

AGENDA

ROSSMOOR COMMUNITY SERVICES DISTRICT

TREE COMMITTEE MEETING

RUSH PARK
Administration Building
3001 Blume Drive
Rossmoor, California

Tuesday, September 24, 2019
7:30 a.m.

A. ORGANIZATION

1. CALL TO ORDER: 7:30 a.m.
2. ROLL CALL: Directors DeMarco, Nitikman
3. PLEDGE OF ALLEGIANCE
4. PRESENTATIONS: None

B. PUBLIC FORUM

Any person may address the members of the Trees/Parks/Facilities Committee at this time upon any subject within the jurisdiction of the Tree Committee of the Rossmoor Community Services District.

C. REGULAR CALENDAR

1. CONSIDERATION OF A REVISED ADMINISTRATIVE CITATION PROGRAM TO ADDRESS VIOLATIONS OF DISTRICT POLICY AND PROPOSED FEE SCHEDULE
2. DISCUSSION OF DISTRICT ISSUED PARKWAY TREE TRIMMING PERMITS
3. TRAQ CERTIFICATION FOR DISTRICT ARBORIST

D. ADJOURNMENT

CERTIFICATION OF POSTING

I hereby certify that the attached Agenda for the Tuesday September 24, 2019 7:30 a.m. Tree Committee Meeting of the Rossmoor Community Services District was posted at least 24 hours prior to the time of the meeting.

ATTEST:

Elizabeth Deering for _____
Joe Mendoza
General Manager

Date 09-19-19 _____

ROSSMOOR COMMUNITY SERVICES DISTRICT

TREE COMMITTEE

AGENDA ITEM C-1

Date: September 24, 2019

To: Directors De Marco and Nitikman

From: General Manager Joe Mendoza

Subject: CONSIDERATION OF A REVISED ADMINISTRATIVE CITATION PROGRAM TO ADDRESS VIOLATIONS OF DISTRICT POLICY AND PROPOSED FEE SCHEDULE

BACKGROUND:

This item follows the discussion at the August 22, 2019 Tree Committee meeting regarding the draft administrative citation policy and subsequent internal staff discussion. A revised version of Policy No. 3098 is attached for the Committee's review that incorporates the changes discussed on August 22, 2019.

RECOMMENDATION:

Review, discuss and make recommendations to the Board of Directors regarding Policy No. 3098 and draft of a proposed fee schedule.

ATTACHMENTS:

1. Draft Administration Citation Policy No. 3098 - Update Draft
2. Draft Administration Citation Policy No. 3098 – Redline Draft
3. Draft of Proposed Fee Schedule

Rossmoor Community Services District

Draft Policy No.

3098

ADMINISTRATIVE CITATIONS

3098.10 Applicability.

- (a) A violation of the provisions of any policy that is subject to enforcement as a misdemeanor and/or an infraction is subject to an administrative citation and fine.
- (b) This policy establishes the administrative procedures for the imposition, enforcement, collection, and administrative review of administrative citations pursuant to Government Code section 53069.4.
- (c) The issuance of an administrative citation under this policy is solely at the District's discretion and shall not limit the District from using any one or more other administrative, criminal and/or civil remedies, in any combination, to address a violation of District Policy.

3098.20 Definitions. The following definitions apply to the use of these terms for the purposes of this policy:

- (a) *Citation* means an administrative citation issued pursuant to this policy stating there has been a violation of a particular District Policy.
- (b) *Citee* means person given an administrative citation charging him or her as a responsible person for a policy violation.
- (c) *Days* means calendar days.
- (d) *District* means the Rossmoor Community Services District.
- (e) *General Manager* means the appointed District General Manager or his or her designee.
- (f) *Hearing officer* means the person appointed by the General Manager to serve as the hearing officer for an administrative hearing.

- (g) *Issue* means giving a citation to the citee, and *issuance* occurs on the date when a citation is personally served on the citee, the date it is posted on real property where a property related violation exists, or the date it is deposited in the US mail, postage paid and addressed to the citee, whichever occurs first.
- (h) *Notice of decision* means a form prepared by the General Manger used to inform a citee of the decision made regarding various provisions of this policy.
- (i) *Policy* means an approved policy of the District; *policies* means the several approved policies of the District.
- (j) *Property related violation* means a policy violation that relates to the maintenance and operation of the real property and improvements in question, whether through active or passive negligence or intentional conduct of the owner, property occupants, and/or their respective agents.
- (k) *Responsible person* means any of the following:
 - (1) A person who causes a policy violation to occur.
 - (2) A person who maintains or allows a policy violation to continue, by his or her action or failure to act.
 - (3) A person whose agent, employee, or independent contractor causes a policy violation by his or her action or failure to act.
 - (4) A person who is either the owner or the occupant of the real property where a property-related policy violation occurs.
- (l) For purposes of this policy, “person” includes both a natural person and a legal entity, and includes the owners of the entity, the directors and officers of a corporation, the managers of a limited liability company, the trustees of a trust, and the general partners of a partnership. There shall be a legal rebuttable presumption that the record owner of a parcel according to the County of Orange’s latest equalized property tax assessment rolls and the occupants of that parcel have notice of any property-related policy violation existing with respect to that parcel. For the purposes of this policy, there may be more than one responsible person with respect to a violation, and a minor at least fourteen (14) years of age may be a responsible person subject to the provisions of this policy for a violation personally committed by the minor.

3098.30 Administrative citation—General.

- (a) Any employee(s) of the District so designated by the General Manager may issue a citation to any responsible person or persons. A responsible person to whom a citation is issued shall be liable for and shall pay to the District the fine

or fines described in the citation when due pursuant to the provisions of this policy.

