



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Consideration of Trial by Declaration for Infractions

MEETING DATE: September 15, 1993

PREPARED BY: City Attorney

RECOMMENDED ACTION: Council consideration and direction to staff.

BACKGROUND: As previously discussed by the Council, California Vehicle Code Sections 40901 and 40902 provide for trial by declaration in the disposition of infractions. This avoids the necessity of having Police Officers present in court to testify for certain minor violations. The potential for saving overtime costs is apparent.

In order to do this, it is necessary only that the Judges of the court adopt a policy allowing it. Assuming that occurs, traffic violators would be notified of this option after they plead not guilty. If trial by declaration is desired, the defendant would waive constitutional rights to confront and cross examine witnesses, and the matter would be set for trial. The officer who issued the citation would prepare a declaration of the facts surrounding the violation and send copies to both the court and the defendant. This serves as the Officer's testimony, and no physical appearance would be required.

The defendant then appears in court to offer rebuttals, explanations, or contradictions to that declaration and the matter is decided by the Judge as in any other traffic matter.

If the Judges consent to such a policy, it would be necessary to develop a procedure for the courts to notify the Police Department of all "not guilty" pleas on traffic matters. It would then be the City's obligation to send out notice to defendants advising of this possibility. If defendants respond negatively or do not respond at all, after a certain cut off date, it would be presumed that the Officer's presence is required and a subpoena issued.

Using this method, if a defendant is dissatisfied with the decision of the court, he or she has a right to another trial with the Officer present. Information received from other cities indicates this happens infrequently.

APPROVED _____

THOMAS A. PETERSON
City Manager



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If the Council wishes to seek implementation of such a policy, staff will prepare the appropriate communications with the courts asking concurrence.

FUNDING: Unknown.

Respectfully submitted,

A handwritten signature in cursive script, reading "Bob McNatt", is written over a horizontal line.

Bob McNatt
City Attorney

BM:vc