



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Tell and Members of the City Council

THROUGH: David N. Carmany, City Manager

FROM: Eve R. Irvine, Chief of Police
Christi Hogin, Special Counsel

DATE: September 6, 2011

SUBJECT: Consideration of an Ordinance Amending Municipal Code Section 5.48.330 Regulating Leaf Blowers and Section 1.04.010 to Allow Violations of the Municipal Code to Be Charged as Either Misdemeanors or Infractions.

RECOMMENDATION:

Staff recommends that the City Council waive further reading and introduce Ordinance No. 2153 amending Manhattan Beach Municipal Code Section 5.48.330 to make operation of a leaf blower a misdemeanor and Section 1.04.010 to allow violations of the Municipal Code to be prosecuted as either a misdemeanor or an infraction.

FISCAL IMPLICATION:

None anticipated.

BACKGROUND:

In 1998, the City Council adopted Ordinance No. 1986 prohibiting the use of leaf blowers due to their high noise levels and effect on the environment, codified as Municipal Code Section 5.48.330. Currently, operation of leaf blowers results in an infraction, unless the person has been convicted twice previously of operating a leaf blower, at which point he or she is charged with a misdemeanor. It would appear that the original ordinance was created to provide a sliding scale in charging the offense. This particular method employed creates bookkeeping and enforcement difficulties which have challenged enforcement efforts. In reviewing recent resident complaints regarding enforcement of the leaf blower ban, limitations created by the Municipal Code have been identified.

DISCUSSION:

While it is illegal to operate a leaf blower within City limits, a violation of the ordinance currently results in an infraction, unless the person charged has previously violated the ordinance twice within the previous 12 months, at which point the repeat offender is charged with a misdemeanor. The Police Department indicates that tracking previous violations for individuals to determine if they have received two or more infractions within the past 12 months is

burdensome for staff and has created difficulties in citing and prosecuting the offense. The proposed ordinance seeks to simplify the process by making any operation of mechanical blowers in the City punishable as a misdemeanor, subject to all fines and penalties permitted under Section 1.04.010 of the Municipal Code. The City Prosecutor has requested that the City Council consider this amendment.

Under Municipal Code Section 1.04.020, any act prohibited by the Code (such as use of a mechanical blower) also includes “causing, permitting, aiding, abetting, suffering or concealing the fact of such act...” Under this section, the City may also cite the employer of a gardener who uses these devices.

Currently, all Municipal Code violations are misdemeanors unless other specific penalties (i.e. infraction) are noted for a particular Code section. Therefore, we could generally accomplish the desired change by merely deleting the specific penalties provision so that the general provisions of Chapter 1.04 would apply. However, in this case, specific penalties are defined for violations of Noise Regulations (Chapter 5.48), so the proposed ordinance for leaf blowers includes a reference to the application of the general penalty provisions defined in Chapter 1.04.

Many municipal codes have what is called “wobbler” provisions that allow the enforcement agency to cite or charge an offense as an infraction if, in the judgment of the enforcement agency, the circumstances warrant the lesser charge. (Santa Monica uses a wobbler in leaf blower enforcement.) The wobbler also provides the prosecutor with flexibility in charging the offense, which may be especially useful in plea bargains.

There are significant differences between an infraction and a misdemeanor. An infraction is not punishable by imprisonment. A person charged with an infraction is not entitled to a jury trial or a public defender. There are also similarities; the authority of the police, the jurisdiction of the court, the statute of limitations and the burden of proof are generally the same for both.

While it is possible to enact penalty provisions that apply only to the leaf blower ban, it is recommended that the City Council amend the general penalty provisions (Section 1.04.010) to allow the wobbler provisions to apply to any violation. Redondo Beach, Hawthorne, and Claremont are just a few examples of cities that have adopted general penalty wobbler provisions. In order to provide clear enforcement authority with respect to conditions of approval for permits (beyond just revocation), it is recommended that the City Council also amend the current code to expressly reference the conditions of approval. Below, the recommended amendments to section 1.04.010 shown in italics:

