

ORDINANCE NO. 1001

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LANCASTER, AMENDING TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE LANCASTER MUNICIPAL CODE BY ADDING CHAPTER 9.48 (ADMINISTRATIVE PENALTIES FOR STATE OFFENSES), RELATING TO THE IMPOSITION OF ADMINISTRATIVE PENALTIES FOR CERTAIN CALIFORNIA PENAL CODE OFFENSES

WHEREAS the City Council of the City of Lancaster finds and declares that, with the passage of Proposition 47, certain so-called non-serious and nonviolent criminal offenses must be charged as misdemeanors, for which offenders are subject to imprisonment in county jail rather than state prison; and

WHEREAS the City Council of the City of Lancaster finds and declares that the removal of potentially significant legal consequences resulting from the change in state law and the implementation of various state- and county-wide diversion and deferral programs is likely to embolden some persons to repeatedly commit certain crimes; and

WHEREAS the City Council of the City of Lancaster finds and declares that the crimes specified in Proposition 47 and other low-level misdemeanor offenses are not likely to be addressed through the already overloaded and underfunded courts; and

WHEREAS the City Council of the City of Lancaster further finds and declares that it is in the public interest for the City to implement an administrative program to dissuade persons from committing these offenses in the City of Lancaster;

THE CITY COUNCIL OF THE CITY OF LANCASTER, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Lancaster hereby finds and determines that the above recitals are true and correct.

SECTION 2. Lancaster Municipal Code Title 9 is hereby amended by adding Chapter 9.48, as follows:

9.48.010 Title.

This chapter shall be known as the City of Lancaster's Administrative Penalties for State Offenses ordinance.

9.48.020 Findings and purpose.

The City Council finds and declares as follows:

- A. Pursuant to state law, certain criminal offenses must always be charged as misdemeanors, unless the defendant has a prior conviction for one of a very limited number of extremely violent and/or serious crimes.
- B. The removal of potentially significant legal consequences resulting from recent changes in state law, as well as the implementation of various state- and county-wide diversion and deferral programs, is likely to embolden certain persons to repeatedly commit these crimes.
- C. Local businesses may be particularly at risk of suffering significant financial losses through repeated, recurring incidents of shoplifting and burglary.
- D. It is the purpose and intent of this chapter to protect public health, safety and welfare by implementing an administrative program that will utilize financial disincentives to dissuade persons from committing these offenses in the City of Lancaster.

9.48.030 Definitions.

- 1. "City" means the City of Lancaster.
- 2. "Code" means the Lancaster Municipal Code, and laws incorporated therein by reference, as well as any adopted and uncodified ordinances.
- 3. "City Manager" means the Lancaster City Manager and/or his or her authorized designee(s).
- 4. "Director" means the Lancaster Public Safety Director or his or her authorized designee.
- 5. "Property" or "Premises" means any privately- or publicly-owned real property in the City of Lancaster.

9.48.040 Enforcement.

Any Los Angeles County Sheriff's deputy, Lancaster public safety officer, Lancaster community services officer, and any other public officer or employee designated by the City Manager shall be authorized to issue administrative citations in accordance with this chapter.

9.48.050 Offenses subject to administrative penalties.

A person who commits any of the following misdemeanor offenses in the City of Lancaster may be issued an administrative citation as provided in this chapter:

1. Shoplifting, as set forth in section 459.5 of the Penal Code;
2. Forgery, as set forth in chapter 4 of title 13 of part 1 of the Penal Code;
3. Theft, as set forth in chapter 5 of title 13 of part 1 of the Penal Code;
4. Buying, receiving or concealing stolen property, as set forth in section 496 of the Penal Code;
5. Unlawful dumping of waste matter, as set forth in section 374.3 of the Penal Code;
6. Disturbing the peace, as set forth in section 415 of the Penal Code;
7. Vandalism, as set forth in section 594 of the Penal Code.

9.48.060 Administrative Citations.

A. As an alternative to pursuing misdemeanor criminal proceedings, any officer, as defined in this chapter, may issue an administrative citation to a person when the officer has determined, through personal observation or after undertaking standard law enforcement investigatory actions, that the person has committed one of the offenses enumerated in section 9.48.050 of this chapter. A separate citation will be issued for the commission of each separate or subsequent enumerated offense.

B. Within five (5) days after issuance of a citation, an officer shall submit a copy of the citation and a written incident report or statement of facts to the Director. Alternatively, the officer may elect to submit the written incident report or statement of facts to the Director, who may then issue the citation.

C. An administrative citation may be personally given to the offender, or the offender may be served by first class mail to an address which is either: (i) indicated on any form of identification presented to the officer, or (ii) discovered by the officer during the course of his or her standard law enforcement investigatory actions. The date a citation is placed in a U.S. Postal Service mail receptacle shall be the date of service. A declaration of service shall be made by the person mailing the administrative citation showing the date and manner of service by mail and reciting the name and address of the citation addressee. Failure of any responsible person to receive an administrative citation by mail shall not invalidate any citation issued pursuant to this chapter.