- (b) For continuing violations, each day a violation of a policy exists shall be a separate violation and be subject to a separate fine. A citation may charge a violation for one (1) or more days on which a violation exists, and for violation of one (1) or more policy sections.
- (c) The District may take into consideration the fact that a person has been issued citations when the District is determining whether to grant, modify, suspend, revoke, or deny any permit, license, agreement or any type of discretionary use approval for that person, and such citations are evidence that the person has committed actions that are not compatible with the health, safety and general welfare of other persons and businesses in the vicinity.

3098.40 Citation contents.

- (a) Each citation shall contain the following information:
 - (1) Name of the responsible person for the violation of the policy or policies.
 - (2) Date or dates on which the violation occurred, and the date the citation is issued, if different.
 - (3) The policy section(s) violated.
 - (4) Address where the policy violation occurred.
 - (5) Description of the policy violation.
 - (6) Amount of the fine for the violation and procedure to pay the fine and avoid a late payment penalty.
 - (7) Brief description of the procedures for requesting an administrative review to contest a citation and a hardship waiver of the advance fine deposit.
 - (9) Signature of the person issuing the citation.
- (b) In addition, the citation may include such other information that the General Manager deems appropriate for enforcement or collection purposes, including, but not limited to:
 - (1) A self-addressed envelope in which the citee can send to the District the fine, a request for an administrative review and/or a hardship waiver of the fine deposit; and/or

- (2) A designation of prior policy violations, if known.

3098.50 Service of administrative citations. An administrative citation may be served as follows:

- (a) A designated employee may personally serve the citation on the citee. The citee may sign a copy of the citation showing his or her receipt of the citation.
- (b) A designated employee may mail the citation by first class mail, return receipt requested, if the citee is not present for personal service when the employee determines there has been a violation. The citation shall be mailed to the citee's address shown on the county's last equalized property tax assessment rolls for a property related violation, or to any address known for the citee for all other violations.
- (c) A designated employee may post a copy of the citation on the property in a conspicuous place for a property related violation when the citee does not reside at the property and the citee's address is not actually known to the designated employee, in which case the designated employee shall also mail a copy of the citation to the citee at the property address by first class mail, return receipt requested.

3098.60 Amount of administrative fines.

- (a) The amount of the fines for violating specific policies shall be set in a schedule of fines adopted by resolution or policy of the District from time to time. The schedule may include escalating fine amounts for repeat policy violations occurring within specified periods of time.
- (b) The schedule of fines may also specify the amount of interest and late payment penalty owed for any fine not paid when due. A late payment penalty and interest may be imposed for fines not paid within thirty (30) days of their due date.
- (c) Fines are due on the day the citation is issued, except that when a hardship waiver has been granted, the fine amount shall be due when the decision on the administrative review is given or mailed to the citee pursuant to section 3098.100.

3098.70 Payment of administrative fines.

- (a) An administrative fine shall be paid to the District within thirty (30) days of its issuance date except as provided in section 3098.85.

- (b) The issuance of a citation and/or payment of a fine does not bar the District from taking any other enforcement actions, including issuing additional administrative citations, bringing a civil action and/or filing a criminal complaint.

3098.80 Request for administrative review of citation; requirement for advance deposit of fine amount.

- (a) Any person receiving an administrative citation may contest it by filing a request for an administrative review. To obtain an administrative review, the citee shall file a signed written request form contained on the reverse side of the citation and indicate the grounds for contesting the citation and fine. A citee may contest the citation by denying that a violation occurred or by denying that the citee is a responsible person for the violation.
- (b) To be effective and complete, the request must be received by the District within thirty (30) days after the date the citation was issued, and be accompanied by a deposit of the full amount of the fine. The request will not be accepted for filing if not accompanied by the fine deposit, unless a hardship waiver has been requested pursuant to section 3098.85(e), below. All requests shall be date stamped upon receipt by the District.
- (c) Upon timely receipt of a complete request for an administrative review, the District shall notify the citee, in a manner set forth in section 3098.50 for service of citations, of the date, time and place of the administrative review, pursuant to section 3098.90.
- (d) The person requesting the administrative review shall appear at the hearing on the date, time and place specified by the District pursuant to section (c), above. Failure to personally attend the hearing will be considered a nonappearance. Non-appearance by the citee shall constitute an abandonment of the request unless the hearing was continued pursuant to section 3098.90(f).

3098.85 Request for hardship waiver of advance deposit of fine amount; separate hearing prior to administrative review of citation.

- (a) A person filing a request for an administrative review may also request at the same time a hardship waiver of the fine deposit. The request for hardship waiver must be made concurrently with the request for administrative review.
 - (1) To seek a hardship waiver and obtain a separate hearing limited to the hardship request, the citee shall check the box indicating this request and file with the District a sworn declaration or affidavit, together with any supporting documentation or other evidence demonstrating the citee's actual financial inability to deposit the full amount of the citation in advance of the hearing. The procedure governing the filing of such requests shall be the same as provided in section 3098.80(b), above.

- (b) The person requesting the hardship waiver bears the burden of establishing by substantial evidence that he or she does not have the financial ability to make the deposit of the fine. The person shall personally appear at the hearing on the hardship waiver request and non-appearance shall constitute an abandonment of the hardship waiver request unless excused pursuant to section 3080.90(h).

Where the hardship waiver request has been abandoned because of non-appearance at the hearing on the request, the full amount of the advance fine deposit shall be submitted to the District within three (3) business days following the date set for the hearing on the hardship waiver request. Failure to make the full amount of the advance fine deposit by the time required in this sub-section (1) shall be deemed an abandonment of the contest of the citation and shall forfeit the citee's right to an administrative review of the citation.

- (c) The request for a hardship waiver of the fine deposit will be heard by the hearing officer at the date, time and place specified by the District on the notice of hardship waiver hearing. At the conclusion of the hearing on the waiver request, or within five (5) business days after the waiver request hearing, at the hearing officer's discretion, the hearing officer shall issue a decision that the fine deposit is or is not waived. The hearing officer shall then insert on the notice of decision form relating to the waiver request the new date set for the administrative review hearing, which shall be within forty-five (45) days of the date on the notice of decision of the hardship waiver request. A copy of the notice of decision shall be delivered to the citee at the end of the hearing on the waiver request, or shall be sent by U.S. Mail within five (5) business days following the conclusion of the hearing on the waiver request.
- (d) If the hardship waiver is denied, the hearing officer shall provide the citee a self-addressed envelope to use in making the fine deposit. The citee shall mail the deposit in the envelope provided so that it is postmarked at least three (3) business days before the date designated on the notice of decision for the administrative review. Failure to make the deposit by the time required shall be deemed an abandonment of the contest of the citation and shall forfeit the citee's right to an administrative review of the citation.
- (e) The filing of a request for hardship waiver of the fine deposit does not extend the time within which to request an administrative review or any other time set forth in this policy, except as provided in subsection (d), above. A hearing officer decision on the hardship waiver is final and not subject to judicial review pursuant to section 3098.110.

3098.90 Hearing procedures for requests for both administrative review and hardship waiver of advance deposit of fine amount.

- (a) Hearings shall be conducted by a hearing officer at a date, time and place designated by the General Manager that is at least ten (10) but not more than thirty (30) days after the citee requests a hearing pursuant to section 3098.80 or 3098.85. At least ten (10) days written notice of the hearing shall be given to the citee, either personally or by mail.
- (b) The General Manager shall ensure that the pertinent citation records are delivered to the hearing officer for a citation set for hearing. The General Manager shall also make available to the citee at District offices at least three (3) business days before the hearing a copy of any additional reports concerning the citation that are provided to the hearing officer.
- (c) The citee shall be given the opportunity to testify and to present evidence relevant to financial hardship, the policy violation specified in the citation, or the fact that all fines have been paid, as applicable. A parent or legal guardian of a citee who is a juvenile shall accompany the citee at the hearing, or any request or contest shall be deemed abandoned.
- (d) The citation, and any other reports prepared by the District concerning the policy violation shall be accepted by the hearing officer as prima facie evidence of the policy violation and the facts stated in such documents.
- (e) Neither the issuing person nor any other representative of the District shall be required to attend the hearing, nor shall the hearing officer require that there be submitted any evidence, other than the citation, that may exist among the public records of the District on the violation. However, any such appearance and/or submission may be made at the discretion of the District.
- (f) The hearing officer, General Manager, or District General Counsel may continue a hearing if a request is made by the citee, or the citee's representative, or a representative of the District, upon a showing of good cause. All continuance requests shall either (i) be made in person at the hearing by the citee or a representative if the citee is physically unable to attend, or (ii) be made by a written request received by the District at least twenty-four (24) hours before the hearing date. If the continuance is granted, a new hearing date shall be set within forty-five (45) days and noted on the notice of decision. If the continuance is denied, the hearing shall proceed as scheduled, and if the citee is not present the request shall be deemed abandoned in accordance with subdivision (h) below. The decision on the continuance request is final and the notice shall either be delivered personally to the citee or the representative if present or be mailed by the District. If the request for continuance is not made in person, the citee is responsible for determining whether the request is denied and the hearing is to proceed as scheduled.

- (g) The hearing shall be conducted informally and the legal rules of evidence need not be followed. The hearing officer does not have the authority to issue a subpoena and there shall be no right to cross-examine witnesses.
- (h) The failure of the citee to appear at the hearing, unless the hearing was continued per subdivision (f) above, shall constitute an abandonment of the request for waiver of the fine deposit and/or administrative review, and a failure to exhaust administrative remedies concerning the violation as set forth in the citation. The fine deposit shall be credited by the District upon the fine due for the violation. The citee's failure to appear shall be noted on the notice of decision by the hearing officer and it shall be mailed to the citee.

3098.100 Administrative review decision.

- (a) After considering all the evidence and testimony submitted at the administrative review, the hearing officer shall issue a written decision to uphold the citation or cancel it based upon a conclusion of whether or not a violation occurred for which the citee was a responsible person. The hearing officer has no discretion or authority to reduce or modify a fine. The decision will be made on a notice of decision form and designate the reasons and evidence considered for the decision. The decision of the hearing officer shall be made at the conclusion of the administrative review, or soon thereafter, and shall be final. The notice of decision shall be personally delivered to the citee at the conclusion of the administrative review, or it shall be mailed to the citee within thirty (30) days following the conclusion of the administrative review.
- (b) If the decision is to uphold the citation, the District shall keep the fine deposited. If the decision is to cancel the citation, the District shall refund the fine deposit to the citee within thirty (30) days of the filing of the decision. If the citation is upheld and the fine deposit had been waived, the fine shall be due on the date the decision is given to the citee at the end of the hearing by the hearing officer, or the date the notice of decision is mailed to the citee. The hearing officer may collect any fine due from the citee at the end of the hearing.
- (c) The hearing officer's continued employment, performance evaluation, compensation, and benefits shall not directly or indirectly be linked to the number of citations upheld or canceled by the hearing officer.

3098.110 Right to judicial review.

- (a) The citee may seek judicial review of the administrative review decision by filing an appeal with the superior court within twenty (20) calendar days after the citee receives a copy of the notice of decision at the conclusion of the hearing in accordance with the provisions of Government Code section 53069.4. The appeal filed with the court shall also contain a proof of service showing a copy of the appeal was served upon the "Rossmoor Community Services District

(Attention: General Counsel).” The citee must pay to the superior court the statutory filing fee when the appeal is filed.

- (b) No appeal is permitted from a decision regarding:
 - (1) A request for a hardship waiver of the fine deposit, or
 - (2) A decision that the citee is deemed to have abandoned the contest of the citation or fine due to her or his failure to appear at the hearing or failure to deposit the fine.
- (c) The District General Counsel shall forward to the superior court within fifteen (15) days of its request, the pertinent citation documents for any case appealed to that court. If the superior court cancels any citation, the District will refund any fine deposit made and the appeal filing fee.

3098.120 Collection of unpaid fines.

- (a) The amount of any fine, penalty, cost or fee imposed pursuant to this policy shall be deemed a debt and a charge owed to the District.
- (b) The failure of any person to pay an assessed fine, penalty, cost, charge or fee by the deadline specified shall result in the assessment of additional late penalties and interest in the amounts established by the District.
- (c) The District in its discretion may pursue any and all legal and equitable remedies to collect unpaid fines, penalties, costs, charges, interest or fees imposed pursuant to this policy, including, where applicable, those set forth in Government Code section 61115. These remedies include, but are not limited to, each of the following:
 - (1) Referring the delinquent account to collection;
 - (2) For a violation occurring on or about the citee’s real property, including, but limited to, Policy No. 3080:
 - i. authorizing a lien to be recorded thereon for any unpaid charges and/or penalties imposed; and/or
 - ii. providing that any charge or penalty be collected on the tax role in the same manner as property taxes;
 - (3) Filing a civil action in a court of competent jurisdiction.
- (d) Any person who fails to pay any debt hereunder shall be liable in any proceeding brought by the District for the costs incurred in securing payment of

the unpaid amount, including attorneys' fees. Such costs shall be in addition to any penalties, interest, and/or late fees imposed upon the unpaid fine, penalty, cost, charge or fee. Fees and costs for collection of a debt shall be in addition to any penalties, interest, and late charges imposed on the delinquent civil debt and may be imposed directly by a collection agency under contract with the District for collection services.

- (e) The District may refuse to issue, extend, or renew any District permit, license, agreement or other District approval to any person, who has unpaid delinquent fines, interest, penalties, liens or assessments due under this policy, related to the permit, license, agreement or approval.
- (f) The District may suspend any permit, license, agreement or discretionary approval issued to or with a person who has unpaid fines related to the permit, license, or approval totaling five hundred dollars (\$500.00) or more that have been delinquent for over thirty (30) days. The suspension shall become effective twenty (20) days after the day notice of the suspension is placed by the director in the U.S. mail, postage prepaid, addressed to the person and shall continue until the delinquency is paid in full. The person may request an administrative hearing pursuant to the procedures in section 3098.80 on the issue of fine delinquency only, if the request is filed with the District before the twenty (20) day period ends. Continuing to operate under a suspended permit, license or approval shall be grounds for revocation of the permit, license or approval. Revocation may be made by the District at a public hearing for which the same notice shall be given as required for issuance of the permit, license, or approval involved, but in no event shall there be less than ten (10) days written notice.
- (g) It is unlawful for a citee to fail to pay any administrative fine, interest, or penalty imposed pursuant to this policy. The District General Counsel, at his or her discretion, may initiate a criminal citation or complaint for an infraction to any citee who fails to make such a payment. The criminal fine for this violation shall be a mandatory minimum of one hundred dollars (\$100.00).
- (h) The parent or legal guardian of a citee who is a minor shall be liable for any fines imposed upon the minor pursuant to the provisions of this policy. Any such fines may be collected from the minor, parent or guardian.

Rossmoor Community Services District

Draft Policy No.

3098

ADMINISTRATIVE CITATIONS

3098.10 Applicability.

- (a) A violation of the provisions of any policy that is subject to enforcement as a misdemeanor and/or an infraction is subject to an administrative citation and fine.
- (b) This policy establishes the administrative procedures for the imposition, enforcement, collection, and administrative review of administrative citations pursuant to Government Code section 53069.4.
- (c) The issuance of an administrative citation under this policy is solely at the District's discretion and shall not limit the District from using any one or more other administrative, criminal and/or civil remedies, in any combination, to address a violation of District Policy.

3098.20 Definitions. The following definitions apply to the use of these terms for the purposes of this policy:

- (a) *Citation* -means an administrative citation issued pursuant to this policy stating there has been a violation of a particular District Policy.
- (b) *Citee* means person given an administrative citation charging him or her as a responsible person for a policy violation.
- (c) *Days* means calendar days.
- (d) *District* means the Rossmoor Community Services District.
- (e) *General Manager* means the appointed District General Manager or his or her designee.
- (f) *Hearing officer* means the person appointed by the General Manager to serve as the hearing officer for an administrative hearing.

- (g) *Issue* means giving a citation to the citee, and *issuance* occurs on the date when a citation is personally served on the citee, the date it is posted on real property where a property related violation exists, or the date it is deposited in the US mail, postage paid and addressed to the citee, whichever occurs first.
- (h) *Notice of decision* means a form prepared by the General Manger used to inform a citee of the decision made regarding various provisions of this policy.
- (i) *Policy* means an approved policy of the District; *policies* means the several approved policies of the District.
- (j) *Property related violation* means a policy violation that relates to the maintenance and operation of the real property and improvements in question, whether through active or passive negligence or intentional conduct of the owner, property occupants, and/or their respective agents.
- (k) *Responsible person* means any of the following:
 - (1) A person who causes a policy violation to occur.
 - (2) A person who maintains or allows a policy violation to continue, by his or her action or failure to act.
 - (3) A person whose agent, employee, or independent contractor causes a policy violation by his or her action or failure to act.
 - (4) A person who is either the owner or the occupant of the real property where a property-related policy violation occurs.
- (l) For purposes of this policy, "person" includes both a natural person and a legal entity, and includes the owners of the entity, the directors and officers of a corporation, the managers of a limited liability company, the trustees of a trust, and the general partners of a partnership. There shall be a legal rebuttable presumption that the record owner of a parcel according to the County of Orange's latest equalized property tax assessment rolls and the occupants of that parcel have notice of any property-related policy violation existing with respect to that parcel. For the purposes of this policy, there may be more than one responsible person with respect to a violation, and a minor at least fourteen (14) years of age may be a responsible person subject to the provisions of this policy for a violation personally committed by the minor.

3098.30 Administrative citation—General.

- (a) Any employee(s) of the District so designated by the General Manager may issue a citation to any responsible person or persons. A responsible person to whom a citation is issued shall be liable for and shall pay to the District the fine

or fines described in the citation when due pursuant to the provisions of this policy.

- (b) For continuing violations, each day a violation of a policy exists shall be a separate violation and be subject to a separate fine. A citation may charge a violation for one (1) or more days on which a violation exists, and for violation of one (1) or more policy sections.
- (c) The District may take into consideration the fact that a person has been issued citations when the District is determining whether to grant, modify, suspend, revoke, or deny any permit, license, agreement or any type of discretionary use approval for that person, and such citations are evidence that the person has committed actions that are not compatible with the health, safety and general welfare of other persons and businesses in the vicinity.

3098.40 Citation contents.

- (a) Each citation shall contain the following information:
 - (1) Name of the responsible person for the violation of the policy or policies.
 - (2) Date or dates on which the violation occurred, and the date the citation is issued, if different.
 - (3) The policy section(s) violated.
 - (4) Address where the policy violation occurred.
 - (5) Description of the policy violation.
 - (6) Amount of the fine for the violation and procedure to pay the fine and avoid a late payment penalty.
 - ~~(7) Designation of prior citations issued for the same policy violations, if known.~~
 - (78) A brief description of the procedures for requesting an administrative review to contest a citation and a hardship waiver of the advance fine deposit.
 - (9) Signature of the person issuing the citation.
 - ~~(10) A self-addressed envelope in which the citee can send to the District the fine, a request for an administrative review and/or a hardship waiver of the fine deposit.~~

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(b) In addition, the citation may include such other information that the General Manager deems appropriate for enforcement or collection purposes, including, but not limited to:-

(1) A self-addressed envelope in which the citee can send to the District the fine, a request for an administrative review and/or a hardship waiver of the fine deposit; and/or;

(2) A designation of prior policy violations, if known.
(b)

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- (c) A designated employee may post a copy of the citation on the property in a conspicuous place for a property related violation when the citee does not reside at the property and the citee's address is not actually known to the designated employee, in which case the designated employee shall also mail a copy of the citation to the citee at the property address by first class mail, return receipt requested.

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the administrative review is given or mailed to the citee pursuant to section 3098.100.

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- (a) An administrative fine shall be paid to the District within thirty (30) days of its issuance date except as provided in section 3098.85.
- (b) The issuance of a citation and/or payment of a fine does not bar the District from taking any other enforcement actions, including issuing additional administrative citations, bringing a civil action and/or filing a criminal complaint.

3098.80 Request for administrative review of citation; requirement for advance deposit of fine amount.

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- (b) To be effective and complete, the request must be received by the District within thirty (30) days after the date the citation was issued, and be accompanied by a deposit of the full amount of the fine. The request will not be accepted for filing if not accompanied by the fine deposit, unless a hardship waiver has been requested pursuant to section 3098.85(e), below. All requests shall be date stamped upon receipt by the District.
- (c) Upon timely receipt of a complete request for an administrative review, the District shall notify the citee, in a manner set forth in section 3098.50 for service of citations, of the date, time and place of the administrative review, pursuant to section 3098.90.
- (d) The person requesting the administrative review shall appear at the hearing on the date, time and place specified by the District pursuant to section (c), above. Failure to personally attend the hearing will be considered a nonappearance. Non-appearance by the citee shall constitute an abandonment of the request unless the hearing was continued pursuant to section 3098.90(f).

3098.85 Request for hardship waiver of advance deposit of fine amount; separate hearing prior to administrative review of citation.

- (a) A person filing a request for an administrative review may also request at the same time a hardship waiver of the fine deposit. The request for hardship waiver must be made concurrently with the request for administrative review.

- (1) To seek a hardship waiver and obtain a separate hearing limited to the hardship request, the citee shall check the box indicating this request and file with the District a sworn declaration or affidavit, together with any supporting documentation or other evidence demonstrating the citee's actual financial inability to deposit the full amount of the citation in advance of the hearing. The procedure governing the filing of such requests shall be the same as provided in section 3098.80(b), above.
- (b) The person requesting the hardship waiver bears the burden of establishing by substantial evidence that he or she does not have the financial ability to make the deposit of the fine. The person shall personally appear at the hearing on the hardship waiver request and non-appearance shall constitute an abandonment of the hardship waiver request unless excused pursuant to section 3080.90(h).

Where the hardship waiver request has been abandoned because of non-appearance at the hearing on the request, the full amount of the advance fine deposit shall be submitted to the District within three (3) business days following the date set for the hearing on the hardship waiver request. Failure to make the full amount of the advance fine deposit by the time required in this sub-section (1) shall be deemed an abandonment of the contest of the citation and shall forfeit the citee's right to an administrative review of the citation.

