

CAPISTRANO BAY DISTRICT
AGENDA REPORT
April 30, 2019

Security Report

ITEM 6c

District Ordinances/Speeding

In a review of existing Ordinances relating to speed issues, the District currently has two ordinances on the books:

- Ordinance No. 08-118 (attached on the following pages)

An ordinance . . . establishing the Prima Facie speed limit for Beach Road at 15 miles per hour.

This ordinance simply establishes the speed limit for Beach Road – there is no penalty component with this ordinance.

- Ordinance No. 05-105 (attached on following pages)

An ordinance . . . establishing penalties for failure or refusal to comply with any lawful order, signal or direction of the District's peace officers and contract security officers.

The operative term in this ordinance is "lawful order." In a discussion with the Dana Point Chief of Police, Lt. Margie Sheehan, it is UNLAWFUL for a security officer to detain or attempt to detain a motorist in an effort to intervene with a moving vehicle. This is identified in the Calif. Penal Code under Section 146 – *Officer Acting Without Regular Process* (Unlawful Arrest or Unlawful Detention). Also, Sections 236-237 of the Penal Code could apply, to wit; *False Arrest or Imprisonment*.

This means that our security officers are not legally authorized to conduct traffic stops on speeders.

Counter to these statutes, however, is language written into the 2007 Revised *Community Services District Law* document under Section 61064 (c) that states *"To protect property and to preserve the peace at facilities owned or managed by a district, a board of directors may confer on designated uniformed district employees the power to issue citations for misdemeanor and infraction violations of state law, city or county ordinances, or district rules, regulations or ordinances when the violation is committed within a facility and in the presence of the employee issuing the citation. District employees shall issue citations pursuant to Chapter 5C (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code.* This section 853.5 describes the procedures for issuing cites and while it is subsequent to our main issue of authority to deal with speed violators, it opens the question of whether the County Court system will honor speed citations if submitted by a District employee (not necessarily a POST certified police officer).

Staff recommendation is to have this reviewed by Counsel and then brought to the administrators at Orange County Superior Court for their opinion. If the District has to hire an in-house patrol officer, maybe it doesn't have to be a POST police officer.

ORDINANCE NO. 08-118

AN ORDINANCE OF THE CAPISTRANO BAY COMMUNITY SERVICES DISTRICT ESTABLISHING THE PRIMA FACIE SPEED LIMIT FOR BEACH ROAD AT 15 MILES PER HOUR.

THE BOARD OF DIRECTORS HEREBY ORDAINS AS FOLLOWS:

1. REPLACING OLD ORDINANCE

Ordinance No. 118 and No. 05-118 are hereby repealed.

2. STATEMENT OF POLICY AND NECESSITY

A. The Capistrano Bay District is a California Community Services District formed pursuant to Section 61000 et seq. of the California Government Code, empowered to exercise certain municipal governmental functions, including the care, maintenance and policing of its streets; and

B. Beach Road is a street not exceeding 25 feet in width and in certain areas as narrow as 12 feet, located entirely within the jurisdictional boundaries of the Capistrano Bay District and exclusively serving the residents therein; and

C. The absence of sidewalks in the community forces pedestrians to walk in the roadway; and

D. As a "local authority" as defined in Section 22358.3 of the California Vehicle Code (*Decrease on Narrow Street*), the District has caused engineering and traffic surveys to be conducted and as a result, the District makes a recommendation on the prima facie speed limit that is determined to be most appropriate, reasonable and safe.

3. ESTABLISHMENT OF A PRIMA FACIE SPEED LIMIT ON BEACH ROAD

The prima facie speed limit for Beach Road is hereby declared to be 15 miles per hour. Peace Officers, District employees empowered as Peace Officers and contract Security Officers of the Capistrano Bay District are, accordingly, hereby authorized and directed to enforce the aforesaid speed limit upon the erection of appropriate signs giving notice thereof.

