City of FRESNO

REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.	1 K
COUNCIL MEETING	12/02/10
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

December 2, 2010

FROM: RANDALL L. COOPER, Director
Parks, After School, Recreation & Community Services Department

BY: PAUL A. MELIKIAN, Administrative Manager
Parks, After School, Recreation & Community Services Department

SUBJECT: PROPOSAL TO AMEND AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA AMENDING SUBSECTION (d) OF SECTION 1-308 OF THE FRESNO MUNICIPAL CODE, RELATING TO ISSUANCE OF ANIMAL CITATIONS WHEN UNABLE TO LOCATE THE VIOLATOR

RECOMMENDATIONS

It is recommended that Council approve an amendment to the City of Fresno's Municipal Code Section 1-308 relating to issuance of animal citations when the violator is unable to be located, which removes the requirement that citations be sent by certified mail. Citations will still be sent by first-class mail, consistent with how they are currently handled by Fresno County.

EXECUTIVE SUMMARY

The Fresno Municipal Code Section 1-308(d) currently requires that animal citations be sent by first class and certified mail when unable to locate the violator; however, past practice has not been to use certified mail. According to Central California SPCA estimates, the cost to send citations to absent violators pursuant to Section 1-308(d) is approximately $6,000 a year based on an average 63% of citations that are unsigned. This amount has never been provided for in the annual animal control services contract and would require an additional appropriation from the General Fund if the ordinance amendment is not approved.

The need for the removal of the certified mail requirement is due in part to a collaborative plan presented to Council on April 15, 2010 to increase public participation in licensing dogs and increase collection rates for animal citations—which has resulted in higher licensure and citation activity. The plan included raising citation fines to be consistent with the County and hiring two full-time License Investigators whose duties are to canvas neighborhoods checking for animal licenses and educating dog owners about the public health and safety benefits of licensing their pet. This dedicated enforcement and public education effort resulted in an unprecedented number of animals being licensed and an increase to citation activity. From May through October, the License Investigators found 2,314 unlicensed dogs and 2,589 new licenses have been issued. Since then, 388 citations have been issued.

The advantage of amending the ordinance is that the City would be consistent with the County, which eliminates mistakes and confusion when one agency is issuing and enforcing citations county-wide. The Department also looked into the feasibility of assessing a surcharge for sending unsigned citations by certified mail; however, the issue with this option is that the surcharge would only be paid if the citation is collected. Even if 50% of citations are collected (which is very optimistic), the City would be out the additional mailing cost for the other 50% (and probably more) of violators who never pay the citation. Additionally, the assessment of the surcharge is only applicable to citations issued where the owner is not home or refuses to sign, resulting in possible confusion in assessing the fee.

BACKGROUND

The City Attorney's Office was asked to evaluate if the certified mail requirement could be removed from the Municipal Code or if it was required by statute or case law. Their analysis yielded no case law or California statute which requires administrative citations to be issued by certified mail.

Procedural due process requires adequate notice for the opportunity to hear objections before life, liberty or property are taken away. The courts have ruled that notice is sufficient, based on the facts of each case, when the notice is reasonably calculated to apprise. The Fresno Municipal Code can be changed to eliminate the certified mail requirement without violating procedural due processes as it can be argued that first class mail with a proof of service seems reasonably calculated to apprise.

A survey of California jurisdictions revealed no uniform method to issue administrative citations by mail, but shows that some jurisdictions do rely only on first class mail. Fresno County and the Cities of Anaheim and San Jose issue administrative citations by first class mail with an attached proof of service. The Cities of Los Angeles, San Diego and Santa Ana required certified mail or personal service. San Francisco and Long Beach require the posting of citations to the property in conjunction with a first class mailing.

By eliminating the certified mail requirement and using only first class mail with a proof of service, the CCSPCA stands to save approximately $5.44 in postage costs per mailed citation. The current method of issuing a citation by mail costs $5.98 ($0.44 first class and $5.54 certified, return receipt). Without a certified mail requirement the cost to mail a citation becomes $0.44, the price of first class postage.

If the code is changed to eliminate certified mail, some people may claim to have never received the citation. The Municipal Code currently states, and will continue to state under the proposed change that, "failure of any person with an interest in the property to receive such notice shall not affect the validity of any proceedings taken under this chapter." If a person claims not to have received a citation, enforcement proceedings will continue as if it was received. Upon an appeal of any related proceeding, a hearing officer will take the proof of service as evidence that the citation was properly served.

The other option is to not issue the citation when the CCSPCA cannot obtain a signature. This option will drastically affect the City's ability (via CCSPCA) to be effective and efficient in enforcing Animal Control laws. The CCSPCA has had positive results in both licensing and at-large violations because of the increase in fines.

FISCAL IMPACT

The additional annual cost of the existing certified mail requirement is approximately $6,000 annually. (The actual amount will depend on the number of unsigned citations every year.) If the proposed amendment is not approved, the CCSPCA will have no choice but to bill the City for this cost as it was never part of the animal control services contract. This additional cost would most likely be incurred by the General Fund. On average, over 63% of citations are issued with no signature, either because of refusal to sign or because no one is home.

Attachment: Amended FMC Ordinance

BILL NO. _____

ORDINANCE BILL NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA AMENDING SUBSECTION (d) OF SECTION 1-308 OF THE FRESNO MUNICIPAL CODE, RELATING TO ISSUANCE OF ANIMAL CITATIONS WHEN UNABLE TO LOCATE THE VIOLATOR.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Subsection (d) of Section 1-308 of the Fresno Municipal Code is amended to read:

(d) Issuance When Unable to Locate Violator. If the enforcement officer is unable to locate the violator(s) then the administrative citation shall be mailed to the responsible party and property owner, if different than the responsible party. [Administrative citations issued for violations of the provisions in Chapter 10, Article 3 of the Municipal Code (Animal Shelter) shall be mailed to the violator(s) or property owners(s) by first class mail with proof of service. Proof of service shall be documented at the time of service by a declaration under penalty of perjury executed by the person effecting service, declaring the time and manner in which the service was made.] ~~The~~ [All other] administrative citation[s] shall be mailed to the violator(s) or property owners(s) by certified and first class mail. The failure of any person with an interest in the property to receive such notice shall not affect the validity of any proceedings taken under this chapter. Notice by ~~certified and first class mail in the manner~~ [the methods] described above shall become effective on the date of mailing.

SECTION 2. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its passage.

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the 2nd day of December, 2010.

AYES :
NOES :
ABSENT:
ABSTAIN:

Mayor Approval: _____, 2010

Mayor Approval/No Return: _____, 2010

Mayor Veto: _____, 2010

Council Override Vote: _____, 2010

REBECCA E. KLISCH
City Clerk

BY:_____
Deputy

APPROVED AS TO FORM:

JAMES C. SANCHEZ
City Attorney

BY:_____
Katherine ~~Doerr~~, Senior Deputy
BY: DOUG SLOAN
KBD:tb [54623tb/ORD] 11/23/10