- (c) The request for a hardship waiver of the fine deposit will be heard by the hearing officer at the date, time and place specified by the District on the notice of hardship waiver hearing. At the conclusion of the hearing on the waiver request, or within five (5) business days after the waiver request hearing, at the hearing officer's discretion, the hearing officer shall issue a decision that the fine deposit is or is not waived. The hearing officer shall then insert on the notice of decision form relating to the waiver request the new date set for the administrative review hearing, which shall be within forty-five (45) days of the date on the notice of decision of the hardship waiver request. A copy of the notice of decision shall be delivered to the citee at the end of the hearing on the waiver request, or shall be sent by U.S. Mail within five (5) business days following the conclusion of the hearing on the waiver request.
- (d) If the hardship waiver is denied, the hearing officer shall provide the citee a self-addressed envelope to use in making the fine deposit. The citee shall mail the deposit in the envelope provided so that it is postmarked at least three (3) business days before the date designated on the notice of decision for the administrative review. Failure to make the deposit by the time required shall be deemed an abandonment of the contest of the citation and shall forfeit the citee's right to an administrative review of the citation.

- (e) The filing of a request for hardship waiver of the fine deposit does not extend the time within which to request an administrative review or any other time set forth in this policy, except as provided in subsection (d), above. A hearing officer decision on the hardship waiver is final and not subject to judicial review pursuant to section 3098.110.

3098.90 Hearing procedures for requests for both administrative review and hardship waiver of advance deposit of fine amount.

- (a) Hearings shall be conducted by a hearing officer at a date, time and place designated by the General Manager that is at least ten (10) but not more than thirty (30) days after the citee requests a hearing pursuant to section 3098.80 or 3098.85. At least ten (10) days written -notice of the hearing shall be given to the citee, either personally or by mail.
- (b) The General Manager shall ensure that the pertinent citation records are delivered to the hearing officer for a citation set for hearing. The General Manager shall also make available to the citee at District offices at least three (3) business days before the hearing a copy of any additional reports concerning the citation that are provided to the hearing officer.
- (c) The citee shall be given the opportunity to testify and to present evidence relevant to financial hardship, the policy violation specified in the citation, or the fact that all fines have been paid, as applicable. A parent or legal guardian of a citee who is a juvenile shall accompany the citee at the hearing, or any request or contest shall be deemed abandoned.
- (d) The citation, and any other reports prepared by the District concerning the policy violation shall be accepted by the hearing officer as prima facie evidence of the policy violation and the facts stated in such documents.
- (e) Neither the issuing person nor any other representative of the District shall be required to attend the hearing, nor shall the hearing officer require that there be submitted any evidence, other than the citation, that may exist among the public records of the District on the violation. However, any such appearance and/or submission may be made at the discretion of the District.
- (f) The hearing officer, General Manager, or District General Counsel may continue a hearing if a request is made by the citee, or the citee's representative, or a representative of the District, upon a showing of good cause. All continuance requests shall either (i) be made in person at the hearing by the citee or a representative if the citee is physically unable to attend, or (ii) be made by a written request received by the District at least twenty-four (24) hours before the hearing date. If the continuance is granted, a new hearing date shall be set within forty-five (45) days and noted on the notice of decision. If the continuance is denied, the hearing shall proceed as scheduled, and if the

citee is not present the request shall be deemed abandoned in accordance with subdivision (h) below. The decision on the continuance request is final and the notice shall either be delivered personally to the citee or the representative if present or be mailed by the District. If the request for continuance is not made in person, the citee is responsible for determining whether the request is denied and the hearing is to proceed as scheduled.

- (g) The hearing shall be conducted informally and the legal rules of evidence need not be followed. The hearing officer does not have the authority to issue a subpoena and there shall be no right to cross-examine witnesses.
- (h) The failure of the citee to appear at the hearing, unless the hearing was continued per subdivision (f) above, shall constitute an abandonment of the request for waiver of the fine deposit and/or administrative review, and a failure to exhaust administrative remedies concerning the violation as set forth in the citation. The fine deposit shall be credited by the District upon the fine due for the violation. The citee's failure to appear shall be noted on the notice of decision by the hearing officer and it shall be mailed to the citee.

3098.100 Administrative review decision.

- (a) After considering all the evidence and testimony submitted at the administrative review, the hearing officer shall issue a written decision to uphold the citation or cancel it based upon a conclusion of whether or not a violation occurred for which the citee was a responsible person. The hearing officer has no discretion or authority to reduce or modify a fine. The decision will be made on a notice of decision form and designate the reasons and evidence considered for the decision. The decision of the hearing officer shall be made at the conclusion of the administrative review, or soon thereafter, and shall be final. The notice of decision shall be personally delivered to the citee at the conclusion of the administrative review, or it shall be mailed to the citee within thirty (30) days following the conclusion of the administrative review.
- (b) If the decision is to uphold the citation, the District shall keep the fine deposited. If the decision is to cancel the citation, the District shall refund the fine deposit to the citee within thirty (30) days of the filing of the decision. If the citation is upheld and the fine deposit had been waived, the fine shall be due on the date the decision is given to the citee at the end of the hearing by the hearing officer, or the date the notice of decision is mailed to the citee. The hearing officer may collect any fine due from the citee at the end of the hearing.
- (c) The hearing officer's continued employment, performance evaluation, compensation, and benefits shall not directly or indirectly be linked to the number of citations upheld or canceled by the hearing officer.

