

## ARTICLE VII. - ADMINISTRATIVE CITATIONS

## Sec. 2-152. - Purpose and intent.

The city council finds that there is a need for alternative methods of enforcing this Code. While criminal fines and penalties have been the most frequent enforcement mechanism, there are certain negative consequences for both the city and the accused. 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 of incarceration do not appear appropriate for most administrative violations. The criminal process does not always regard city Code violations as being 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 is in addition to any other legal remedy that may be pursued for city Code violations.

(Code 1986, § 355.01)

## Sec. 2-153. - Issuance of citation; payment.

- (a) A person authorized to enforce provisions of this Code may issue an administrative citation upon belief that a code violation has occurred. The citation must be issued in person or by mail to the person responsible for the violation 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 name of the issuing officer, the amount of the scheduled civil penalty, and the manner for paying the civil penalty or appealing the citation.
- (b) The person responsible for the violation must either pay the scheduled civil penalty or request a hearing within 14 days after issuance. Payment of the civil penalty constitutes admission of the violation. A late payment fee of ten percent of the scheduled civil penalty amount may be imposed under section 2-155.

(Code 1986, § 355.07)

## Sec. 2-154. - Civil penalties and administrative fees.

- (a) A violation of a provision of this Code may be subject to an administrative citation and civil penalties not exceeding \$2,000.00. Each day a violation exists constitutes a separate offense.
- (b) The city council has adopted by resolution a schedule of civil penalties for offenses initiated by administrative citation. The city council may adopt a schedule of fees to be

paid to administrative hearing officers. The city manager shall implement procedures for administering the administrative citation program.

(Code 1986, § 355.05)

Sec. 2-155. - Recovery of civil penalties.

- (a) If a civil penalty is not paid within the time specified, it will constitute a lien on the real property upon which the violation occurred if the property or improvements on the property was the subject of the violation or a personal obligation of the violator in all other situations.
- (b) A lien may be assessed against the property and collected in the same manner as taxes, and a personal obligation may be collected by appropriate legal means.
- (c) A late payment fee of ten percent of the civil penalty may be assessed for each 30-day period, or part thereof, that the fine remains unpaid after the due date.
- (d) Failure to pay a civil penalty is grounds for suspending or revoking a license related to the violation.

(Code 1986, § 355.11)

Sec. 2-156. - Hearing officers.

The city council will periodically approve a list of lawyers to act as hearing officers. The hearing officer is not a judicial officer but is a public officer as defined by M.S.A. § 609.415. The hearing officer must not be a city employee. The city manager must establish a procedure for evaluating the competency of the hearing officers, including comments from accused violators and city staff. These reports must be provided to the city council.

(Code 1986, § 355.09(1))

Sec. 2-157. - Administrative hearing procedure.

- (a) *Assignment of hearing officer.* If the person who has received an administrative citation requests an administrative hearing, a hearing officer shall be assigned, as follows:
  - (1) The city clerk will randomly select from the approved list of lawyers a hearing officer to hear and determine the matter.
  - (2) The accused will 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 request for each case will be granted automatically by the city clerk. A subsequent request

must be directed to the assigned hearing officer who will decide whether he cannot fairly and objectively review the case.

- (3) The city clerk may remove a hearing officer only by requesting that the assigned hearing officer find that he cannot fairly and objectively review the case. If such a finding is made, the officer shall be removed from the case, and the city clerk will assign another hearing officer.
- (b) *Subpoenas.* Upon the hearing officer's own initiative or upon written request of an interested party demonstrating the need, the officer may issue 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, subject to the following:
  - (1) 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 a witness.
  - (2) A person served with a subpoena may file an objection with the hearing officer and a copy of the objection shall be given to the city clerk and the accused no later than the time specified in the subpoena for compliance. The hearing officer may cancel or modify the subpoena if it is unreasonable or oppressive.
  - (3) 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 guilty of a misdemeanor. Alternatively, the party requesting the subpoena may seek an order from district court directing compliance.
- (c) *Scheduling hearing; notice.* The hearing shall be scheduled to occur within 45 days of receiving a request for a hearing. Notice of the hearing must be served on the person responsible for the violation at least 14 days in advance, unless a shorter time is accepted by all parties. Service of the notice will be by first class mail and will be complete upon mailing.
- (d) *Conduct of hearing.* At the hearing, the parties will have the opportunity to present testimony and question any witnesses, but strict rules of evidence will not apply. The hearing officer must tape record the hearing and receive testimony and exhibits. The officer must receive and give weight to evidence, including hearsay evidence that possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs.
- (e) *Decision of hearing officer.* The hearing officer has the authority to determine that a violation occurred, to dismiss a citation, to impose the scheduled civil penalty, and to reduce, stay, or waive a scheduled civil penalty either unconditionally or upon compliance with appropriate conditions. The hearing officer's decision and supporting reasons must

be in writing. 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 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 penalty on the violator;
- (8) The impact of the violation upon the community; and
- (9) Any other factors appropriate to a just result.

The hearing officer may exercise discretion to impose a civil penalty 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.

- (f) *Appeal.* The decision of the hearing officer is final without any further right of administrative appeal. An aggrieved party may obtain judicial review of the decision of the hearing officer by proceeding under a writ of certiorari in district court.
- (g) *Effect of failure to attend.* The failure to attend the hearing constitutes a waiver of the violator's rights to an administrative hearing and an admission of the violation. A hearing officer may waive this result upon good cause shown. Examples of good cause are: 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 or intentional delay.

(Code 1986, § 355.09)

#### Sec. 2-158. - Criminal prosecutions.

- (a) Failure, without good cause, to appear at a hearing that was scheduled under this article and failure to pay a civil penalty imposed by a hearing officer within 30 days after it was imposed, or such other time as may be established by the hearing officer are misdemeanors, punishable in accordance with state law.
- (b) If the final adjudication in the administrative penalty procedure is a finding of no violation, then the city may not prosecute a criminal violation in district court based on the same set of facts. This does not preclude the city from pursuing a criminal conviction for a violation

of the same provision based on a different set of facts. A different date of violation will constitute a different set of facts.

(Code 1986, § 355.13)