for an advance deposit hardship waiver shall be in writing and describe with particularity the responsible person's actual financial inability demonstrating why all or a part of the fine cannot be paid. Further, the written request for an advance deposit hardship waiver must be accompanied by a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the City's Finance Director, or his or her designee, the responsible person's actual financial inability that necessitates an advance deposit hardship waiver. The City's Finance Director, or his or her designee, is entitled to request additional documentation and information from the responsible person in order to fully assess the waiver request. The failure of any responsible person to timely submit all requested additional documentation and information to the City's Finance Director, or his or her designee, as requested shall be deemed a failure to exhaust the responsible person's administrative remedies with regard to the advance deposit hardship waiver.
2. Once a complete written request for an advance deposit hardship waiver is filed with the City's Finance Director, or his or her designee, the requirement of depositing the full amount of the fine shall be stayed until the City's Finance Director, or his or her designee, determines whether to grant, grant in part, or deny the request. The written determination of the City's Finance Director, or his or her designee, shall be served on the person requesting the advance deposit hardship waiver as provided for in this Code. The written determination of the City's Finance Director, or his or her designee, shall be final.
3. If the City's Finance Director, or his or her designee, grants the advance deposit hardship waiver, the responsible person shall not be required to deposit the fine in advance of the hearing.
4. If the City's Finance Director, or his or her designee, grants in part the advance deposit hardship waiver, the responsible person shall remit that amount of the fine as a deposit that the City's Finance Director, or his or her designee, determines the responsible person has the ability to pay within ten (10) calendar days of that decision or twenty-one calendar (21) days from service of the administrative citation, whichever is later.
5. If the City's Finance Director, or his or her designee, denies the request for an advance deposit hardship waiver, the responsible person

shall remit the full amount of the fine as a deposit to the City within ten (10) calendar days of that decision or twenty-one calendar (21) days from service of the administrative citation, whichever is later.

6. The granting, or granting in part, of any request for an advance deposit hardship waiver shall not excuse or discharge any continuation or repeated occurrence of any violation of this Code, nor shall it bar further enforcement action by the City.

7. The granting, or granting in part, of any request for an advance deposit hardship waiver shall not excuse the responsible person from paying the full amount of the fine if the administrative citation is upheld by the hearing officer following an administrative hearing.

Section 3: Subsection (B) of Section 1.12.020 (NBMC Authority of Public Officers or Employees to Issue Citations) of Chapter 1.12 (Citations and Warrants) of Title 1 (General Provisions) of the Newport Beach Municipal Code is hereby amended to read as follows:

B. The Fire Chief, Public Works Director and Harbormaster, and members of the staff designated by the Fire Chief, Public Works Director and Harbormaster, shall have the power to issue citations for any violation of Titles 5, 11 and 17, Chapters 7.04, 7.16, 7.20, and 7.30, Sections 6.04.050, 6.04.190 and 10.06.010, the Fish and Game Code of the State of California, Title 14 of the California Code of Regulations, the provisions of the Health and Safety Code of the State of California that pertain to animals and the provisions of Chapter 5 of Division 3 of the Harbors and Navigation Code of the State of California.

Section 4: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 5: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 6: The City Council finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 7: Except as expressly modified in this ordinance, all other Sections, Subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

PROPOSED

Section 8: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 11th day of May, 2021, and adopted on the 25th day of May, 2021, by the following vote, to-wit:

AYES, COUNCILMEMBERS _____

NOES, COUNCILMEMBERS _____

ABSENT COUNCILMEMBERS _____

BRAD AVERY, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY