

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Dave Klotzle, City Engineer/Public Works Director 
Prepared by: Shaun Kroes, Senior Management Analyst

DATE: February 13, 2013 (CC meeting of 02/20/2013)

SUBJECT: Consider Policy for Review of Appealed Parking Citations

SUMMARY

The City Council is being asked to consider the adoption of a formal policy for the review and processing of City parking citations issued by Moorpark Public Works staff and Moorpark Police Department staff, and appealed by the recipient of the citation. Staff is also requesting that the City Council approve authorizing telephone interviews during the administrative review process.

BACKGROUND

On July 1, 1993, California decriminalized parking citations and removed parking citation processing from the courts and established a system of administrative adjudication for these offenses. The California Vehicle Code (CVC) §40215 and CVC §40230 describe three distinct steps for an individual wishing to contest a parking citation. The three steps are as follows:

1. The individual may request an initial review of the notice by the issuing agency (the individual then becomes an appellant).
2. If the appellant is not satisfied with the results of the initial review he/she may request an administrative hearing of the violation.
3. If the appellant is not satisfied with the outcome of the administrative hearing he/she may file an appeal through the Ventura County Municipal Court Small Claims Division-Parking Appeals (Court).

At any time during the process, the citation can be paid and the issue shall be closed. Late notices issued to appellants who are recorded as being in the process for contesting a

citation are suspended until the final outcome has been determined. Internal procedures for contesting a parking citation in the City have been followed by the Public Works Department and the Moorpark Police Department. Over time, acceptable explanations for canceling a street sweeping parking citation have been developed, but have never been formalized in a Council policy. The Review of Appealed Parking Citations document (Attachment 1) provides a formal policy for the City to review parking citations. The intention of the document is to provide clear limits of discretion for staff reviews of citation appeals and to help insure consistent application and outcomes for those who appeal a parking citation.

DISCUSSION

CVC §40215(a) states that a parking citation may be canceled if the request meets one of three criteria:

1. The violation did not occur. An example would be if an officer cited a vehicle for parking in a restricted street sweeping zone on Tuesday at 2:00 pm, but the actual restricted street sweeping zone was Monday between the hours of 9:00 am and Noon.
2. The registered owner was not responsible for the violation. For example, the vehicle received a citation after it had been stolen.
3. Extenuating circumstances. The CVC does not define "extenuating circumstances." Consequently, the City has established several criteria for canceling a parking citation, particularly for citations related to street sweeping.

The Review of Appealed Parking Citations also adds an additional option for the hearing examiner to consider appealed parking citations over the telephone. The CVC states that an appellant can request an in-person appeal or submit a written declaration (in lieu of attending the hearing). City staff proposes to also allow appellants to speak to the hearing examiner by telephone during a scheduled hearing. Staff has developed a "Parking Citation Phone Declaration" (Attachment 2) that an appellant would need to sign prior to the administrative hearing.

If approved, the attached Review of Appealed Parking Citations would be added to the Council Policies Resolution, becoming Policy 7.9 of Section 7 (Policies Administered by Public Works Department). The update would be added to the Council Policies during the next update.

FISCAL IMPACT

Revenue from parking citations goes to the General Fund (1000). Any citation that is canceled reduces City revenue. The attached document is intended to ensure that parking citations are canceled correctly and processing is fair and consistent for similar circumstances.

STAFF RECOMMENDATION

Approve a new City Council Policy 7.9, Review of Appealed Parking Citations, and direct that the new policy be incorporated into the City Council Policies Resolution at the time of the next update, subject to final language approval by the City Manager and the City Attorney for the Administrative Hearing Parking Citation Phone Declaration form.

Attachments:

1. Review of Appealed Parking Citations
2. Administrative Hearing Parking Citation Phone Declaration

Policy 7.9: Review of Appealed Parking Citations

This policy is intended to be consistent with the applicable requirements in the California Vehicle Code, which shall be controlling. California Vehicle Code (CVC) §40215 and CVC §40230, and as such may be amended from time to time, describe three distinct steps for an individual wishing to appeal a parking citation. The three steps are summarized as follows:

1. The individual may request an initial review of the notice by the issuing agency (the individual then becomes an appellant).
2. If the appellant is not satisfied with the results of the initial review he/she may request an administrative hearing of the violation.
3. If the appellant is not satisfied with the outcome of the administrative hearing he/she may file an appeal through the Ventura County Municipal Court Small Claims Division-Parking Appeals (Court).

At any time during the process, the citation can be paid and the issue shall be closed. Late notices issued to appellants who are recorded as being in the process for appealing a citation are suspended until the final outcome has been determined. Any additional procedures for appealing a parking citation in the City may be approved by the City Manager consistent with this policy. Currently, the Public Works Department provides initial review of citations issued by designated City employees. The Moorpark Police Department (Ventura County Sheriff's Office) provides initial review of citations issued by designated Police Department employees.

1. Initial Review:

- A. An appellant may request an initial review of the notice by telephone, in writing, or in person. For purposes of tracking citation appeals, an Initial Review of Parking Citation Form ("IRF") must be completed by the appellant in order for an initial review to take place. The City Receptionist shall receive the IRF before the IRF is reviewed for citations issued by both City employees and the Police Department. In instances where the appellant's IRF is incomplete, the City shall request additional information from the appellant in writing. The appellant shall have seven (7) calendar days to provide the requested additional information. If the appellant fails to provide the requested information within seven (7) calendar days, the appellant shall be found "Liable" for the citation.
- B. During the initial review, the respective Department evaluates the information and makes a determination which either confirms the citation or excuses the appellant from liability. CVC §40215(a) states that the issuing agency shall cancel a citation if it is satisfied that the violation did not occur, that the registered owner was not responsible for the violation, or that extenuating circumstances make dismissal of the citation appropriate in the interest of justice. For a detailed description of determining when an appellant is "Not Liable" see Section 7.9(4).

- C. If during the initial review, the issuing agency determines the appellant is "Not Liable," the IRF is forwarded to the City Manager for final approval.
- D. If during the initial review the issuing agency determines the appellant is "Liable," the appellant is informed in writing of the results. The appellant can either pay the citation (providing payment within twenty-one (21) calendar days from the date of the letter) or, the appellant can request to schedule an administrative hearing within twenty-one (21) calendar days from the date of the letter.
- E. The administrative hearing shall be performed by a hearing examiner. The hearing examiner shall be appointed by the issuing agency's chief executive officer. The hearing examiner shall meet the requirements specified in CVC §40215 and as amended from time to time.

2. Administrative Hearing Requests:

- A. Within twenty-one (21) calendar days of mailing the outcome of the City's IRF, the appellant may contact the City Receptionist to schedule an administrative hearing. The request may be done in person, over the phone or in writing. A hearing shall be conducted without the appellant present, if requested (referred to as a written declaration); or the appellant shall arrange to have the hearing completed by appearing and providing personal testimony. The appellant may also request to attend the hearing by telephone. If the appellant attends the hearing by telephone then the City shall advise appellant (in writing) that the phone hearing will limit the appellant's ability to see what is occurring during the hearing. The appellant who participates in a phone hearing will also be required to provide all evidence to the hearing examiner prior to hearing; no new evidence can be admitted during the administrative review. The City shall advise appellant (in writing) that if the appellant participates in a phone hearing then the appellant shall be waiving the right to contest on procedural due process grounds the outcome of the hearing.

Waiver of Administrative Hearing Prepayment Fee Due to Hardship:

- 1) If an appellant believes the requirement to prepay the parking citation is a financial hardship, he/she may request to have the prepayment requirement waived.
- 2) The appellant shall provide, in writing, a request to have the administrative hearing prepayment requirement waived.
- 3) The written request shall be presented to the City Manager.

- 4) The City Manager or designee shall determine if the appellant's request will be granted.
- 5) The appellant shall be notified of the outcome in writing.

3. Failure to Properly Post a Disabled Persons Parking Placard Resulting in a Violation:

- A. Per CVC §22507.8, it is unlawful for any person to park or leave standing any vehicle in a stall or space designed for disabled persons without properly displaying a valid disabled persons parking placard. A person who violates the disabled persons parking law shall be fined an amount established by City Council Resolution. Occasionally, a person with a valid disabled persons parking placard does not place his/her placard in plain view resulting in a citation. A disabled person in this situation may appeal the citation (appellant).
- B. The appellant shall fill out an IRF. To complete an IRF, three pieces of information are required: A valid disabled persons parking placard, a copy of the DMV placard identification, and a photocopy of a valid photo identification.
- C. If the appellant's placard is not expired, the identifications match, and the appellant who is issued the placard testifies that it was in his/her possession at the time of the citation, then the citation shall be cancelled during the initial review process.
- D. According to CVC §40226 the City may, in lieu of collecting a fine for a citation for failure to display a disabled persons parking placard, charge an administrative fee for processing citation cancellations in any case where an appellant who receives a citation shows proof that he/she had been issued a valid placard at the time the citation was received.

4. Cancellation of Parking Citations:

Upon submittal of a complete IRF and all required supplemental documentation, an appellant may be found "Not Liable" for a citation if one of the conditions below applies to the citation. The City Manager shall approve all findings of "Not Liable."

A. The violation did not occur:

- 1) The officer issued a ticket that was incorrect. For example, the officer cited a vehicle for parking in a restricted street sweeping zone on Tuesday at 2:00 p.m. but the actual restricted street

sweeping zone was Monday between the hours of 9:00 a.m. and Noon.

- 2) Commercial vehicles in a residential district are exempt from resolutions or ordinances relating to street sweeping, when the commercial vehicle is making pickups or deliveries of goods, wares, or merchandise from or to any building or structure located on the restricted street or highway, or for the purpose of delivering materials to be used in the repair, alteration, remodeling, or reconstruction of any building or structure for which a building permit has previously been obtained (CVC 22507.6).

