

Section 117 – Administrative Penalties  
(Added, Ord. No. 11-02)

117.01. Purpose. Subdivision 1. The City Council finds that there is a need for alternative methods of enforcing the City code. The criminal process is not always the most effective or efficient option for addressing City code violations. Accordingly, the City Council finds that the use of administrative citations and the imposition of civil penalties is a legitimate alternative method of enforcement for certain types of City code violations. This method of enforcement is in addition to any other legal remedy that may be pursued for City code violations.

Subd. 2. Administrative citations and civil penalties. This section governs administrative citations and civil penalties for violations of the City code.

Subd. 3. Definitions.

- (a) "Person" means any individual, firm, partnership, association, corporation, company or organization of any kind.
- (b) "Property owner" means those shown to be the owner or owners on the records of the Hennepin County Department of Property Taxation; those identified as the owner or owners on a vacant building registration form, a holder of an unrecorded deed, contract for deed, a mortgagee or vendee in possession, a mortgagor or vendor in possession, an assignee of rents, a receiver, an executor, a trustee, a lessee, other person, firm or corporation in control of the freehold of the premises or lesser estate therein. An owner also means any person, partnership, association, corporation, or fiduciary having a legal or equitable title or any interest in the property or building. This includes any partner, officer, or director of any partnership, corporation, association or other legally-constituted business entity.
- (c) "Responsible person" means in the cases of offenses related to real property, an owner, occupant, entity or person acting as an agent for the owner who has direct or indirect control or authority over the building or real property upon which the building is located. Any party having a legal or equitable interest in the property. Responsible party may include, but is not limited to, a realtor, service provider, mortgager, leasing agent, management company, or similar person or entity.
- (d) "City Manager" means the City Manager or designated agent.

Subd. 4. Administrative offenses, schedule of fines and fees.

- (a) A violation of any provision of the City Code may be designated by resolution as an administrative offense, which may be subject to an administrative citation and civil penalties pursuant to this subdivision. Each day a violation exists constitutes a separate offense.
- (b) An administrative offense may be subject to a civil penalty not exceeding \$2,000.
- (c) The City Council must adopt by resolution a schedule of recommended fines and fees for offenses subject to an administrative citation.
- (d) The City Council may adopt a schedule of fees to be paid to administrative hearing officers.
- (e) The City Manager must adopt written procedures for administering the administrative citation program.

Subd. 5. Administrative penalties. (Amended, Ord. No. 13-01)

- (a) A person authorized to enforce provisions of the City code may issue an administrative citation upon the belief that a code violation has occurred. The citation must be issued in person or by first class mail to the person who violated the code or a responsible person or posted at the property or attached to the motor vehicle in the case of a vehicular offense. The citation must state the date, time and nature of the offense, the identity of the person issuing the citation, the amount of the scheduled fine and the manner for paying the fine or appealing the citation.
- (b) The persons receiving the citation must either pay the scheduled fine or request a hearing within ten calendar days after the issuance of the citation. Payment of the fine constitutes admission of the violation. A late payment fee per the scheduled amount will be imposed in accordance with subdivision 10. (Amended Ord. No. 13-01)

Subd. 6. Requests for a hearing/appeal.

- (a) A person served with an administrative citation may file a notice of appeal in person or postmarked within ten calendar days from the date of the administrative citation. Failure to comply with such time limit shall be deemed to waive the right to a hearing.
- (b) The notice of appeal shall be made in writing, filed with the City Clerk, and contain the following information:
  - (1) The reasons the appellant believes the administrative citation is objectionable or that a violation did not exist or occur.
  - (2) The name, address and telephone number of the appellant.
  - (3) The name, address and telephone number of any person in addition to the appellant who will be attending the hearing.
  - (4) The signature of the appellant.
- (c) A hearing request filing fee shall be paid simultaneously with the filing of the notice of appeal. The hearing request fee will be in the amount adopted by resolution by the City Council. The fee is refundable as provided in the hearing officer's decision. In cases where a violation was found to have occurred, the hearing officer may apply the refund towards the citation payment as provided in the hearing officer's decision.

Subd. 7. Administrative hearing.

