

CHAPTER 32: ADMINISTRATIVE CODE ENFORCEMENT, CITATIONS AND CIVIL PENALTIES

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§ 32.01 APPLICATION.

This chapter shall govern administrative code enforcement, citations, and civil penalties for violations of the city's ordinances.

(Ord. 205, passed 12-18-2018)

§ 32.02 FINDINGS; PURPOSE AND INTENT.

(A) The City Council finds that there is a need for one or more alternate methods of enforcing the city's ordinances. Though criminal fines and penalties have been the most frequent enforcement mechanism, there are certain negative consequences for both the city and the accused in that system. The delay inherent in that system does not ensure prompt resolution. Citizens resent being labeled as criminals for violations of administrative regulations. The higher burden of proof and the potential for incarceration do not appear appropriate for most administrative violations. The criminal process does not always regard city ordinance violations as being particularly important. Accordingly, the City Council finds that the use of administrative citations and the imposition of civil penalties is a legitimate and necessary alternative method of enforcement. This method of enforcement shall be in addition to any other legal remedy which could be pursued for city ordinance violations.

(B) The administrative offense procedures established under this chapter are intended to provide the public and the city with an informal, cost effective, and expeditious alternative to traditional criminal charges for violations of certain ordinance provisions. The procedures are intended to be voluntary on the part of those who have been charged with the administrative offenses. At any time prior to the payment of the administrative penalty as is provided for hereafter, the individual may withdraw from participation in the procedures, in which event the city may bring criminal charges in accordance with law.

Likewise, the city, in its discretion, may choose not to initiate an administrative offense and may bring criminal charges in the first or succeeding instances.

(Ord. 205, passed 12-18-2018)

§ 32.03 GENERAL PROVISIONS.

(A) *Administrative offenses established.* A violation of any provision of the city's ordinances or the acts prohibited in § 32.08 is an administrative offense that may result in an administrative citation and civil penalties pursuant to this chapter. Each day a violation exists constitutes a separate offense.

(B) *Fines Established.*

(1) *Fine Per Offense.* The City's fine is set in the amount of \$100.00 for each administrative offense unless a fine or civil penalty is expressly set forth in a different amount elsewhere in City code or per the fine schedule adopted by the City Council under section 32.03(B)(3). (2) *Fine, Subsequent Violations.* The administrative fine imposed for a subsequent violation of the same or similar nature as another violation by the same person shall be increased by the total number of violations. As a result, a second violation shall be 200% of the stated amount, and a third violation shall be 300% of the stated amount. The maximum fine for a violation, however, shall be set at the petty misdemeanor maximum, as amended, which as of 2023 is \$300.00. For continuous violations, after the \$300.00 maximum penalty amount has been reached, the City may impose multiple administrative penalties at the maximum amount until the ordinance violation is completely corrected.

(3) *City Fine Schedule.* The City Council may amend the civil penalty amounts by including a list of the amounts in the city's fee schedule ordinance that is adopted from time to time. Penalty amounts shall be determined in accordance with the fee schedule in effect on the date of the violation.

(C) *Service of City Enforcement Action.* As used in this chapter, service may be accomplished by delivering a copy to the person directly; by leaving a copy at the individual person's usual place of abode with some person of suitable age and discretion then residing there; by depositing a copy in the U.S. mail at a receptacle in the county, postage prepaid and properly addressed to last known address of the person to be served; or by any other manner provided in the Minnesota Rules of Civil Procedure. In the case of service by mail, service is completed on mailing.

(Ord. 205, passed 12-18-2018)

§ 32.04 PROCEDURES.

(A) *Hearing Petition.* The objective is for all city residents to comply with the city's ordinances. As more fully set forth below, the City anticipates the following code enforcement sequence: (1) Notice or Order to Correct the ordinance violation; (2) Administrative Citation with imposed Penalty if there is a failure to correct; (3) Hearing Officer Proceeding if requested by resident or city; and (4) civil district court enforcement

actions and/or criminal prosecution. Facts and circumstances, however, may change the sequence and manner of the City's code enforcement procedures and actions.

(B) *Notice or Order to Correct: Exceptions and Extensions.* Upon reasonable belief that a code violation has occurred, the City Administrator, or any other person (the "official") employed by the city and authorized in writing by the City Administrator, or any officer of the County Sheriff's Department (the "Official") may serve on the violator an order to correct ordinance violations.