3098.110 Right to judicial review.

- (a) The citee may seek judicial review of the administrative review decision by filing an appeal with the superior court within twenty (20) calendar days after the citee receives a copy of the notice of decision at the conclusion of the hearing in accordance with the provisions of Government Code section 53069.4. The appeal filed with the court shall also contain a proof of service showing a copy of the appeal was served upon the "Rossmoor Community Services District (Attention: General Counsel)." The citee must pay to the superior court the statutory filing fee when the appeal is filed.
- (b) No appeal is permitted from a decision regarding:
 - (1) A request for a hardship waiver of the fine deposit, or
 - (2) A decision that the citee is deemed to have abandoned the contest of the citation or fine due to her or his failure to appear at the hearing or failure to deposit the fine.
- (c) The District General Counsel shall forward to the superior court within fifteen (15) days of its request, the pertinent citation documents for any case appealed to that court. If the superior court cancels any citation, the District will refund any fine deposit made and the appeal filing fee.

3098.120 Collection of unpaid fines.

- (a) The amount of any fine, penalty, cost or fee imposed pursuant to this policy shall be deemed a debt and a charge owed to the District.
- (b) The failure of any person to pay an assessed fine, penalty, cost, charge or fee by the deadline specified shall result in the assessment of additional late ~~fees~~penalties, and interest in the amounts established by the District.
- (c) The District in its discretion may pursue any and all legal and equitable remedies to collect unpaid fines, penalties, costs, charges, interest or fees imposed pursuant to this policy, including, where applicable, those set forth in Government Code section 61115. These remedies include, but are not limited to, each of the following:
 - (1) Referring the delinquent account to collection;
 - (2) For a ~~property related~~violation occurring on or about the citee's real property, including, but limited to, Policy No. 3080:
 - i. authorizing a lien to be recorded thereon for any unpaid charges and/or penalties imposed; and/or

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ii. providing that any charge or penalty be collected on the tax role in the same manner as property taxes;

(3) Filing a civil action in a court of competent jurisdiction.

~~Any person who fails to pay any fine, penalty, cost or fee debt hereunder shall be liable in any proceeding brought by the District for the costs incurred in securing payment of the unpaid amount, including attorneys' fees. Such costs shall be in addition to any penalties, interest, and/or late fees imposed upon the unpaid fine, penalty, cost, charge or fee.~~

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~~Any civil debt or other amount due to the District pursuant to this Policy remaining unpaid on the day after the stated due date shall be subject to a late penalty and interest in the amounts established by the District.~~

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~~The District may submit a delinquent civil debt to a collection agency that is under contract with the District for such collection service.~~

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~~(d) Any responsible person who has a delinquent civil debt shall be liable for all costs incurred to obtain payment of the delinquent civil debt, including, but not limited to, administrative costs, collection fees and costs, and attorneys' fees. F. Collection fees and costs for collection of the debt shall be in addition to any penalties, interest, and late charges imposed on the delinquent civil debt and may be imposed directly by thea collection agency under contract with the District for collection services.~~

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(e) The District may refuse to issue, extend, or renew any District permit, license, agreement or other District approval to any person, who has unpaid delinquent fines, interest, penalties, liens or assessments due under this policy, related to the permit, license, agreement or approval.

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(f) The District may suspend any permit, license, agreement or discretionary approval issued to or with a person who has unpaid fines related to the permit, license, or approval totaling five hundred dollars (\$500.00) or more that have been delinquent for over thirty (30) days. The suspension shall become effective twenty (20) days after the day notice of the suspension is placed by the director in the U.S. mail, postage prepaid, addressed to the person and shall continue until the delinquency is paid in full. The person may request an administrative hearing pursuant to the procedures in section 3098.80 on the issue of fine delinquency only, if the request is filed with the District before the twenty (20) day period ends. Continuing to operate under a suspended permit, license or approval shall be grounds for revocation of the permit, license or approval. Revocation may be made by the District at a public hearing for which the same notice shall be given as required for issuance of the permit, license, or approval involved, but in no event shall there be less than ten (10) days written notice.

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- (g) It is unlawful for a citee to fail to pay any administrative fine, interest, or penalty imposed pursuant to this policy. The District General Counsel, at his or her discretion, may initiate a criminal citation or complaint for an infraction to any citee who fails to make such a payment. The criminal fine for this violation shall be a mandatory minimum of one hundred dollars (\$100.00).
- (h) The parent or legal guardian of a citee who is a minor shall be liable for any fines imposed upon the minor pursuant to the provisions of this policy. Any such fines may be collected from the minor, parent or guardian.

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ATTACHMENT 3

Proposed Fee Schedule for Administrative Citation Program

Type of Violation and Proposed Fine:

1. Complete Tree Removal - \$1000.00
2. Pruning of more than 50% of live crown - \$1000.00
3. Pruning of less than 50% of live crown – 1st offense \$300.00
4. Pruning of less than 50% of live crown – 2nd or more offense
\$500.00

ROSSMOOR COMMUNITY SERVICES DISTRICT

AGENDA ITEM C-2

Date: September 24, 2019

To: Tree Committee

From: General Manager Joe Mendoza
District Arborist Mary Kingman

Subject: **DISCUSSION REGARDING THE POSSIBILITY OF DISTRICT ISSUED PARKWAY TREE TRIMMING PERMITS**

RECOMMENDED ACTION

Rossmoor Community Services District (RCSD) General Manager recommends that the Tree Committee discuss and direct staff on whether resident tree trimming permits should be allowed through a resident hired contractor. The Committee previously approved resident paid aesthetic tree trims through District tree contractor, West Coast Arborist, Inc.

BACKGROUND

At the Tree Committee Meeting on August 22, 2019, District staff was asked to explore the possibility of issuing tree permits for residents and property owners who wish to have the District owned parkway trimmed by their own contractors.

If the Committee decides that a resident-hired contract trim permit process should also be allowed for residents, certain conditions and criteria should be required before permits are issued.

ATTACHMENTS

1. Details for resident trim permit through resident hired contractor
2. Sample Trim Permit

ATTACHMENT 1

Resident Aesthetic Trim Through Resident-Hired Tree Contractor

This option will allow residents to hire their own tree trimming contractor with the issuance of a permit from RCSD. This system would require more paperwork and regulatory supervision from District staff. Permits would be issued free of charge once the following conditions are met by the applicant:

- Work is to be performed by a tree service company with a current C27 Landscaping Contractor license, possibly from RCSD recommended list of contractors.
- Tree is inspected by District arborist both before and after tree trimming
- ISA and ASNI pruning guidelines are followed by contractor
- Trees are only pruned September through January in compliance with Federal bird and wildlife protection standards.
- A deposit in the amount of \$500.00 is made to insure against any tree damage that may occur as a result of improper pruning practices.

ATTACHMENT 2



City of Benicia
Parks and Community Services Department
370 East "L" Street Benicia, CA 94510
Phone: (707) 746-4285



TREE TRIMMING PERMIT APPLICATION

Date: _____

Permit no. _____

As described in the Tree & Street Trees Ordinance, Section 12.24 of the Benicia Municipal Code, a permit is required when altering or trimming a tree that is classified as a street tree, heritage tree or designated protected tree. A permit is not required to trim branches on said trees that are less than 3 inches in diameter. Tree Trimming Permits are valid for 6-months from the date issued.

In accordance with the above Ordinance, a permit for tree trimming is required prior to the commencement of work. This permit is valid only for the location(s) listed. Unless otherwise stated, all trimming must be done in strict adherence to the guidelines listed on the reverse of this form.

Property Owner's Name: _____

Property Owner's Address (if different):

Site Address or Tree Location: _____

Tree Type(s): _____

Daytime Phone: _____

Does the current condition of the tree(s) deem this application urgent? Explain in detail what constitutes this situation an emergency:

Description of work to be performed:

A separate Encroachment Permit may be required if any portion of the work will be performed in the public right-of-way. Information regarding encroachment permits is available from the Engineering Division located at 250 East L Street Benicia, CA 94510 or by calling (707) 746-4240.

Name of Tree Service Company to Perform

Work: _____

Benicia Business License #: _____ **Certified Arborist**

#: _____

Explanation For Not Using a Tree Service Company and/or Lack of Certified Arborist:

Permittee shall defend, indemnify and hold harmless the City of Benicia or its agents, officers, and employees from any claim, actions or proceeding of whatsoever kind or nature against the City of Benicia or its agents, officers arising out of or in any way related to the tree activity which is the subject of this permit.

I acknowledge that I have read and understand the City of Benicia Guidelines for Tree Trimming. I have also read and agree to comply with all instructions and conditions as listed herein.

Signature of Owner or Authorized Representative

Date

TREE TRIMMING GUIDELINES

1. Tree topping shall not be allowed. If the City deems height reduction necessary, drop crotch pruning may be allowed.
2. NO MORE than 25% of the total leaf or limb material should be removed at any one time or within any 12-month period.
3. Heading or stubbing cuts are not allowed. "Lion tailing" should be avoided, especially on older trees. All thinning cuts should be removed entirely to an appropriate lateral or main branch. Exceptions to this rule must be noted on the front of the application.
4. Deciduous or coniferous trees should be trimmed during the dormant winter season.
5. Trees should be trimmed to retain or enhance the natural appearance, size, and shape of the tree. Except in cases of pollarding, topiary or espalier, trees shall not be trimmed to create lopsided, sculptured, or void areas to enhance views, signage, or unusual effects unless specifically noted otherwise on the permit.
6. To minimize tree stress, multiple light trimmings are preferable to infrequent heavy pruning.
7. Thinning cuts should be made just outside the branch bark collar. Care should be taken to avoid flush cuts, as the tree will take longer to heal over and compartmentalize the wound.
8. Coniferous limbs marked for trimming should be removed entirely back to the main trunk or major limb of attachment (just outside the branch bark collar).
9. The property owner or his authorized representative takes full responsibility for strictly adhering to all tree-trimming guidelines and instructions.

ROSSMOOR COMMUNITY SERVICES DISTRICT

AGENDA ITEM C-3

Date: September 24, 2019

To: Tree Committee

From: General Manager Joe Mendoza
District Arborist Mary Kingman

Subject: **TRAQ CERTIFICATION FOR DISTRICT ARBORIST**

RECOMMENDED ACTION

RCSD General Manager has approved District Arborist to complete a 2-day educational course followed by a half day assessment that includes both a written and field component.

BACKGROUND

In order to meet the needs of the profession and respond to the demands of the stakeholders for advanced certificate-based programs, ISA has expanded its training and credentialing opportunities to include qualifications. The ISA offers the Tree Risk Assessment Qualification (TRAQ) as an instructor-led credential that demonstrates professional knowledge in tree risk assessment through participation in a training course and passing its accompanying exam. The TRAQ program offers tree care professionals the opportunity to expand their knowledge of the fundamentals of tree risk assessment by learning a standardized, systematic process for assessing tree risk and providing information to tree owners and risk managers for making informed decisions that will promote the safety of people and property and enhance tree benefits, health, and longevity. Through education and training, arborists will learn strategies to systematically identify and assess tree risk. Supplemental information can be found on the ISA website: <https://www.isa-arbor.com/Credentials/ISA-Tree-Risk-Assessment-Qualification>.