

ORDINANCE NO. 2015-19

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AMENDING ESCONDIDO MUNICIPAL CODE
CHAPTER 1A ADMINISTRATIVE REMEDIES

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN AS
FOLLOWS:

SECTION 1. That Escondido Municipal Code Chapter 1A Administrative Remedies, Section 1A-2 is hereby repealed and replaced as follows:

Sec. 1A-2. Administrative citations authorized.

Any person violating provisions of this code may be issued an administrative citation, which is a civil penalty, by an enforcement officer as provided in sections 1A-6, 1A-7 and 1A-8 of this code. This chapter shall apply only to those titles and chapters of this code for which the city council has prescribed a civil penalty.

SECTION 2. That Escondido Municipal Code Chapter 1A Administrative Remedies, Section 1A-4, is hereby repealed and replaced as follows:

Sec. 1A-4. Definitions.

- (a) City means the City of Escondido.
- (b) Code means the Escondido Municipal Code, the Escondido Zoning Code, or any law, rule, regulation, or code which is adopted by reference.
- (c) Enforcement officer means any person authorized to enforce violations of this code.

(d) Hearing officer means any person appointed by the city manager to preside over the administrative hearings provided for in section IA-9 of this code.

(e) Party means any natural person, firm, association, business, trust, organization, corporation, partnership, company, or any other entity which is recognized by law as the subject of rights or duties.

(f) Penalty shall include "civil penalty" and shall mean the amount assessed for violation of this code pursuant to the administrative citation.

(g) Person means any natural person, firm, association, business, trust, organization, corporation, partnership, company, or any other entity which is recognized by law as the subject of rights or duties.

(h) Reinspection Fee shall mean a fee charged against a responsible person who has become the subject of city enforcement of state or local law, and for which there is a need to recover the city's actual cost of a second or any subsequent inspection of the property, caused by the responsible party's failure to comply with a lawful order from an enforcement officer. The amount of this fee shall be set by periodic resolution of the city council.

(i) Respondent means any person or entity who is the registered owner, property owner, legal owner, driver, operator, tenant, lessee, or is otherwise liable for penalties in accordance with the applicable section of this code, and who contests or disputes liability for civil penalties.

(j) Responsible Person or Party shall mean an owner of any property, a person who is responsible for control of the property or the condition of the property, or a

person who is responsible for repair or maintenance of the property.

SECTION 3. That Escondido Municipal Code Chapter 1A Administrative Remedies, Section 1A-9, is hereby repealed and replaced as follows:

Sec. 1A-9. Appeal of administrative citation.

(a) Persons receiving an administrative citation may appeal it within ten (10) calendar days from the date the citation is served. The appeal must be in writing and must indicate a return address. It must be accompanied by the penalty amount, specifying the basis for the appeal in detail, and must be filed with the city as indicated in the administrative citation. If the deadline falls any day City Hall is closed, then the deadline shall be extended until the next regular business day.

(b) As soon as practicable after receiving the written notice of appeal, the city agency shall fix a date, time and place for hearing before a hearing officer. Written notice of the time and place for the hearing may be served by first class mail, at the return address indicated on the written appeal. Service of the appeal notice must be made at least ten (10) days prior to the date of the hearing to the party appealing the citation.

(c) The failure of any person with an interest in the property, or other responsible party, to receive such properly addressed notice of the hearing shall not affect the validity of any proceedings under this chapter. Service by first class mail, postage prepaid shall be effective on the date of mailing.

(d) Failure of any person to file an appeal in accordance with the provisions of this section shall constitute a waiver of that person's rights to administrative

determination of the merits of the citation and the amount of the penalty. If no appeal is filed, the citation shall be deemed a final administrative order.

(e) A hearing officer shall be designated by the city manager for all appeal hearings under this chapter. The respondent may request the city manager recuse a hearing officer for reasons of actual prejudice against the party's cause. The hearing officer shall conduct an orderly fair hearing and accept evidence on which persons would commonly rely in the conduct of their ordinary business affairs as follows:

(1) A valid citation shall be prima facie evidence of the violation;

(2) The hearing officer shall accept testimony by declaration under penalty of perjury relating to the violation and the appropriate means of correcting the violation;

(3) The owner, agent, person responsible for the violation, or any other interested person may present testimony or evidence concerning the violation and the means and time frame for correction.

(f) The city manager shall establish all appropriate administrative regulations for implementing this chapter, conducting hearings and rendering decisions pursuant to this section.

(g) The hearing officer may reduce, waive or conditionally reduce the penalties stated in a citation or any late fees assessed if mitigating circumstances are shown and the hearing officer states specific grounds for reduction or waiver in the written decision. The hearing officer may impose conditions and deadlines for correction of violations or payment of outstanding penalties.