*“It shall be unlawful for any person to violate any provision, or to fail to comply with any of the requirements of this Code **or any condition of any permit or license approved pursuant to any provision of this code.** Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Code shall be guilty of a misdemeanor, unless it is specifically stated in the applicable chapter that it is an infraction, **or unless such violation is subsequently prosecuted as an infraction, in which case such person is guilty of an infraction.**”*

ENVIRONMENTAL DETERMINATION:

This ordinance is exempt from review under the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq., “CEQA”) and CEQA regulations (14 California Code of Regulations §§ 15000, et seq.) because it is an action by the City for protection of the environment, and is therefore categorically exempt from further CEQA review under Cal. Code Regs. Title 14, § 15308. The proposed amendment is also exempt in that it is covered by the general rule that CEQA only applies to projects which have the potential for causing a significant effect on the environment, and since it can be seen with certainty that there is no possibility that the amendment will have a significant effect on the environment, the amendment is not subject to CEQA.

CONCLUSION:

Staff recommends that City Council introduce Ordinance 2153.

Attachment: Ordinance No. 2153

ORDINANCE NO. 2153

AN ORDINANCE OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, AMENDING THE MANHATTAN BEACH MUNICIPAL CODE SECTION 5.48.330 PROHIBITING OPERATION OF LEAF BLOWERS AND SECTION 1.04.010 TO ALLOW VIOLATIONS OF THE MUNICIPAL CODE TO BE CHARGED AS EITHER A MISDEMEANOR OR AN INFRACTION

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

SECTION 1. This ordinance is exempt from review under the California Environmental Quality Act (California Public Resources Code §§ 21000, *et seq.*, "CEQA") and CEQA regulations (14 California Code of Regulations §§ 15000, *et seq.*) because it is an action by the City for protection of the environment, and is therefore categorically exempt from further CEQA review under Cal. Code Regs. Title 14, § 15308. The proposed amendment is also exempt in that it is covered by the general rule that CEQA only applies to projects which have the potential for causing a significant effect on the environment, and since it can be seen with certainty that there is no possibility that the amendment will have a significant effect on the environment, the amendment is not subject to CEQA.

SECTION 2. The City Council hereby amends Manhattan Beach Municipal Code to amend subparagraph C of Section 5.48.330 to read as follows:

"Enforcement. Violation of this section shall be punishable as described in Chapter 1.04 of this Code."

SECTION 3. The City Council hereby amends the introductory provisions of Manhattan Beach Municipal Code section 1.04.010 to read as follows, without any change to subparagraphs A through D:

"It shall be unlawful for any person to violate any provision, or to fail to comply with any of the requirements of this Code or any condition of any permit or license approved pursuant to any provision of this code. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Code shall be guilty of a misdemeanor, unless it is specifically stated in the applicable chapter that it is an infraction, or unless such violation is subsequently prosecuted as an infraction, in which case such person is guilty of an infraction."

SECTION 4. If any part of this ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this ordinance are severable.

SECTION 5: Repeal or amendment of any provision of the Manhattan Beach Municipal Code does not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before, this ordinance's effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this ordinance.

SECTION 6: The City Clerk shall certify to the adoption of this ordinance and shall cause the same to be published in the manner prescribed by law within fifteen (15) days after its passage, and said ordinance shall become effective thirty (30) days after adoption.

SECTION 7: The City Clerk shall cause this ordinance or a summary thereof to be published and, if appropriate, posted, as provided by law. Any summary shall be published and a certified

copy of the full text of this ordinance posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this ordinance is to be adopted. Within fifteen (15) days after the adoption of this ordinance, the City Clerk shall cause a summary to be published with the names of those City Councilmembers voting for and against this ordinance and shall post in the Office of the City Clerk a certified copy of the full text of this ordinance along with the names of those City Councilmembers voting for and against the ordinance.

PASSED, APPROVED, and ADOPTED this ___ day of _____, 2011.

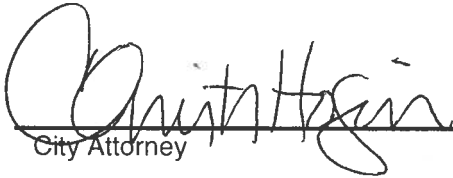
Ayes:
Noes:
Absent:
Abstain:

Mayor, City of Manhattan Beach, California

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney