

Section 1100 – Administrative Hearing Process

Section 1100. Administrative Hearing Process.

Subd. 1. Purpose. Pursuant to City Charter, Section 14.84, the City council enacts Section 1100 of the City Code to provide an administrative hearing process for the resolution of violations of the City Code. The Council finds that an administrative hearing process will facilitate compliance with certain City Code provisions, avoid unnecessary delay in the enforcement of the City Code, and help to alleviate pressure on a burgeoning criminal caseload in District Court.

Subd. 2. Alternative Methods of Enforcement. This administrative enforcement procedure seeks to gain compliance with the City Code of Ordinances prior to any formal criminal or civil court action. The administrative hearing process provided for in Section 1100 shall be in addition to any other legal or equitable remedy available to the City for City code violations, except that if a determination is made by the mediator or hearing officer, pursuant to the hearing process detailed in Subd. 9, that a violation did not occur, the City may not then proceed with criminal prosecution for the same act or conduct.

Subd. 3. City Code Violations. A violation of the following provisions of the City Code, or successor ordinances, shall be an administrative offense that may be subject to the administrative hearing process of Section 1100. Ordinance violations are categorized as property violations, non-property violations or parking violations.

(a). Property Violations.

1. Section 244 – Refuse and Garbage Collection and Disposal
2. Section 300:00 - Building Code
3. Section 300:10 - Plumbing Code
4. Section 300:20 – Mechanical Code
5. Section 300:30 – Electrical Code
6. Section 300:40 – Rental Dwelling Licensing
7. Section 300:41 – International Property Maintenance Code of St. Cloud Section 300:50 – Fire Code
8. Section 355 – Ordinance No. 634, as amended, The Land Development Code
9. Section 360 – Sewer Use Code
10. Section 370 – Heritage Preservation
11. Section 400 - General Provision for Issuance of Licenses and Permits
12. Section 440 – Food Establishments
13. Section 441- Lodging Establishments
14. Section 447- Massage Facilities
15. Section 449-Tattooing, Body Piercing, Branding, and Scarification
16. Section 470-Swimming Pools, Public, State Regulations Adopted by Reference
17. Section 1000 – Nuisances Generally defined, enumerated and made unlawful
18. Section 1005 – Public Nuisances Affecting Health and Safety

(b). Parking Violations. Parking violations include any violation of Section 700 of the Code of Ordinances. Pursuant to Minnesota Statute § 169.346, handicapped parking violations will be enforced in the same manner as other parking ordinances and are therefore subject to this administrative process.

(c). Non-Property Violations. Non-Parking Violations include all other Code violations not specifically designed as Property or Parking Violations.

Subd. 4. Property Violations. Upon the reasonable belief that a property related administrative offense detailed in Subd. 3 of this Section has occurred, the City officials listed in this section shall serve on the violator an order to correct the violation. If compliance is not achieved by virtue of an order to correct, the official is authorized to issue an administrative citation. An administrative citation shall be presented in person or by mail to the person responsible for the violation. The citation shall state the date, time and nature of the offense, the name of the official issuing the citation, the amount of the scheduled civil fine, and the manner for paying the fine or appealing the citation by requesting a hearing.

Pursuant to Minn. Statute § 626.862, the Community Development Director, Health Director and/or representatives including the Chief Building Official, Health & Inspections Coordinator, Senior Planner; Planning Technician, Environmental Health Specialist, Environmental Health Technician, Building Inspector, Plumbing Inspector, Electrical Inspector, Heating Inspector, Fire Chief, Deputy Chief of Operations, Fire Marshal and Community Development Aide are authorized to issue a citation for ordinance violations.

Subd. 5. Parking Violations. Upon reasonable belief that a parking violation has occurred, a parking ticket will be issued pursuant to Section 700:50 of this Code of Ordinances.

Subd. 6. Non-Property Offenses; Administrative Citations. Upon reasonable belief that a non-property code violation has occurred, an administrative citation may be issued and served upon the person responsible for the violation. The administrative citation may be issued by a police officer or by an official designated in Subd. 4 of this Section. Service shall be in person or by mail. The citation shall state the date, time and nature of the offense, the name of the official issuing the citation, the amount of the scheduled civil fine, and the manner for paying the fine or appealing the citation by requesting an administrative hearing.

Subd. 7. Civil Fines. The administrative offenses detailed in Subd. 3-6 may be subject to a civil fine. The amount of a civil fine may not exceed the amount of the maximum fine allowed if the ordinance violation had been prosecuted as a misdemeanor. Civil Fines may not be imposed for ordinance violations that prohibit the same conduct that is classified as a crime of petty misdemeanor in Minnesota statutes, Chapters 168, 168A, 169, 169A, 170, 171, and 609.

Subd. 8. Schedule of Civil Fines. The City shall adopt by resolution a schedule of civil fines for administrative offenses for which a citation has been issued. City officials shall adhere to this schedule of fines in issuing administrative citations pursuant to this section.

Subd. 9. Payment of Civil Fine; Request for Administrative Hearing. The person responsible for the violation shall either pay the scheduled civil fine or request a hearing within 20 days after issuance of the administrative citation. During that period, only the City Attorney or an Assistant City Attorney has authority to dismiss the citation and/or waive the scheduled civil fine. Upon payment of the fine, the right to appeal is waived.

Subd. 10. Fee for Late Payment of Civil Fine.

- (a) A late payment fee of ten percent of the civil fine amount for property and non-property related violations shall be imposed if the person responsible for the violation fails to pay the civil fine within 20 days after issuance of the administrative citation or fails to timely request a mediation and hearing pursuant to this Article. A late payment fee of shall be imposed for late parking fines. The late fee will be designated by the City Council in Section 500 of this Code.
- (b) If a civil fine is not paid within the time specified and no request for a hearing is timely received, the nonpayment of the civil fine shall constitute a personal obligation of the violator. A personal obligation may be collected by the City by any appropriate legal means. Unpaid fines that are referred to collections will be assessed a collection fee in addition to the late fee. The collection fee will be set by resolution. If the fine was imposed for a property-related violation, the City may assess the applicable property pursuant to Subd. 14 of this Code.

Subd. 11. Mediation. After a violator has made a request for an administrative hearing the matter will be scheduled for a mediation. The mediation will be conducted by the City Attorney's Office. Notice of the date, time and location of the mediation will be mailed to the violator. The Parking Violations Bureau may provide oral notice of mediation to parking violators. The mediator shall have the authority to:

- (a) mediate and enforce a settlement of the dispute;
- (b) determine whether a violation occurred;
- (c) reduce, stay, or waive a scheduled fine either unconditionally or upon compliance with appropriate conditions.

If the dispute is not resolved through mediation then the matter will be scheduled for an administrative hearing.

Subd. 12. Administrative Hearing Procedures.

- (a) Hearing Officers. The City Administrator shall periodically approve a list of lawyers, from which the City Administrator shall randomly select as a hearing officer to hear a matter for which a hearing is requested. The person requesting a hearing shall have the right to request, no later than five days before the date of the hearing, that the assigned hearing officer be removed from the case. One such request for each case will be granted automatically by the City Administrator. A subsequent request shall be directed to the assigned /hearing officer, who will decide whether he or she cannot fairly and objectively review the case. If such a finding is made, 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 Minnesota Statutes, Section 609.415. The hearing officer shall not be a current or former City employee.