(C) *Administrative Citation.* If compliance is not achieved within the timeline prescribed in an order to correct a violation, the Official is authorized to issue an administrative citation. An administrative citation shall be served on the person responsible for the violation. The citation shall provide the following:

- (1) The date, time, location, and nature of the offense;
- (2) The relevant portion(s) of the city code related to the offense;
- (3) The amount of the scheduled civil penalty and instructions for paying the penalty;
- (4) Identification of the Official or law enforcement officer issuing the citation;
- (5) A statement that the city code violation and the amount of the administrative civil penalty may be contested to be heard before an Hearing Officer by notifying the City Administrator or designated city representative in writing within 14 days of the date of the citation; and
- (6) A statement that failure to pay the administrative civil penalty may result in it being assessed against the property as provided in M.S. Ch. 429, as it may be amended from time to time.

(D) *Immediate Administrative Citation.* For the following violations, the city shall not be required to issue an order to correct and may proceed directly to the issuance of an administrative citation.

- (1) Repeat offender. If the same person commits a subsequent violation within 12 months after an order to correct has been issued for the same or similar offense.
- (2) License violations. For any license violations, including not having a license.
- (3) Parking violations. For parking violations issued under Ch. 72 of this code.
- (4) Animal violations. For any violations of Ch. 90 of this code.
- (5) Noise violations. For any violation of §§ 91.01 to 91.08 (Noise Related Issues).

(6) Other violations. Any city code expressly authorizing the immediate issuance of an Administrative Citation for specific code violations; Circumstances that in the discretion of the City Administrator require immediate corrective action.

(E) *Payment of Fines.* Within 14 days of the service of the citation, the alleged violator shall pay the amount of the applicable civil penalty.

§ 32.05. REQUEST FOR HEARING; HEARING OFFICER

(A) *Hearing Petition.* Any person contesting an order to correct or citation issued pursuant to this Chapter may, within 14 days of the service of the order to correct or citation, file with the City Clerk or City Administrator a completed and signed hearing petition requesting a hearing be scheduled before a Hearing Officer.

(B) *Hearing Deposit Fee.* A person requesting a hearing must pay a hearing request fee at the time of submitting the hearing petition, otherwise the hearing petition will not be deemed complete. The hearing fee shall be in the amount adopted by resolution of the City Council, which fee is intended to cover the City's hearing expenses.

(C) *Date, Location, and Notice of Hearing.* The Hearing Officer shall set the hearing date, time, and location. The hearing shall be held at Scandia City Hall unless another location has been agreed to by all parties and the Hearing Officer. Notice of the hearing must be served on the person responsible for the violation no less than 30 days in advance of the scheduled hearing, unless a shorter time is accepted by both parties.

(D) *Hearing Procedures.* The Hearing Officer controls the proceedings in all respects. During the hearing, the alleged violator and the City shall present their respective positions based on documented evidence to be presented to the Independent Hearing Officer at the scheduled hearing. The Hearing Officer shall record the hearing and receive testimony and exhibits, and the full record of the hearing shall be provided to the City and retained for the period required under Minnesota law. The Hearing Officer shall receive and give weight to evidence based on the probative value commonly accepted by reasonable and prudent people in the conduct of their affairs.

(E) *Hearing Officer Authority and Decision.* The Hearing Officer has the authority to determine that a violation did or did not occur, to dismiss a citation, to impose the scheduled fine, or to reduce, stay, or waive a scheduled fine, either unconditionally or upon compliance with appropriate conditions. The objective of the City, and by extension the objective of the Hearing Officer is to obtain code compliance; therefore, if the Hearing Officer determines that a violation has occurred and exists, when imposing a penalty for a violation, the Hearing Officer may consider any or all of the following:

- (1) The duration of the violation;
- (2) The frequency or recurrence of the violation;
- (3) The seriousness of the violation;
- (4) The history of the violation;

- (5) The violator's conduct after issuance of the notice of hearing;
- (6) The effort of the violator to comply;
- (7) The economic impact of the penalty on the violator;
- (8) The impact of the violation upon the community; and/or
- (9) Any other factors appropriate to a just result.

(F) *Fines for Continuing Violations.* The Hearing Officer may exercise discretion to impose additional administrative fines for more than one day of a continuing violation based on a finding that the accused intentionally and unreasonably refused to comply with the Code requirement. The Hearing Officer's decision and supporting reasons for continuing violations must be in writing.

