

ORDINANCE NO. 3260

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING  
MUNICIPAL CODE CHAPTER 1.20 TO CLARIFY CITY  
ATTORNEY AUTHORITY AS PRIMARY CRIMINAL  
PROSECUTOR OF THE MUNICIPAL CODE AS STATED IN  
THE CITY CHARTER

WHEREAS, the Chula Vista City Charter states that the City Attorney shall “[p]rosecute, if so directed by ordinance of the City Council, all offenses against the ordinances of the City...” [Section 503(b)(6)]; and

WHEREAS, the current Chapter 1.20 is unclear because it does not explicitly state that the City Attorney is the official responsible for prosecuting Municipal Code violations nor is the Chapter consistent with the City Charter; and

WHEREAS, the City Council so directs and authorizes the City Attorney to act as a prosecutor with regard to Municipal Code misdemeanor violations as stated in the City Charter subject to his or her prosecutorial discretion and as office resources and staffing permit; and

WHEREAS, this action is necessary to preserve the public peace, health, safety and general welfare in that this action will promote the public’s compliance with municipal law, it will solidify the authority to prosecute code violations as misdemeanors and it will support the Police Department’s efforts in the field.

NOW, THEREFORE, with the above recitations incorporated herein, the City Council of the City of Chula Vista does, hereby, ordain as follows:

**SECTION I.** That Chula Vista Municipal Code Chapter 1.20 be amended to read as follows:

Chapter 1.20

GENERAL PENALTY\*

Sections:

- |          |   |
|----------|---|
| 1.20.005 | City Attorney authority to prosecute violations of the Chula Vista Municipal Code.                    |
| 1.20.010 | Designated – Applicability.   |
| 1.20.020 | Infractions – Prosecutor’s discretion/defendant’s election to have infraction treated as misdemeanor. |
| 1.20.030 | Applicability of misdemeanor provisions.  |
| 1.20.040 | Precedence over other sections.   |

- \* For statutory provisions authorizing cities to impose penalties for violations of ordinances, not exceeding \$500.00 in fines and/or six months imprisonment, see Gov. Code § 36901; for provisions of the city Charter regarding penalties for violation of ordinances, see Charter §§ 316 and 1501; for statutory authority for cities to compel prisoners to labor, see Gov. Code § 30904.

1.20.005 City Attorney authority to prosecute violations of the Chula Vista Municipal Code.

- A. Pursuant to Section 503(b)(6) of the City Charter, the City Council hereby authorizes and directs the city attorney to prosecute all offenses against the ordinances of the City. The city attorney will prosecute all offenses against the ordinance of the City subject to his or her prosecutorial discretion and as office resources and staffing permit. The city attorney is hereafter referred to as the “city prosecutor” in this Chapter and the city attorney can also authorize deputy city attorneys to act as city prosecutors as he or she deems appropriate based on the professional qualifications of the deputy city attorney.
- B. This ordinance establishes a full-time city prosecutor subject to the resources and staffing of the city attorney’s office.
- C. A city prosecutor may exercise the following powers:
  - 1. The city prosecutor may prosecute all such misdemeanors committed within the city, and handle all appeals arising from it. The city prosecutor may draw complaints for such misdemeanors, and may prosecute all recognizance’s or bail bond forfeitures arising from or resulting from the commission of such offenses.
  - 2. Whenever any person applying for a writ of habeas corpus is held in custody by any peace officer of such city, charged with having committed within the city any misdemeanor, a copy of the application for such writ shall be served upon such city prosecutor at the time and in the manner provided by law for the service of writs of habeas corpus upon district attorneys. On behalf of the people, the prosecutor shall conduct all proceedings relating to such application. If the constitutionality of any law is questioned in any such habeas corpus proceeding, the city prosecutor shall immediately notify the city attorney who may take charge of the proceedings on behalf of the people, or become associated with the city prosecutor in the proceedings.

1.20.010 Designated – Applicability.

- A. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of the ordinances of the city shall be guilty of a misdemeanor, unless, at the sole option of the city prosecutor, the violation is cited and prosecuted as an infraction.