- (b) Notice of Hearing. Notice of the hearing must be served in person or by mail on the person responsible for the violation at least ten days in advance of the scheduled hearing, unless a shorter time is accepted by all parties.
- (c) Prepayment for Cost of Hearing. An administrative hearing fee of \$75 shall be payable to the City at the time of the request for hearing is made. However, in no event will the amount of the administrative hearing fee exceed the total amount of the civil fine. A request for hearing is not valid until the administrative hearing fee is paid. The City has authority to reduce the requesting person's share of the costs where that person can demonstrate indigency by clear and convincing evidence. Proof of indigency can be demonstrated by the person's receipt of means tested governmental benefits or a demonstrated lack of assets or current income. Such proof shall be presented to the City Attorney's Office for determination of the amount of the prepayment in advance of the hearing. In all cases, where the person requesting an administrative hearing is unable to attend and fails to request a continuance of the hearing at least 48 hours in advance of the scheduled hearing, all costs incurred by the City attributable to the requested hearing shall be charged to the requesting party and deducted from any prepayment made. The administrative hearing fee may be refunded if the administrative hearing officer determines that no violation occurred. In the event that the hearing officer determines that a violation occurred then the administrative hearing fee will be applied toward any civil fine imposed.
- (d) Hearing Procedures. At the hearing, the parties shall have the opportunity to present testimony and question any witnesses, but strict rules of evidence shall not apply. The hearing officer shall tape record the hearing and receive testimony and exhibits and the full record of the hearing shall be kept. The hearing officer shall receive and give weight to evidence, including hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs.
- (e) Authority of Hearing Officer. The hearing officer shall have the authority to:
 - (1) determine whether a violation occurred;
 - (2) dismiss the administrative citation;
 - (3) impose the scheduled fine; or
 - (4) reduce, stay or waive a scheduled fine either unconditionally or upon compliance with appropriate conditions.
 - (5) waive all or part of the administrative hearing application fee
- (f) Imposition of Civil Fine by Hearing Officer. When imposing a fine for a violation, the hearing officer may consider any or all of the following factors but in no case shall the fine exceed \$1,000.00.

- (1) the duration of the violation;
- (2) the frequency or reoccurrence 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 good faith effort by the violator to comply;
- (7) the economic impact of the fine on the violator;
- (8) the impact of the violation upon the community;
- (9) prior record of city code violations; or
- (10) any other factors appropriate to a just result.

(g) Fines for Continuing Violations. The hearing officer may exercise discretion to impose a fine for more than one day of a continuing violation but only upon a finding that:

- (1) the violation caused a serious threat of harm to the public health, safety, or welfare;
or
- (2) 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.

(h) Written Report of Hearing Officer. The decision of the hearing officer shall be in writing and contain findings of fact and conclusions of law. The written report shall be served on the parties by mail within 20 days of the last date of the hearing.

(i) Finality of Decision. The decision of the hearing officer shall be final without any further right of administrative appeal.

Subd. 13. Judicial Review. An aggrieved party may obtain judicial review of the decision of the hearing officer by petitioning the Minnesota Court of Appeals for a writ of certiorari pursuant to Minnesota Statute Section 606.01.

Subd. 14. Assessment of Civil Fines for Property-Related Violations.

(a) Civil Fines Subject to Assessment. In accordance with Section 14.85 of the City Charter, unpaid civil fines imposed for property-related violations may be assessed against:

- (1) property which was the subject matter or related to the subject matter of the civil fine;
or
- (2) property which was the location of an activity, proposed use, delivery of city services or other circumstances which resulted in the civil fine.

- (b) **Prior Voluntary Payment.** Prior to any assessment for unpaid fines, the City Administrator or the City Administrator's designate shall seek voluntary payment of the fines by notifying the owner of the property in writing of the fine imposed.
- (c) **Assessment Procedure.** On or before the first day of October of each year, the unpaid civil fine and late fees, including the administrative charge due under subdivision (d) of this Section, together with interest thereon at the maximum lawful rate permitted under Minnesota Statutes, Chapter 429, against said lot or parcel of land, together with a description of the premises and the name of the supposed owner, shall be certified to the County Auditor and shall be collected in the same manner as taxes and/or special assessments against the premises. The charge shall be a perpetual lien on the premises until paid. Prior to the certification to the County Auditor, the owner shall be given written notice of the proposed assessment and be provided an opportunity to be heard before the City Council.
- (d) **Certification fee:** A \$50.00 charge will be added to all accounts certified to the County Auditor's office for collection. This fee is to be considered separate and distinct from any penalty or interest that may be charged by the County as a result of the certification.

History: Ord. 2340 2-26-07; 2429 7-13-09.