

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO:** Honorable City Council  
**FROM:** Captain Ron Nelson *RNelson*  
**DATE:** December 22, 2008 (CC Meeting of 1/7/09)  
**SUBJECT:** Consider an Ordinance Amending Sections 1.10.020.C, 1.10.060, and 1.10.070 of Chapter 1.10, Code Violations, Penalties and Enforcement, of Title 1, General Provisions, of the Moorpark Municipal Code

**SUMMARY**

The Moorpark Municipal Code (MMC) currently defines all of its applicable codes as misdemeanors, with a potential fine up to \$1,000 and/or imprisonment. The MMC provides for the ability to prosecute applicable codes as infractions at the discretion of the prosecuting attorney (City Attorney). The current process to file a simple misdemeanor MMC case with the Superior Court and prosecute the offender is inefficient in terms of the process and the associated costs to the City of Moorpark. By changing the code to allow law enforcement officers discretion to cite offenders for either an infraction or a misdemeanor, the overall process can be much more efficient, cost effective, and still hold violators accountable for their actions.

**BACKGROUND/DISCUSSION**

Moorpark Municipal Code section 1.10.020.C currently states the following:

Any person violating any of the provisions of this code is guilty of a misdemeanor, unless the offense is specifically classified in this code or by state law as an infraction. However, the city attorney is authorized to file or charge any violation of this code as either a misdemeanor or infraction or reduce any charge filed as a misdemeanor to an infraction.

When a violator is cited or arrested for a misdemeanor MMC, a copy of the citation and all associated reports are provided to the City Attorney for review. The reviewing City

Attorney has the responsibility to review the case to ensure that the elements of the crime are met, and that proper legal procedures were followed so that the case can be prosecuted in the Superior Court. The reviewing City Attorney must then prepare court documents and file the case and related reports with the Superior Court Clerk. The City Attorney must appear in court on behalf of the City during associated hearings such as arraignments, pre-trial hearings, court or jury trials, and sentencing hearings. These appearances require that the City Attorney be present at the courthouse of record, either in Simi Valley or Ventura.

If a violator was booked into jail for the charge and remains in custody, all the preparation must be done within the court's mandatory time frame of two business days (48 hours), which requires all investigation reports to be completed, charges to be filed with the court clerk, and court appearances made within the time limit.

Some of the violations of the MMC involve relatively minor offenses, such as:

- Drinking in Public
- Dogs off the Leash
- Amplified Noise Heard Over 50 Feet
- Illegal Solicitors

The majority of MMC cases identified and put forth for prosecution are minor in nature. A few cases, especially those involving repeat offenders, may benefit from more stringent prosecution. If minor offenses were to be cited as an infraction, the citation could be filed directly with the court clerk by the Police Department, similar in process to the handling of a traffic citation. The citing officer would be responsible for testifying in court. The procedure would allow for an appropriate fine amount to hold the violator accountable, but not at the expense of requiring an attorney to see the case through the court processes. Appropriate language in the MMC, allowing officers the discretion to cite for either an infraction or misdemeanor, would allow more serious cases to be handled as misdemeanors by the City Attorney.

A review of all of the Municipal Codes for the ten incorporated cities in Ventura County revealed that half of them allowed cases to be handled as infractions at the discretion of the arresting officer. The cities are listed below:

- Camarillo – Discretion with City Attorney
- Fillmore – Discretion with Officer
- Moorpark – Discretion with City Attorney
- Ojai – Discretion with Officer
- Oxnard – Discretion with City Attorney
- Port Hueneme – All codes are infractions
- Santa Paula – Discretion with City Attorney

- Simi Valley – Discretion with Officer
- Thousand Oaks – Discretion with Officer
- Ventura – All codes are identified as either Infraction or Misdemeanor

The suggested language of the new code would read:

Any person violating any of the provisions of this code may be prosecuted as an infraction punishable by fine, or as a misdemeanor and punishable by fine or imprisonment, or both, in accordance with Government Code Section 36900, et seq., unless the offense is specifically classified in this code or by state law as an infraction. All violations shall be a misdemeanor unless made an infraction by: (1) the City Attorney filing a complaint in the Municipal Court specifying that the offense is an infraction; or, (2) the issuing of a citation by an officer specifying that the violation is an infraction; or, (3) the City Attorney making a motion in court to reduce a misdemeanor to an infraction if such motion is made prior to the trial on the matter.

Pursuant to Section 1.10.060, persons convicted of a misdemeanor violation of the MMC are subject to a fine of not more than one thousand dollars (\$1,000), or by imprisonment not to exceed six (6) months, or by both fine and imprisonment.

MMC Section 1.10.070(B) currently provides for the fines for persons convicted of an infraction:

1. A fine not exceeding one hundred dollars (\$100.00) for a first (1<sup>st</sup>) conviction;
2. A fine not exceeding two hundred dollars (\$200.00) for a second (2<sup>nd</sup>) violation of the same code section within the previous twelve (12) months;
3. A fine not exceeding five hundred dollars (\$500.00) for each additional violation of the same code section within the previous twelve (12) months.

The fine amounts specified in Sections 1.10.060 and 1.10.070 are established by Sections 36901 and 36900 of the California Government Code, and the attached draft ordinance includes language to revise Sections 1.10.060 and 1.10.070 to delete specific fine amounts and term of imprisonment and instead reference the applicable sections of the Government Code. If the applicable Government Code language is subsequently amended, the City would not have to amend the MMC.

The City Attorney has reviewed the attached draft ordinance and concurs with the proposed amendments.

**FISCAL IMPACT**

There is no additional cost to implement this change to the MMC. It is estimated that officers with the Moorpark Police Department encounter violators of the MMC several times per month. Given the current budget appropriation for legal costs, the City has the resources to prosecute on average one case every other month. Because the majority of cases involve minor violations that could be prosecuted as infractions with little to no extra expense to the City, the City could realize a potential savings, while also holding persons accountable for violating the MMC.

**STAFF RECOMMENDATION**

Introduce Ordinance No. \_\_\_ for first reading; waive full reading, and schedule second reading and adoption for January 21, 2009.

Attachment: Draft Ordinance

ATTACHMENT

ORDINANCE NO. \_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, AMENDING SECTION 1.10.020.C CODE VIOLATIONS, SECTION 1.10.060 MISDEMEANOR PENALTIES, AND SECTION 1.10.070 INFRACTION PENALTIES, OF CHAPTER 1.10 CODE VIOLATIONS, PENALTIES AND ENFORCEMENT, OF TITLE 1 GENERAL PROVISIONS, OF THE MOORPARK MUNICIPAL CODE

WHEREAS, Section 1.10.020.C of the Moorpark Municipal Code presently requires that any person violating any of the provisions of the Municipal Code is guilty of a misdemeanor, unless the offense is specifically classified in the Municipal Code or by state law as an infraction, or unless the City Attorney's office, in its discretion, prosecutes the violation as an infraction; and

WHEREAS, Section 1.10.020.C of the Moorpark Municipal Code is proposed to be amended to change the classification of violations from misdemeanors to infractions or misdemeanors to improve the efficiency of the prosecution of persons charged with violations of the code by conserving resources in the prosecution of minor offenses as infractions, while still retaining the discretion to prosecute more serious offenses, or offenses by repeat offenders, as misdemeanors; and

WEREAS, Sections 1.10.060 and 1.10.070 of the Moorpark Municipal Code are proposed to be amended to reference California Government Code Section 36901 for misdemeanor penalties and 36900 for infraction penalties.

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

SECTION 1. Section 1.10.020.C of the Moorpark Municipal Code is amended in its entirety to read as follows:

"Any person violating any of the provisions of this code may be prosecuted as an infraction punishable by fine, or as a misdemeanor and punishable by fine or imprisonment, or both, in accordance with Government Code Section 36900, et seq., unless the offense is specifically classified in this code or by state law as an infraction. All violations shall be a misdemeanor unless made an infraction by: (1) the City Attorney filing a

complaint in the Municipal Court specifying that the offense is an infraction; or (2) the issuing of a citation by an officer specifying that the violation is an infraction; or (3) the City Attorney making a motion in court to reduce a misdemeanor to an infraction if such motion is made prior to the trial on the matter.”

SECTION 2. Section 1.10.060 of the Moorpark Municipal Code is amended in its entirety to read as follows:

“Any person convicted of a misdemeanor for the violation of this code may be punished by the maximum fine or by imprisonment as established by Government Code Section 36901, or by the imposition of both such fine and imprisonment.”

SECTION 3. Section 1.10.070 of the Moorpark Municipal Code is amended in its entirety to read as follows:

“Any person convicted of an infraction for the violation of this code, including any person convicted of an infraction for a violation of any city building or safety code, may be punished by the maximum fines permitted by Government Code Section 36900 et seq.”

SECTION 4. If any section, subsection, subdivision, sentence, clause, or portion of this ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have adopted this ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5. This ordinance shall become effective thirty (30) days after its passage and adoption.

SECTION 6. The City Clerk shall certify to the passage and adoption of this ordinance; shall enter the same in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published once in the Moorpark Star a newspaper of general circulation, as defined in Section 6008 of the Government Code, for the City of Moorpark, and which is hereby designated for that purpose.

PASSED AND ADOPTED this \_\_\_\_ day of January, 2009.

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Janice S. Parvin, Mayor

ATTEST:

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Deborah S. Traffenstedt, City Clerk