4. EFFECTIVE DATE

This ordinance is an urgency ordinance and shall take effect immediately upon its passage. The continued restriction of speed limits on and along Beach Road is absolutely necessary for the preservation of the public health, safety and welfare of District residents; it is, moreover, inconvenient and ineffective to cause such enforcements to be made exclusively by the Police Officers of the City of Dana Point.

Passed, approved and adopted this 27th day of May, 2008 by the following vote:

ORDINANCE NO. 05-105

AN ORDINANCE OF THE CAPISTRANO BAY COMMUNITY SERVICES DISTRICT ESTABLISHING PENALTIES FOR FAILURE OR REFUSAL TO COMPLY WITH ANY LAWFUL ORDER, SIGNAL OR DIRECTION OF THE DISTRICT'S PEACE OFFICERS AND CONTRACT SECURITY OFFICERS.

THE BOARD OF DIRECTORS HEREBY ORDAINS AS FOLLOWS:

1. Replacing Old Ordinance.

Ordinance No. 105 is hereby repealed.

2. Purpose and Need.

From time to time, attempted enforcement of District Ordinances have been willfully and unlawfully ignored and disregarded.

3. Resisting A District Peace Officer or Contract Security Officer in the Discharge of His or Her Duties.

It is unlawful to willfully delay, resist or obstruct a District Peace Officer or Contract Security Officer in the discharge or attempted discharge of his or her duties.

4. Obedience to a District Peace Officer or Contract Security Officer Enforcing District Ordinances.

It is unlawful to willfully fail or refuse to comply with any lawful order, signal or direction from a District Peace Officer or Contract Security Officer.

5. Flight From A District Peace Officer or Contract Security Officer Enforcing District Ordinances.

It is unlawful for any person operating a motor vehicle, upon hearing a horn and seeing at least one lighted lamp exhibiting any overhead, bumper or dash-mounted flashing light from a vehicle carrying a District Peace Officer or Contract Security Officer wearing the District Peace Officer uniform or Contract Security Officer uniform emblazoned with a District emblem with appropriate badges, to flee and otherwise attempt to elude the pursuing District Peace Officer or Contract Security Officer's motor vehicle.

6. Penalties.

Any person found violating this ordinance is guilty of an infraction or a misdemeanor and shall be punished as follows:

(1) For a first offense, punished as an infraction by a fine of fifty dollars (\$50).

(2) For a second offense, punished as an infraction by a fine of not less than one hundred dollars (\$100) nor more than two hundred and fifty dollars (\$250).

(3) For a third or subsequent offense, by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars (\$1000), or both.

7. Notice.

61064. (a) Violation of any rule, regulation, or ordinance adopted by a board of directors is a misdemeanor punishable pursuant to Section 19 of the Penal Code.

(b) Any citation issued by a district for violation of a rule, regulation, or ordinance adopted by a board of directors may be processed as an infraction pursuant to subdivision (d) of Section 17 of the Penal Code.

(c) To protect property and to preserve the peace at facilities owned or managed by a district, a board of directors may confer on designated uniformed district employees the power to issue citations for misdemeanor and infraction violations of state law, city or county ordinances, or district rules, regulations, or ordinances when the violation is committed within a facility and in the presence of the employee issuing the citation. District employees shall issue citations pursuant to Chapter 5C (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code.

Topic, Derivation, and Comments: Misdemeanors and Infractions. New.

Subdivision (a) is new and derived from Public Resources Code §5786.17 (a). This “billboard” language cross-references the standard Penal Code provisions for misdemeanors. See the new §61060 (b) for the method to adopt ordinances.

Subdivision (b) is new and derived from Public Resources Code §5786.17 (b). Instead of prosecuting a violation as a misdemeanor, this language lets a CSD treat the violation as an infraction by following the standard Penal Code provisions.

Subdivision (c) is new and derived from Public Resources Code §5786.17 (c). This language requires a CSD’s board of directors to designate the district employees who have the authority to issue citations.