- (a) The City Manager must periodically approve a list of persons, from which the City Manager or designated agent will randomly select a hearing officer to hear and determine a matter for which a hearing is requested. A person who has been issued a citation has the right to request, no later than five calendar 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 Manager or designated agent. A subsequent request must be directed to the City Manager who will decide whether the alternate hearing officer can fairly and objectively review the case. If such a finding is made, the Manager must remove that officer from the case, and the City Manager or designated agent must 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 must not be an employee of the City. The City Manager or designated agent must establish a procedure for evaluating the competency and neutrality of the hearing officers, including comments from citizens and City staff. (Amended, Ord. No. 13-01)
- (b) Upon the hearing officer's own initiative or upon written request of an interested party demonstrating the need, the officer may arrange for issuance of a subpoena for the attendance of a witness or the production of books, papers, records or other documents that are material to the matter being heard. The party requesting the subpoena is responsible for serving the subpoena in the manner provided for civil actions and for paying the fees and expenses of any witness. A person served with a subpoena may file an objection with the hearing officer promptly but no later than the time specified in the subpoena for compliance. The officer may cancel or modify the subpoena if it is unreasonable or oppressive. A person who, without just cause, fails or refuses to attend and testify or to produce the required documents in obedience to a subpoena is subject to penalties provided by law. Alternatively, the party requesting the subpoena may seek an order from district court directing compliance.
- (c) Notice of the hearing must be served in person or by mail on the person responsible for the violation and/or appellant at least ten calendar days in advance, unless a shorter time is accepted by all parties. At the hearing, the parties will have the opportunity to present testimony and question any witnesses, but strict rules of evidence do not apply. The hearing officer must record the hearing and receive testimony and exhibits. The officer must receive and give weight to evidence, including reliable hearsay evidence that possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs. (Amended, Ord. No. 13-01)
- (d) The hearing officer has the authority to determine that a violation occurred, to dismiss a citation, to impose the scheduled fine, and to reduce, or stay all or part of the scheduled fine either unconditionally or upon compliance with appropriate conditions. When imposing a penalty for a violation, the hearing officer may consider any or all of the following factors:
  - (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 good faith effort by the violator to comply;
  - (7) The economic impact of the penalty on the violator;
  - (8) The impact of the violation upon the community; and
  - (9) Any other factors appropriate to a just result.
- (e) 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 the violation caused a serious threat of harm to the public health, safety, or welfare or that the accused intentionally and unreasonably refused to comply with the code requirement. The hearing officer's decision and supporting reasons must be in writing.
- (f) The failure to pay the fine or request a hearing within ten calendar days after the issuance date of the citation, or the failure to attend the hearing, constitutes a waiver of the violator's rights to an administrative hearing and is an admission of the violation. A hearing officer may waive this result upon good cause shown. Examples of good cause include: death or incapacitating illness of the accused; a court order requiring the accused to appear for another hearing at the same time; and lack of proper service of the citation or notice of the hearing. "Good cause" does not include forgetfulness and intentional delay. If the accused violator fails to attend a hearing without good cause the fee for the hearing will not be returned to the accused. (Amended, Ord. No. 13-01)
- (g) The decision of the hearing officer is final without any further right of administrative appeal, except for matters subject to administrative review under subdivision 8. In a matter subject to administrative review under subdivision 8, the hearing officer's decision may be appealed to the City Council by submitting a request in writing to the City Manager or designated agent within ten calendar days after the hearing officer's decision. (Amended, Ord. No. 13-01)

Subd. 8. Administrative review.

- (a) The hearing officer's decision in any of the following matters may be appealed by the person responsible to the City Council for administrative review:
- (1) An alleged failure to obtain a permit, license, or other approval from the City Council as required by an ordinance;
  - (2) An alleged violation of a permit, license, other approval, or the conditions attached to the permit, license, or approval, that was granted by the City Council; and
  - (3) An alleged violation of regulations governing a person or entity who has received a license granted by the City Council.
- (b) The appeal must be heard by the City Council after a notice has been served in person or by registered mail at least ten calendar days in advance. The parties to the hearing must have an opportunity to present oral and/or written arguments regarding the hearing officer's decision. (Amended, Ord. No. 13-01)
- (c) The City Council must consider the record, the hearing officer's decision, and any additional arguments before making a determination. The Council is not bound by the hearing officer's decision, but it may adopt all or part of the officer's decision. The Council's decision must be in writing.

- (d) If the Council makes a finding of a violation, it may impose a civil penalty not exceeding \$2,000 per day per violation, and it may consider any or all of the factors contained in subdivision 7(d). The Council may also reduce, stay or waive a fine unconditionally or based on reasonable and appropriate conditions.
- (e) In addition to imposing a civil penalty, the Council may suspend or revoke any City issued license, permit, or other approval associated with the violation, if the procedures on the City code have been followed.

Subd. 9. Judicial review. An aggrieved party may obtain judicial review of the decision of the hearing officer or the City Council in accordance with state law.

Subd. 10. Recovery of civil penalties.

- (a) If a civil penalty is not paid within the time specified, it constitutes:
  - (1) A personal obligation of the violator in all situations, and
  - (2) A lien upon the real property upon which the violation occurred if the property or improvements on the property were the subject of the violation and the property owner was found responsible for that violation.
- (b) A lien may be assessed against the property and collected in the same manner as taxes.
- (c) A personal obligation may be collected by any appropriate legal means.
- (d) A late payment fee per unpaid or portion thereof will be assessed per the schedule of fees.
- (e) During the time that a civil penalty remains unpaid, no City approval will be granted for a license, permit, or other City approval sought by the violator or for property under the violator's ownership or control.
- (f) Failure to pay a fine is grounds for suspending, revoking, denying, or not renewing a license or permit associated with the violation.

Subd. 11. Criminal penalties. The following are misdemeanors, punishable in accordance with State Law.

- (a) Failure, without good cause, to pay a fine or request a hearing within ten calendar days after issuance of an administrative citation. (Amended, Ord. No. 13-01)
- (b) Failure to pay a fine imposed by a hearing officer within ten calendar days after it was imposed, or such other time as may be established by the hearing officer, unless the matter is appealed under section 8. (Amended, Ord. No. 13-01)
- (c) Failure to pay a fine imposed by the City Council within ten calendar days after it was imposed, or such other time as may be established by the City Council. (Amended, Ord. No. 13-01)

Subd. 12. Applicable laws. Where differences occur between provisions of this section and other applicable code sections, this section applies.