(G) *Decision of the Hearing Officer.* The Hearing Officer shall issue a decision in writing to both parties within ten business days of the hearing. Any fines or penalties imposed must be paid no later than 30 days from the date of the Hearing Officer's decision. If the fine is not timely paid, the city may assess the civil penalty against the person's property pursuant to M.S. Ch. 429, as it may be amended from time to time. If the Hearing Officer dismisses all violations and administrative fines, then the person shall receive a full refund of the hearing fee.

(H) *Hearing Costs; Payment.*

(1) *Non-prevailing Party.* The cost of the hearing shall be borne solely by the non-prevailing party. The city shall provide an estimate of the cost of the hearing at the time of the hearing petition. The City Council has the authority to reduce the non-prevailing party's costs where that party can demonstrate indigency by clear and convincing evidence.

(2) *Inability to Pay Petition Fee or Costs.* If the alleged violator's income is at or below the 125% of the Federal poverty level, receives public assistance, or does not have enough money to pay the filing fee, then the City Administrator or the Hearing Officer may waive all or a portion of the hearing costs. The alleged violator must provide proof of financial need, such as tax return, W-2, or public assistance documents.

(I) *Hearing Officer Authority and Duties and Responsibilities; Hearing Procedures* If the Hearing Officer cannot fairly and objectively review the case, the Hearing Officer shall remove himself or herself from the case, and the City Administrator shall assign another Hearing Officer. The Hearing Officer is not a judicial officer, but is a public officer as defined by M.S. § 609.415, as it may be amended from time to time. The Hearing Officer shall not be a current or former employee of the city.

(J) *Appeal of Hearing Officer Decision.* The decision of the Hearing Officer is deemed final, unless and until appealed to the state district court, Washington County, State of Minnesota.

(Ord. 205, passed 12-18-2018)

§ 32.06 ENFORCEMENT, CIVIL REMEDIES, AND CITY CORRECTIVE ACTION

The City may elect to undertake any of the following enforcement actions individually or collectively and in any order and the City's enforcement action under one of the following cannot and does not preclude the City from undertaking any of the other enforcement actions under City code or otherwise authorized law.

(A) *Corrective Action*. The City may seek a court order permitting the city enter a person's property and take corrective action to bring the property in to code compliance and in addition seek the right to impose an assessment on the property for all of the City's corrective costs as well as city attorneys' fees and costs.

(B) *Unpaid fines*. If a civil penalty is not paid within the time specified, it shall constitute:

(1) A lien upon the real property upon which the violation occurred if the property or improvements on the property was the subject of the violation and the property owner was found responsible for that violation; or

(2) A personal obligation of the violator in all other situations.

(C) *Assessment*. The property may be assessed for all fines and city cost and expenses and collected in the same manner as taxes.

(D) *Personal obligation*. A personal obligation may be collected by any appropriate legal means.

(E) *Late fee*. A late payment fee to 10% of the fine shall be assessed for each 30-day period, or part thereof, that the fine remains unpaid after the due date.

(F) *Suspension and revocation*. Failure to pay a fine is grounds for suspending or revoking a license or permit or other approval associated with the violation.

(Ord. 205, passed 12-18-2018)

§ 32.07 CRIMINAL PENALTIES.

All code violations under this Chapter are, at minimum, petty misdemeanors. To the fullest extent permitted by law, code violations may also be deemed and shall be punishable as misdemeanor offenses,

And to the fullest extent permitted by law, the following shall be deemed separate and continuing city code violations and misdemeanor violations:

(A) Failure to pay a fine or request a hearing within 14 days after service of an administrative citation;

(B) Failure to appear at a scheduled hearing after service of a notice regarding the same; and

(C) Failure to pay a fine imposed by a Hearing Officer within 14 days after it was imposed, or such other time as may be established by the Hearing Officer.

(Ord. 205, passed 12-18-2018)

§ 32.08 INCORPORATED POLICIES AND STANDARDS.

The following policies and standards are incorporated into this chapter as if fully set forth herein:

(A) The Unified Development Code, as amended;

(B) Engineering Standards and Detail Specifications, adopted April 16, 2019 and subsequent revisions;

(C) Snow Plowing and Ice Control Policy, adopted February 15, 2011, and amended April 15, 2014 and February 21, 2017 and subsequent revisions; and

(D) Road Right-of-Way Maintenance Policy, adopted November 15, 2016 and subsequent revisions.

(Ord. 205, passed 12-18-2018; Ord. 211, passed 5-21-2019)