



MEMORANDUM

TO: CITY COUNCIL

**FROM: WHITNEY MCDONALD, CITY MANAGER
BILL ROBESON, ASSISTANT CITY MANAGER/ PUBLIC WORKS
DIRECTOR
DAVID HIRSCH, ASSISTANT CITY ATTORNEY**

**SUBJECT: SUPPLEMENTAL INFORMATION
AGENDA ITEM 11.b. – OCTOBER 26, 2021 CITY COUNCIL MEETING
INTRODUCTION OF AN ORDINANCE ADDING CHAPTER 8.33,
MANDATORY ORGANIC WASTE DISPOSAL REDUCTION, AND
CHAPTER 15.06, SB 1383 CALGREEN RECYCLING AND MODEL
WATER EFFICIENT LANDSCAPING ORDINANCE REQUIREMENTS, TO
THE MUNICIPAL CODE TO COMPLY WITH SB 1383**

DATE: OCTOBER 26, 2021

Subsection 8.33.130(e) of the proposed Ordinance for Mandatory Organic Waste Disposal Reduction includes Penalty Amounts for Types of Violations, and provides for a range of penalties for violations as follows:

- (1) For a first violation, the amount of the base penalty shall be \$50 to \$100 per violation.
- (2) For a second violation, the amount of the base penalty shall be \$100 to \$200 per violation.
- (3) For a third or subsequent violation, the amount of the base penalty shall be \$250 to \$500 per violation.

Upon further review, staff is recommending that the City Council consider modifying the proposed ordinance to provide more certainty for each penalty amount and to consider using the low end of the range for each violation. This approach is permissible under the CalRecycle regulations, which requires that penalties meet the minimums in a range set out in 14 CCR 18997.2.

If the City Council wishes to modify the penalties provision as suggested, it is recommended that Section 8.33.130(e) be revised and introduced using the following language:

- (e) Penalty Amounts for Types of Violations.

The penalty amounts for violations are as follows:

- (1) For a first violation, the amount of the penalty shall be \$50.
- (2) For a second violation, the amount of the penalty shall be \$100.
- (3) For a third or subsequent violation, the amount of the penalty shall be \$250 per violation.

Since the next Subsection, 8.33.130(f), is worded to provide factors to consider in determining penalty amounts based upon the range, if Subsection 8.33.130(e) is modified to provide a set amount, it is also recommended that Subsection 8.33.130(f) be revised as follows:

(f) Factors Considered in Imposing Penalties.

The following factors shall be used when imposing penalties for violations:

- (1) The nature, circumstances, and severity of the violation(s).
- (2) The violator's ability to pay.
- (3) The willfulness of the violator's misconduct.
- (4) Whether the violator took measures to avoid or mitigate violations of this chapter.
- (5) Evidence of any economic benefit resulting from the violation(s).
- (6) The deterrent effect of the penalty on the violator.
- (7) Whether the violation(s) were due to conditions outside the control of the violator.

cc: City Attorney
City Clerk
City Website (or public review binder)