D. The citation shall be in a City-approved format, and shall include the following information:

1. A brief description of the offense committed;
2. The date, location and approximate time the offense was committed;
3. The Penal Code section of the offense committed, as set forth in section 9.48.050 of this chapter;
4. A statement describing the right to appeal the citation;
5. A statement advising that the fine shall be paid to the City within thirty (30) days from the date of the administrative citation, procedure for payment, and the consequences of failure to pay.

E. The penalty amounts of administrative citations issued pursuant to this chapter shall be as follows, which City Council may periodically adjust by resolution:

1. For the first administrative citation, the penalty shall be five hundred dollars (\$500.00);
2. For the second and any subsequent administrative citation, the penalty shall be one thousand dollars (\$1,000.00).

9.48.070 Right of appeal from an administrative citation.

A. A person who has been issued an administrative citation pursuant to this chapter may contest the citation by filing a written appeal on a City-approved form to the City Clerk within ten (10) calendar days from the date of the citation. The basis for the appeal must be specified in detail on the appeal form. There shall be no filing fee for the appeal, however, a deposit in the amount of the citation must be paid at the time the appeal is filed. If the citation is dismissed as a result of the appeal hearing, the deposit shall be returned to the appellant within thirty (30) days from the date of the written appeal decision.

B. Failure of the City Clerk to receive a timely appeal constitutes a waiver of the right to contest a citation; in this event, the citation is final and binding.

C. As soon as practicable after a timely appeal is filed, the Director shall fix a date, time and place for a hearing. The hearing shall be conducted by an independent and impartial hearing officer. Written notice of the time and place for the hearing shall be served by first class mail, at the return address indicated on the appeal form, at least ten (10) calendar days prior to the date of the hearing.

D. An appellant may request, in writing, that the Director reschedule the hearing if the request is made at least twenty-four (24) hours prior to the hearing. The Director shall grant one continuance of the hearing date.

E. Failure of an appellant to appear at the scheduled hearing shall constitute the appellant's waiver of the right to appeal and a forfeiture of the citation amount deposited at the time the appeal was filed.

F. Appeal hearings are informal, and formal rules of evidence and discovery do not apply. The City bears the burden of proof to establish, by a preponderance of evidence, that the appellant committed the offense that was the basis for the citation. The officer issuing the administrative citation and/or submitting the written incident report or statement of facts shall not be required to appear at the hearing. The hearing officer shall accept testimony by declaration under penalty of perjury relating to the commission of the offense, as set forth in the issuing officer's incident report or statement of facts, and shall consider any other relevant evidence concerning the commission of the offense that the Director may present at the hearing. The hearing officer shall also take the testimony of the appellant, and/or his or her witnesses, will consider any other credible relevant rebuttal evidence the appellant may wish to present. The appellant may represent himself or herself or be represented by anyone of his or her choice, including counsel, at his or her sole expense. The appellant may bring an interpreter to the hearing at his or her sole expense.

G. The hearing officer shall make findings based on the record of the hearing, and shall prepare a written decision, based on those findings, to either uphold or dismiss the citation. A copy of the written decision shall be served on the appellant by first class mail within ten (10) days after the hearing. If the citation is dismissed, the City shall refund the amount of the citation deposit to the appellant within thirty (30) days from the date of the decision.

H. The decision of the hearing officer is final and conclusive, subject only to review by the superior court in accordance with the time limits set forth in Government Code Section 53069.4 and/or Code of Civil Procedure Section 1094.6.

9.48.080 Collection of unpaid administrative citations.

The City may collect an unpaid administrative citation in any manner authorized by law, including, but not limited to, the following:

1. Causing a special assessment to be made upon real property owned by the person to whom the citation was issued;
2. Recording a lien upon real property owned by the person to whom the citation was issued;
3. Collecting the moneys through the Franchise Tax Board, from personal income tax refunds, unclaimed property claim payments, and/or state lottery winnings.

9.48.090 Severability.

If any section, subsection, paragraph, sentence, clause or phrase of this chapter is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this chapter. The City Council declares that it would have adopted this chapter, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases, or portions be declared invalid or unconstitutional.

SECTION 2. That the City Clerk shall certify to the passage of this Ordinance and will see that it is published and posted in the manner required by law.

I, Britt Avrit, CMC, City Clerk of the City of Lancaster, do hereby certify that the foregoing ordinance was regularly introduced and placed upon its first reading on the ____ day of _____, 2015, and placed upon its second reading and adoption at a regular meeting of the City Council on the ____ day of _____, 2015 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

BRITT AVRIT, CMC
City Clerk
City of Lancaster

R. REX PARRIS
Mayor
City of Lancaster

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss
CITY OF LANCASTER)

CERTIFICATION OF ORDINANCE
CITY COUNCIL

I, _____, _____ City of Lancaster, California, do hereby certify that this is a true and correct copy of the original Ordinance No. 1001, for which the original is on file in my office.

WITNESS MY HAND AND THE SEAL OF THE CITY OF LANCASTER, on this _____ day of _____, _____.

(seal)