

City of Los Alamitos

Agenda Report Ordinances

February 18, 2014
Item No: 10A

To: Mayor Gerri Graham-Mejia & Members of the City Council

Via: Bret M. Plumlee, City Manager

From: Cary S. Reisman, City Attorney

Subject: Seconding Reading of Ordinance 2014-01 – Amend Los Alamitos Municipal Code to Allow Prosecutorial Discretion to Treat Misdemeanors as Infractions

Summary: This Ordinance allows prosecutors to charge misdemeanors as infractions in appropriate cases.

Recommendation:

1. Waive reading in full and authorize reading by title only of Ordinance No. 14-01; and,
2. City Attorney Reisman read the title of Ordinance No.14-01, entitled, "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALAMITOS, CALIFORNIA, AMENDING VARIOUS PROVISIONS OF THE LOS ALAMITOS MUNICIPAL CODE TO PROVIDE FOR TREATMENT OF SOME MISDEMEANORS AS INFRACTIONS"; and,
3. Adopt Ordinance No. 14-01.

Background

As initially introduced, this ordinance would have increased maximum misdemeanor fines for violations of the Los Alamitos Municipal Code from \$500.00 to \$1,000.00, in accordance with state legislation adopted in 1983 allowing such increases. It would also have granted prosecutors and the courts the ability to treat some misdemeanor violations as infractions, either at the time of initiation of proceedings, or as part of a plea or sentence bargain. After the City Council introduced the Ordinance, the City Attorney (who drafted it and presented it to the Council) realized that the City Charter limited misdemeanor fines to five hundred dollars (\$500.00). Thus, the City Council lacks the authority to make the change in fine amount absent a Charter amendment.

Discussion

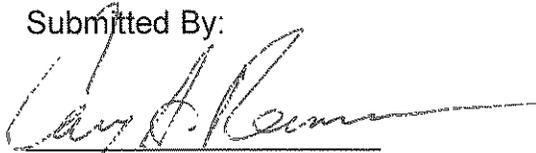
This Ordinance will grant the City Prosecutor the legal authority to charge misdemeanors as infractions and to accept infraction pleas to misdemeanor violations. (These violations would become “wobblettes,” similar to “wobblers” where a felony can be charged as a misdemeanor.) The City Prosecutor, Ken Dapeer, feels that this change will be beneficial in those rare cases that actually go to court. Some Defendants in municipal code prosecutions contest minor charges all the way to jury trial because they don’t want a criminal conviction on their record. This change will increase the flexibility in municipal prosecutions and could result in cost savings by allowing cases that would otherwise be taken to jury trials to instead be tried as infractions before a Judge, or settled with a plea bargain and conviction of an infraction offense.

Because the modifications to this proposed Ordinance are subtractions only, the City Council may adopt the Ordinance at this time without requiring a new first reading.

Fiscal Impact

The ability to charge misdemeanors as infractions could result in cost savings to the City and County as there will be no need for court appointed counsel or jury trials in cases charged or settled as infractions.

Submitted By:



Cary S. Reisman
City Attorney

Approved By:



Bret M. Plumlee
City Manager

Attachment: 1. Ordinance 2014-01

ORDINANCE NO. 2014-01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALAMITOS, CALIFORNIA, AMENDING VARIOUS PROVISIONS OF THE LOS ALAMITOS MUNICIPAL CODE TO PROVIDE FOR TREATMENT OF SOME MISDEMEANORS AS INFRACTIONS

THE CITY COUNCIL OF THE CITY OF LOS ALAMITOS DOES ORDAIN AS FOLLOWS:

Section 1. Section 1.20.010 of Chapter 1.20 of Title 1 of the Los Alamitos Municipal Code is hereby amended to read as follows:

1.20.010. Violation, Penalty.

Whenever in this code or in any other ordinance of the city or in any rule, regulation or order promulgated by any officer or agency of the city under authority duly vested in him or if any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or the doing of any act is required or the failure to do any act is declared to be unlawful or an offense or a misdemeanor, where no specific penalty is provided therefor, the violation of any such provision shall be punished by a fine not exceeding five hundred dollars (\$5000.00) or imprisonment for a term not exceeding six months, or by both such fine and imprisonment.

(B) Notwithstanding the foregoing, if any section of this Code is specifically deemed to be an infraction, as specified in the applicable section, chapter or title, it shall be treated as an infraction. In addition, unless otherwise specifically provided in this Code, and as prescribed by Section 42001 of the Vehicle Code of the State, every person convicted of an infraction involving a vehicle shall be punished by a fine not exceeding One Hundred and no/100ths (\$100.00) Dollars, and for a second conviction within a period of one year, by a fine not exceeding Two Hundred and no/100ths (\$200.00) Dollars, and for a third or any subsequent Conviction within a period of one year, by a fine not exceeding Two Hundred Fifty and no/100ths (\$250.00) Dollars. A pedestrian convicted of an infraction for a violation of this code as adopted pursuant to the Vehicle Code of the State, shall be punished by a fine not exceeding fifty dollars (\$50.00).

(C) Notwithstanding anything contained in this code, the prosecutor, in his or her sound discretion, may prosecute a violation of this code as an infraction, rather than as a misdemeanor. The prosecutor may also reduce or agree to the reduction of a previously filed misdemeanor to an infraction.

(D) Notwithstanding anything contained in this code, every person, firm, partnership, association, or corporation convicted of an infraction for violation of any provision of this chapter other than one covered in subdivision (B) hereof, shall be punished by a fine not exceeding \$100 for a first violation, a fine not exceeding \$200 for a second violation of the same section within a year and a fine not exceeding \$500 for each additional violation of

the same section within one year. A fourth violation within one year shall constitute a misdemeanor.

(E) In addition to the penalties provided by this section, any condition caused or permitted to exist in violation of any of the provisions of this Code, or the provisions of any Code adopted by reference by this Code, shall be deemed a public nuisance, subject to abatement in accordance with law.

(F) Each day during any portion of which any violation of any provision of this Code is committed, continued or permitted, constitutes a new and separate offense.

Section 2. Violations of Title 10 of the Los Alamitos Municipal Code – Vehicles and Traffic, are to be treated as infractions, punishable in accordance with section 1.20.010 (B) or (D) with the exception of a) violations of Chapters 10.36 and 10.44, which shall be treated as set forth in those chapters, and b) any subsequently adopted ordinance with a specific designation to the contrary, which shall be treated in accordance with its terms.

Section 3. If any provision of this Ordinance is held to be unconstitutional, it is the intent of the City Council that such portion of this Ordinance be severable from the remainder and that the remainder be given full force and effect.

Section 4. The City Clerk shall certify to the adoption of this Ordinance.

PASSED, APPROVED, AND ADOPTED this 18th day of February, 2014.

Gerri L. Graham-Mejia, Mayor

ATTEST:

Windmera Quintanar, CMC, City Clerk

APPROVED AS TO FORM:

Cary S. Reisman, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF LOS ALAMITOS)

I, Windmera Quintanar, CMC, City Clerk of the City of Los Alamitos, do hereby certify that the foregoing Ordinance No. 14-01, was duly introduced and placed upon its first reading at a regular meeting of the City Council on the 21st day of January, 2014, and that thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the 18th day of February, 2014, by the following roll-call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Windmera Quintanar, CMC, City Clerk