B. An infraction is punishable by:

1. A fine not exceeding \$100.00 for a first violation.

C. An infraction is not punishable by imprisonment. A person charged with an infraction shall not be entitled to a trial by jury. A person charged with an infraction shall not be entitled to have the public defender or other counsel appointed at public expense to represent him unless he is arrested and not released on his written promise to appear, on his own recognizance, or upon a deposit of bail.

D. A misdemeanor is punishable by:

1. Imprisonment in the county jail not exceeding six months, or by fine not exceeding \$1,000, or by both.

E. Each such person described in subsection (A) of this section shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the ordinances of the city is committed, continued or permitted by any such person, and he shall be punished accordingly.

F. Payment of a fine shall not excuse payment of any fee required by the municipal code.

G. In addition to the foregoing, any violation of the provisions of the ordinances of the city is deemed to be a public nuisance. Such violations may be abated by civil action or pursuant to applicable administrative abatement procedures.

1.20.020 Infractions – Prosecutor’s discretion/defendant’s election to have infraction treated as misdemeanor.

A. A violation of any Chula Vista Municipal Code section may, at the discretion of the city prosecutor if the violation is initially charged as a misdemeanor rather than an infraction, be prosecuted as an infraction, subject to the procedures described in CVMC 1.20.010(C) and 1.20.030 when:

1. The city prosecutor files a complaint charging the offense as an infraction, unless the defendant, at the time he is arraigned, after being informed of his rights, elects to have the case proceed as a misdemeanor; or
2. The court, with the consent of the defendant, determines that the offense is an infraction, in which event the case shall proceed as if the defendant had been arraigned on an infraction complaint.

1.20.030 Applicability of misdemeanor provisions.

Except as otherwise provided by law, all provisions of law related to misdemeanors shall apply to infractions, including but not limited to powers of peace officers, jurisdiction of courts, period for commencing action and for bringing a case to trial, and burden of proof.

1.20.040 Precedence over other sections.

CVMC 1.20.005, 1.20.010, 1.20.020 and 1.20.030 supersede all other criminal penalty provisions of the Chula Vista Municipal Code and any other city ordinances.

## **Section II. Severability**

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

## **Section III. Construction**

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict; applicable state and federal law and this Ordinance shall be construed in light of that intent.

## **Section IV. Effective Date**

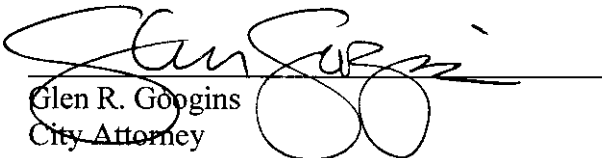
This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

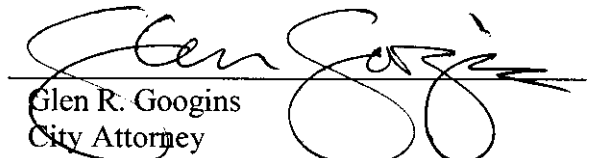
## **Section V. Publication**

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by

Approved as to form by

  
Glen R. Googins  
City Attorney

  
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City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 19th day of March 2013, by the following vote:

AYES: Councilmembers: Aguilar, Bensoussan, Salas and Cox

NAYS: Councilmembers: Ramirez

ABSENT: Councilmembers: None

  
Cheryl Cox, Mayor

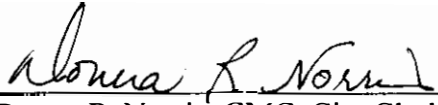
ATTEST:

  
Donna R. Norris, CMC, City Clerk

STATE OF CALIFORNIA       )  
COUNTY OF SAN DIEGO    )  
CITY OF CHULA VISTA      )

I, Donna R. Norris, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 3260 had its first reading at a regular meeting held on the 5th day of March 2013 and its second reading and adoption at a regular meeting of said City Council held on the 19th day of March 2013; and was duly published in summary form in accordance with the requirements of state law and the City Charter.

March 29, 2013  
Dated

  
Donna R. Norris, CMC, City Clerk