

## REPORT TO THE CITY COUNCIL

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**DATE:** April 3, 2018

**TITLE:** An Ordinance Amending the Desert Hot Springs Municipal Code Updating Procedures to Issue Administrative Citations

**Submitted by:** Jennifer Mizrahi, City Attorney

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### RECOMMENDATION

- 1) Staff Report;
- 2) Entertain questions from the City Council to Staff;
- 3) Open the Public Hearing;
- 4) Take testimony of those in Favor;
- 5) Take testimony of those who Opposed;
- 6) Take testimony of those in a neutral position;
- 7) Close the Public Hearing;
- 8) City Council discussion; and
- 9) Introduce for First Reading and read by title only, "An ordinance of the City Council of the City of Desert Hot Springs, California, 1) amending Chapter 4.24 "Administrative Citation Procedure" of Title 4 "Code Enforcement" and 2) amending Section 8.40.030 "Inspection, Registration and Fees" of Chapter 8.40 "Abandoned Residential Property Registration" of Title 8 "Health and Safety" of the Desert Hot Springs Municipal Code to revise the procedures for the issuance of administrative citations.

### BACKGROUND:

The purpose of the City of Desert Hot Springs' ("City") administrative citation procedures is to proceed administratively with its code enforcement efforts in an expedient, efficient and fair manner for purposes of effectively protecting the health and safety of the general public and to discourage violations of the Desert Hot Springs Municipal Code ("DHSMC").

Currently, Chapter 4.24 contains the City's administrative citation procedures. Whenever a violation of the DHSMC occurs, a Community Preservation Officer may issue a citation to the responsible party. However, if the violation pertains to a building, plumbing, electrical, or other similar structural or zoning issue that does not create an immediate danger to health or safety, the Officer must first issue a Notice of Violation. The Notice of Violation must provide no less than thirty calendar days for the responsible party to correct the violation. Only once the responsible party fails to comply with the Notice of Violation may an Officer issue a citation.

In addition, any responsible party may file an appeal of the citation or Notice of Violation within twenty-one days. Enforcement of the citation or Notice of Violation is stayed during an appeal.

### DISCUSSION

The proposed ordinance is designed to update the procedures contained in Chapter 4.24. For instance, the proposed ordinance allows Community Preservation Officers to determine whether to issue an administrative citation for a violation of the DHSMC, regardless of the type of violation. The current language in Chapter 4.24 is somewhat unique among cities in that it effectively removes discretion from the Officers and hinders their ability to respond to violations involving building, electrical, plumbing, zoning, and other similar issues. Moreover, Chapter 4.24 currently would require at least thirty days' notice prior to issuing any citation.

The proposed change to allow Officers to issue on the spot citations regardless of violations is necessary to effectively and expediently respond to ongoing or fast developing violations.

Officers investigating a violation are in the best position of knowing facts and determining the appropriate remedy. For example, if a property owner is performing illegal construction work that does not cause an immediate danger to health and safety, the current language in Chapter 4.24 prohibits an Officer from issuing a citation. Instead, the Officer, despite knowing the illegal construction is not up to code and will present a danger down the line, must issue at least thirty days' notice. If the property owner files an appeal, the waiting time will be extended and further enforcement is stayed during appeal. In the meantime, the property owner, having faced no administrative fines, may be inclined to finish the illegal construction.

The proposed ordinance can potentially prevent ongoing violations. Under the same scenario above, the Officer may immediately issue an administrative citation. Likewise, the Officer may conduct re-inspections, and if the illegal construction work persists, may issue additional citations with escalating fines. If the property owner appeals one, or all, of the citations, the Officer may continue issuing new citations if the same underlying violation continues. The combination of multiple citations, accumulating fines, and repeat inspections, may discourage the property owner from further illegal construction.

The proposed ordinance therefore removes a barrier for Community Preservation Officers to investigate and respond to code violations. This flexibility will be useful for any situation. To be sure, Officers may determine that regular notices of violation, instead of a citation, or a combination of both may be appropriate in any single case.

It should be noted that due process is protected under the proposed ordinance. The proposed ordinance preserves the appeals process under Chapter 4.24. This means any responsible party who has been issued a citation may appeal that citation and any associated fine. Further, if the citations and fines are upheld, or not appealed, the fines can be challenged again prior to the City imposing a lien or special assessment to collect the fines.

Other changes in the proposed ordinance include changing "Code Enforcement Officer" to "Community Preservation Officer," adding a schedule of fines, and other minor amendments to renumber sections and ensure consistency in words and phrases.

**EXHIBIT:**

1) Ordinance