B. The registered owner was not responsible for the violation:

- 1) The vehicle was stolen. The appellant would need to provide a valid police report to prove the theft.
- 2) The person sold/transferred the vehicle to another person. The appellant would need to show proof of sale or transfer. Also, the parking citation would then need to be transferred to the new vehicle owner.
- 3) Leased/rental vehicles. The person who leases or rents rather than owns a vehicle is jointly liable with the vehicle owner for citations issued to that vehicle. The lease or rental company that owns the vehicle has thirty (30) days to supply the name, address and driver's license number of the person that is leasing or renting the vehicle to the processing agency. If this information is supplied within the thirty (30) day time limit, liability is transferred to the lessee or renter and a notice of delinquent parking violation is mailed to the lessee or renter. If the thirty (30) day time limit is not met, there is no statutory requirement to transfer liability. Therefore, responsibility remains with the lease or rental company.

C. Extenuating Circumstances:

- 1) Inoperable vehicle. If a vehicle suffers a mechanical breakdown and if reasonable efforts are made to have the vehicle removed from the street, a citation for illegal parking issued while the car was incapacitated may be cancelled. To maintain the claim of "mechanical breakdown", four elements must be proven:
 - a) The appellant must prove that the breakdown actually occurred.

- b) The appellant must prove that the vehicle was not illegally parked before the breakdown occurred.
 - c) The violation must have resulted from the breakdown.
 - d) Reasonable steps must have been taken to remove the vehicle from the situation that caused the violation, including proof of repair occurring no later than three (3) calendar days from the date of violation.
- 2) Medical emergency. The appellant suffered, or was responding to, a medical emergency that prevented him/her from moving the vehicle. The appellant shall provide proof such as hospitalization records or an ambulance receipt. Medical emergency does not include scheduled procedures whereby the appellant had prior knowledge he/she was going to be at a hospital or doctor's office.
 - 3) Construction-related activities. A contractor who was providing services, such as home repair or installation services may have a street sweeping citation cancelled. This may apply to the property owner as well if the construction activities prevented him/her from parking in the garage or driveway. The appellant must provide the vehicle registration of the cited vehicle as well as proof that construction occurred. Proof could include a contract or receipt for services. If the contractor is requesting cancellation, he/she must have or obtain a valid business registration prior to cancellation of the parking citation. Cancellation of the citation shall be limited to one occurrence per vehicle per site.
 - 4) Non-neighborhood residency (street sweeping citation only). This is a one-time only waiver per location with a maximum of two locations in a twelve month period. The appellant shall provide a valid vehicle registration that shows an address from a different neighborhood than where the citation was issued. If the appellant's vehicle is registered to the neighborhood where the citation occurred, the citation will not be cancelled. If the appellant claims to have been at the location for work then the appellant shall (when applicable) have, obtain, or provide proof that the property owner has a valid business registration prior to cancellation of the citation.
 - 5) New to the neighborhood (street sweeping citation only). This is a one-time only waiver. An appellant who moved to the neighborhood where the citation was issued no more than sixty (60) days prior to receipt of a parking citation may be found "Not Liable" upon providing proof of new residency. Proof includes either a lease agreement or escrow papers, or, a utility bill indicating new

service start-up. The appellant shall also provide a copy of the vehicle registration.

- 6) Disabled person (street sweeping citation only). Policy 7.1 exempts vehicles with disabled person license plates or placards from the City's street sweeping parking restrictions. The appellant shall provide proof of disability as indicated in Section 7.9(3)(B).
- 7) Bereavement (street sweeping citation only). An appellant who has experienced the loss of a family member (defined as husband, wife, parent, brother, sister, child (including child beyond the first trimester of a pregnancy) step-child, grandchild, grandparent, father-in-law, mother-in-law, son-in-law, daughter-in-law, or step-parent) may be found "Not Liable" upon providing proof that the death occurred prior to receiving the parking citation. Proof includes, either, a published obituary or death certificate.
- 8) The City Manager or designee shall have the discretion to consider and grant cancelation of parking citation appeals that do not fall within the above criteria but meet the intent of a justifiable "extenuating circumstance."

City of Moorpark

799 Moorpark Avenue
Moorpark, CA 93021

Administrative Hearing Parking Citation Phone Declaration

Citation Number: _____

I, (Name): _____
am requesting the option of attending my Administrative Hearing via telephone instead of in person or through a written declaration.

I understand that by choosing to attend the Administrative Hearing by telephone I am limited in my ability to see the hearing examiner in person or see his activities during the hearing.

I understand that any and all evidence that I intend to provide the hearing examiner must be provided to and in the hearing officer's hands before the Administrative Hearing and therefore am unable to introduce new written evidence at the hearing.

By participating in the Administrative Hearing by phone I am waiving my right to an in-person hearing and thereby waiving my right to contest on procedural due process grounds the outcome of the hearing.

I declare, under penalty of perjury under the laws of the State of California, that any statements that I make during the Administrative Hearing shall be true and correct.

Executed by:

_____ on _____ at _____
(Name) (Date) (City & State)

Address: _____