(h) The hearing officer shall make findings based on the record of the hearing and make a written decision based on the findings. The processing agency shall preserve all exhibits submitted by the parties and shall serve the decision by first class mail on the respondent within ten (10) working days after the hearing. The decision of the hearing officer dismissing the citation is final and conclusive. The decision of the hearing officer affirming the citation is final and conclusive, subject only to review by the superior court. There are no appeals to the city council.

SECTION 4. That Escondido Municipal Code Chapter 1A Administrative Remedies, Section 1A-10, is hereby repealed and replaced as follows:

Sec. 1A-10. Court review procedures.

(a) After receipt of the hearing officer's decision, the respondent may file an appeal with the superior court for de novo review. The request for review shall be submitted within twenty (20) days of the date of mailing of the hearing officer's decision. The request for superior court review shall state the reasons the party objects to the hearing officer's findings or decision.

(b) The superior court shall conduct a de novo hearing except the contents of the processing agency file shall be received into evidence.

(c) A copy of the notice of violation and imposition of penalty shall be entered as prima facie evidence of the facts stated therein.

(d) The superior court filing fee shall be twenty-five dollars (\$25.00). If the court finds in favor of the respondent, the amount of the fee shall be reimbursed to the

respondent by the city. Any deposit of penalty shall be refunded by the city in accordance with the judgment of the court.

(e) If the penalty has not been deposited, and the decision of the court is against the respondent, the city may proceed to collect the civil penalty in the manner provided by law.

SECTION 5. That Escondido Municipal Code Chapter 1A Administrative Remedies, Section 1A-11, is hereby repealed and replaced as follows:

Sec. 1A-11. Penalties assessed.

(a) The penalty amount shall be assessed at a rate as adopted by resolution of the city council as follows:

(1) One hundred dollars (\$100) for the first violation;

(2) Two hundred fifty dollars (\$250) for the second violation of the same provision within one year;

(3) Five hundred dollars (\$500) for the third and each subsequent violation of the same provision within one year.

(b) If the violator or property owner fails to correct the violation, subsequent administrative citations may be issued for the same violation(s).

(c) Payment of the penalty shall not excuse the failure to correct the violation nor shall it bar further enforcement action by the city.

(d) All penalties assessed shall be payable to the city.

(e) The failure of any person to pay a penalty assessed by administrative citation within the time specified on the citation constitutes a debt to the city. To enforce

that debt, the city may file a civil action, impose a special assessment as set forth below, or pursue any other legal remedy to collect such money.

(f) The city may impose a special assessment against the property that is the subject of a citation if the citation has been issued to the property owner. The city shall record a notice of lien in the office of the county recorder when the special assessment procedure is used. When so made and confirmed, the cost shall constitute a lien on that property for the amount of the assessment. After confirmation and recordation, a copy shall be turned over to the San Diego County tax collector. At that point, it will be the duty of the tax collector to add the amounts of the respective assessments to the next regular property tax bills levied against the lots and parcels of land for municipal purposes. Those amounts shall be collected at the same time and in the same manner as ordinary property taxes are collected, and shall be subject to the same penalties and procedures under foreclosure and sale as provided for with ordinary municipal taxes. Or, after recording, the lien may be foreclosed by judicial or other sale in the manner and means provided by law.

(g) Any administrative penalty assessed under this chapter may also include a reinspection fee, as defined in section 1A-4.

SECTION 6. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 7. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 8. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be prepared in accordance with Government Code section 36933, to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the County and circulated in the City of Escondido.

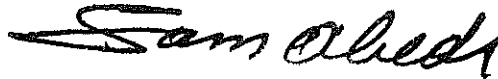
PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 21st day of October, 2015 by the following vote to wit:

AYES : Councilmembers: DIAZ, GALLO, MASSON, MORASCO, ABED

NOES : Councilmembers: NONE

ABSENT : Councilmembers: NONE

APPROVED:



SAM ABED, Mayor of the
City of Escondido, California

ATTEST:



DIANE HALVERSON, City Clerk of the
City of Escondido, California

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO : ss.
CITY OF ESCONDIDO)

I, DIANE HALVERSON, City Clerk of the City of Escondido, hereby certify that the foregoing ORDINANCE NO. 2015-19 passed at a regular meeting of the City Council of the City of Escondido held on the 21st day of October, 2015, after having been read at the regular meeting of said City Council held on the 7th day of October, 2015.



DIANE HALVERSON, City Clerk of the
City of Escondido, California

ORDINANCE NO. 2015-19