

ORDINANCE NO. 56

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE APPLE VALLEY FIRE PROTECTION DISTRICT, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ADOPTING AN ADMINISTRATIVE CITATION PROGRAM.

THE BOARD OF DIRECTORS OF THE APPLE VALLEY FIRE PROTECTION DISTRICT ORDAINS AS FOLLOWS:

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1. Applicability

This ordinance provides for administrative citations, which are in addition to all other legal remedies, criminal or civil, which the District may pursue to address a violation of this code. Use of this ordinance is at the sole discretion of the District. This ordinance is authorized under Government Code Sections 53069.4 and Health and Safety Code Sections 13861(h) and (i), 13870 and 13871.

2. Definitions

For the purposes of this ordinance:

- A. "District" means Apple Valley Fire Protection District (AVFPD).

- B. "Code" or "this code" means any AVFPD Ordinance, the California State Fire Code, or the Health and Safety Code, or any condition of approval placed on development regarding the foregoing.
- C. "Continuing violation" means any violation of a Code when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to health or safety.
- D. "Fire Official" means any employee of the AVFPD within the Community Risk Reduction Division (CRRD) with the authority to enforce a provision of this code and appointed by the Fire Marshal to perform such functions.
- E. "Fire Marshal" means an employee of the AVFPD that supervises the Fire Official.
- F. "Hearing Officer" means the hearing officer appointed under section 9 of this ordinance.
- G. "Fire Chief" means an employee of the AVFPD that supervises the Fire Marshal and appoints the Hearing Officer.
- H. "Responsible person" means the owner, operator or person or entity otherwise in charge and control of property that is the subject of a violation, or who is otherwise causing, permitting or aiding and abetting in any violation of this Code.

3. Continuing Violations

If a violation is a continuing violation, the District shall provide a reasonable period of time for the responsible person to correct or otherwise remedy the violation before the imposition of an administrative fine. For any violation of the Code, other than a continuing violation, the Fire Official may impose an administrative fine concurrently with the issuance of the first administrative citation and on each subsequent administrative citation.

4. Administrative Citation

- A. Authority. Whenever a Fire Official determines that a violation of this code has occurred, the Fire Official has the authority to issue an administrative citation to the responsible person causing or permitting the violation.

B. Contents of Citation. Each administrative citation shall contain the following information:

- 1) The date of the violation.
- 2) The address or a definite description of the location where the violation occurred.
- 3) The section of this code violated and a description of the violation.
- 4) The amount of the fine, if applicable, for the code violation.
- 5) A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid.
- 6) An order prohibiting the continuation or repeated occurrence of the code violation described in the administrative citation.
- 7) A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request for hearing form to contest the administrative citation may be obtained.
- 8) The name and signature of the citing Fire Official.

C. Delivery of Citation. The administrative citation shall be delivered either of the following methods:

- 1) Personally, or
- 2) Sent by both first class mail and certified mail to the responsible person, as shown on the County Tax Assessor's Roll or otherwise known to the Fire Official.

D. Dismissal of Citation. At any time before the hearing, if the Fire Marshal determines that there was no violation as charged in the administrative citation or that the citation should be dismissed in the interest of justice, the Fire Marshal shall dismiss the administrative citation, cancel the hearing, and refund any administrative citation fine.

5. Amount of Fine

- A. **Maximum Amount of Fine.** The maximum amount of the fine imposed for each code violation under this ordinance shall be as set forth by AVFPD Board ordinance or resolution.
- B. **Additional Amounts.** In addition to the fine amount, the responsible person shall be liable to the District for all administrative costs, including, but not limited to, interest, late payment charges, costs of compliance re-inspections, and collection costs. These include:
- 1) **Administrative costs:** based on time spent by AVFPD staff, and supervisors, at the full cost hourly rate of each employee, including salary, benefits and overhead.
 - 2) **Late payment charges:** due at the rate of 10 percent (10%) per month.
 - 3) **Compliance re-inspections:** based on staff time at the full cost hourly rate.
 - 4) **Collection costs:** actual collection costs.
 - 5) **Attorneys' fees and costs.**
- C. **Discretion of Hearing Officer – Factors in Establishing Fine.** In determining the amount of the fine and additional amounts, the hearing officer has the discretion to set the fine lower than the maximum amount, or to reduce the additional costs, based on any or all of the following factors:
- 1) The duration of the violation;
 - 2) The frequency, recurrence and number of violations, related or unrelated, by the same violator;
 - 3) The seriousness of the violation;
 - 4) The good faith efforts of the violator to come into compliance;
 - 5) The economic impact of the fine on the violator;
 - 6) The impact of the violation on the community; and

7) Such other factors as justice requires.

6. Payment of the Fine

- A. Due Date. The fine shall be paid to the District within 30 days following the date of the administrative citation. The Fire Official may (but shall not be obligated to) suspend the imposition of fines for any period of time during which the violator has filed for necessary permits, and such permits are required to achieve compliance, and the permit applications are actively pending before the appropriate governmental agency.
- B. Refund. The District shall refund a fine paid if the hearing officer determines, after a hearing held under Section 10 hereof, that the person charged in the citation was not responsible for the violation or that there was no violation as charged.
- C. Further Violations Not Excused. Payment of a fine under this chapter shall not excuse or discharge any continuation or repeated occurrence of the code violation.

7. Hearing Request

- A. Hearing Request. A person who receives an administrative citation may contest the citation on the basis that there was no violation of the code or that he or she is not the responsible person. To contest the citation, the person shall submit a request for hearing to the District's Board Clerk within 30 days following the date of the administrative citation. The request form may be obtained from the Administrative office of the Fire District. The completed request must be submitted together with either an advance deposit of the fine or notice that a request for an advance deposit hardship waiver has been filed under Section 8 hereof.
- B. Notice of Hearing. The person requesting the hearing shall be notified, in writing, of the time and place set for the hearing at least 10 days before the date of the hearing.
- C. Additional Reports. If the Fire Official submits an additional written report concerning the administrative citation to the hearing officer for consideration at the hearing, then a copy of this report also shall be provided to the person requesting the

hearing at least five days before the date of the hearing.

8. Advance Deposit Hardship Waiver

- A. Request for Waiver. A person who intends to contest an administrative citation under Section 7 hereof and who is financially unable to make the required advance deposit of the fine may file a request for an advance deposit hardship waiver under this section.
- B. Filing. An advance deposit hardship waiver shall be filed with the District's Board Clerk on a form provided by the District. The application submitted shall include an affidavit, together with any supporting documents or materials, demonstrating the person's actual financial inability to deposit with the District the full amount of the fine. The waiver form shall be filed within 10 calendar days following the date of the administrative citation.
- C. Deposit Requirement Stayed. The requirements of depositing the fine shall be stayed unless or until the District makes a determination not to issue the advance deposit hardship waiver.
- D. Standard for Waiver. The Fire Chief may waive the requirement of an advance deposit under Section 7 hereof and issue the waiver only if the evidence submitted demonstrates to the satisfaction of the Fire Chief of the person's actual financial inability to deposit with the District the full amount of the fine in advance of the hearing.
- E. Written Determination. The Fire Chief shall issue a written determination listing the reasons for his or her determination to issue or not issue the advance deposit hardship waiver. The written determination of the Fire Chief is final. The written determination shall be served upon the person who applied for the waiver.
- F. Deposit Required If Waiver Denied. If the District determines not to issue a waiver, the person cited shall deposit the fine with the District's Board Clerk within 10 days following the date of that decision or 30 days following the date of the citation, whichever is later.

9. Hearing Officer

- A. The Fire Chief of the District shall designate the hearing officer for the administrative citation hearing. The hearing officer shall be an impartial person, including, but not limited to:
 - 1. A Town of Apple Valley employee assigned to the Building and Safety Section, or
 - 2. A Fire Department employee from a neighboring agency, or
 - 3. A person selected randomly from a panel of local attorneys who have been admitted to practice before the courts of this state for at least 5 years willing to volunteer as a hearing officer, or
 - 4. A person that the District utilizes for impartial hearing officer services.
- B. Should the person seeking the hearing reject the hearing officer selected by the District, then the hearing officer shall be hired from an organization which provides such hearing officer services and the cost therefore shall be shared equally by the District and the person cited.
- C. The employment, performance evaluation, compensation and benefits of the hearing officer shall not be directly or indirectly conditioned upon or affected by decision rendered or the amount of administration citation fines upheld by the hearing officer, if any.

10. Hearing Procedure

- A. **Setting the Hearing.** A hearing before the hearing officer shall be set for a date that is not less than 15 days nor more than 60 days following the date that the request for hearing is filed, unless agreed to by the Fire Official and the cited party. The person requesting the hearing shall be notified of the time and place set for the hearing as soon as it is set, and at least 10 days before the hearing. If the Fire Official submits a written report concerning the citation to the hearing officer for consideration at the hearing, then a copy of the report shall be served on the person requesting the hearing at least five days before the hearing. No hearing shall be held unless the fine has been deposited in advance, under Section 7(A) hereof, or

an advance deposit hardship waiver has been issued under Section 8 hereof.

- B. Failure to Appear. The failure of the person requesting the hearing to appear at the hearing shall constitute a forfeiture of the fine and a failure to exhaust his or her administrative remedies.
- C. At the Hearing. The administrative citation and any additional report submitted by the Fire Official shall constitute prima facie evidence of the respective facts contained in those documents. At the hearing, the party contesting the citation shall be given the opportunity to testify and to present evidence concerning the citation. Technical rules of evidence shall not govern the proceedings before the hearing officer.
- D. Continuances. The hearing officer may continue the hearing and may request additional information from the Fire Official or the person receiving the citation before issuing the decision.

11. Hearing Officer's Decision

- A. Decision. After considering the testimony and evidence presented at the hearing, the hearing officer shall issue a written decision to uphold, dismiss or modify the administrative citation. The hearing officer shall state the reasons for the decision and shall send a copy of the decision to the person requesting the hearing, the Fire Official, and the Fire Marshal. The decision of the hearing officer shall constitute the District's final administrative decision, and may not be appealed to the Board of Directors, Fire Marshal or Fire Chief.
- B. Status of Fine. If the citation is upheld, then the fine amount on deposit with the District shall be retained by the District. If the fine has not been deposited because there was an advance deposit hardship waiver, the hearing officer shall set forth in the decision a payment schedule for the fine.

If the citation is dismissed, the District shall promptly refund the amount of any fine deposited, together with interest at the average rate earned on the District's portfolio for the period of time that the fine was held by the District.

12. Late Payment Charges

Any person who fails to pay the District the fine imposed under this

chapter on or before the date that fine is due is also liable for the payment of the applicable late payment charges set forth in Section 5 hereof.

13. Recovery of Administrative Citation Fines and Costs

- A. **Costs of Securing Payment.** A person who fails to pay any fine or other charge owed to the District under this chapter is liable in any action brought by the District for all costs incurred in securing payment of the delinquent amount, including but not limited to administrative costs and attorney's fees. Such collection costs are in addition to any fines, interest, and late charges.
- B. **Other Costs.** In addition to the administrative citation fine, the District may collect its administrative costs, interest, late payment charges, costs of compliance re-inspections, and collection costs.
- C. **Collection.** The District may collect any past due administrative citation fine and other costs and charges by any available legal means. The District may use a third party to collect the fines and fees.

14. Right to Judicial Review

A person aggrieved by the hearing officer's decision on an administrative citation may obtain review of the decision by filing a petition for review with the Superior Court in San Bernardino County within 20 days after service of the final decision in accordance with the timelines and provisions set for in California Government Code Section 53069.4.

15. Notices

- A. **Method of Service.** The administrative citation and all notices required to be given by the District pursuant to this ordinance shall be served on the responsible person either by:
 - 1) Personal service, or
 - 2) By both first class mail and certified mail, return receipt requested.
- B. **Real Property.** When real property is involved in the violation, any original notice and the administrative citation and all notices required to be given by this ordinance shall be served

on the responsible person and, if different, to the property owner at the address as shown on the last equalized county assessment roll. If personal service or service by mail on the property owner is unsuccessful, a copy of each notice and the citation shall be conspicuously posted at the property which is the subject of the violation. The city may, in its discretion, also serve notice on a tenant, a mortgagor or any other person having an interest in the property.

- C. Failure to Receive Notice. The failure of a person to receive a required notice shall not affect the validity of any proceedings taken under this chapter.

16. Administrative Fine Schedule

- A. Violation Penalties. Every person who violates any provision of any the Code is guilty of a misdemeanor. The imposition of one penalty for any violation shall not excuse the violation or permit such violation to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and when not otherwise specified, each day that prohibited conditions are maintained shall constitute a separate offense.
- B. Maximum Amount of Fine Not Listed. The maximum amount of the fine imposed for any violation not listed in Administrative Fee Schedule ordinance or resolution, as such may be amended from time to time, may not exceed the maximum fine or penalty amounts for infractions set forth in subdivision (b) of Section 25132 of the California Government Code.
- C. Fireworks. Any violation pertaining to fireworks shall be subject to a fine of \$1,000. The fine amount shall be for each offense and may be imposed by the Fire Official cumulatively.
- D. Maximum Amount of Fine. The maximum amount of the fine Imposed for each code violation under this ordinance shall be as established and amended from time to time by Board resolution or ordinance.”

REVIEWED, APPROVED, AND ADOPTED at a regular meeting of the Board of Directors on this 20th day of June, 2017, by the following vote

AYES: Vice President Jay Jeffs, Director Michael Karen, President Dan Leary, Director Brett Savage, Director Bob Tinsley
NOES: None.
ABSENT: None.
ABSTAIN: None.



Daniel J. Leary, Board President
Apple Valley Fire Protection District

ATTEST:



Sid Hultquist, Board Secretary
Apple Valley Fire Protection District