

## **Chapter 2**

### **Article 2-VII ADMINISTRATIVE CITATIONS.**

#### **Section 2-400 Purpose**

The City Council seeks to offer an alternative method of enforcement for city code violations rather than relying on the criminal court system. The formal criminal prosecution process does not provide an environment to adequately address the unique and sensitive issues that are involved in City Code violations, including, but not limited to, neighborhood concerns, livability issues, economic impact, physical limitations of the offenders and the stigma and unintended consequences of being charged with or convicted of a misdemeanor offense. In addition, the court system is a slow, overburdened and methodical process that is not conducive to dealing with the violations in a prompt and timely manner. Finally, the penalties afforded the criminal court system are restricted to fines or physical confinement, which are not always effective solutions to address Code violations. In order to provide more flexibility in addressing Code violations on an individualized basis that will be more efficient and effective, the City Council finds that an alternative enforcement process is necessary. Therefore, to protect the health, safety, and welfare of the citizens of the city, it is the City Council's intent to create a process for the use and imposition of administrative civil penalties that will provide the public and the city with a more effective alternative method for addressing city code violations.

#### **Section 2-401 Authority**

The City is authorized to enact this administrative citation scheme pursuant to §1-8 of the Marshall City Code, §12.08 of the Marshall City Charter, Minn. Stat. §§410.33, 412.221, 412.861, and 412.871.

- (a) **Administrative offense.** A violation of any provision of the City code is an administrative offense that may be subject to an administrative citation and civil penalties. Each day a violation exists constitutes a separate offense.
- (b) **Exemption.** Alcohol and tobacco license violations, and motor vehicle violations are not subject to administrative citation under this ordinance.

#### **Section 2-402 Alternative Methods of Enforcement**

A violation of the Code is a misdemeanor pursuant to §1-8 of the Code; however, this section seeks to gain compliance with the Code as an alternative to the commencement of any formal civil or criminal court action. The administrative civil penalties proceedings are in addition to any other legal or equitable remedy available to the city for Code violations. The city may, in its discretion, choose not to issue an administrative citation and may initiate criminal charges instead.

#### **Section 2-403 Authority to Issue Compliance Letters and Administrative Citations**

Any person authorized to enforce provisions of the Code is authorized to issue compliance letters and administrative citations for violations under this Section.

## **Section 2-404 Compliance letter.**

- (a) If a city employee or agent determines that a City Code violation has occurred, when appropriate, a compliance letter shall be issued. The compliance letter shall contain the following information:
- (1) A description or address of the property on which the Code violation has occurred;
  - (2) The nature of the violation, including a reference to the appropriate Code section;
  - (3) A compliance deadline, providing a reasonable time for compliance based on the nature of the violation; and
  - (4) A statement that failure to correct the violation may result in the imposition of an administrative citation, including a civil penalty and stating the amount of the penalty as provided in the fee schedule.
- (b) *Service of compliance letter.* The compliance letter may be served on the offender by regular mail, by electronic mail with proof of delivery confirmation and receipt requested, by personal service or by posting a copy in a conspicuous place in or about the building or property affected by the letter.
- (c) *Reasonable extensions.* Following service of the compliance letter, the city shall attempt to work to resolve the violation, including, but not limited to, offering reasonable extensions for compliance.
- (d) *Exceptions to issuance of a compliance letter.* For violations of any of the following sections, the city shall not be required to issue a compliance letter and may proceed directly to issuance of an administrative citation as provided in §2-405 below.
- (1) If the same offender commits a subsequent violation within 12 months after a compliance letter has been issued for a same or similar offense. If the offense involves a property related offense, then the subsequent violation must occur at the same property within this 12-month period for this subsection to apply.
  - (2) For any license violations, including, but not limited to, not having a license.
  - (3) For traffic or parking violations issued under Chapter 74 of the Code.
  - (4) For violations involving animals at large and potentially dangerous or dangerous animals under Chapter 14 of the Code.
  - (5) For any violation of §42-89, Loud Noise.
  - (6) For violations of Chapter 34, Fire Prevention Code.
  - (7) When a condition exists that requires immediate action to protect the public health, safety, and welfare, including any condition that represents a life-threatening condition.
  - (8) Disorderly conduct or other similar behavior that tends to disrupt, injure, or annoy a reasonable person for which a compliance letter would be moot, as the conduct or behavior has terminated.

### **Section 2-405 Administrative Citation**

- (a) Upon the failure to correct the violation specified in the compliance letter within the time frame established in the compliance letter or any extension thereof granted by the city, or for any offense for which a compliance letter is not required, an administrative citation may be issued.
- (b) The administrative citation shall be served by certified mail or by personal service and shall contain the following information:
  - (1) A description or address of the property on which the Code violation has occurred;
  - (2) Reference to the Code that is alleged to be violated;
  - (3) The amount of the administrative civil penalty for the specific Code violation, which shall be due and payable to the city within 30 days of the date the citation is mailed or personally served;
  - (4) A statement that the violation must be corrected or a subsequent administrative or a criminal citation may be issued;
  - (5) A statement that the Code violation and the amount of the administrative civil penalty may be contested to be heard before an independent hearing officer by notifying the City Clerk in writing within ten days after the citation was mailed or personally served; and
  - (6) A statement that failure to pay the administrative civil penalty may constitute a lien upon the property where the violation occurred or a personal obligation on the violator.
- (c) No peace officer will issue an administrative citation in violation of Minn. Stat. §169.999

### **Section 2-406 Payment of Penalty and Correction of Violation**

If the offender pays the administrative civil penalty and corrects the Code violation, no further action will be taken for that same violation.

### **Section 2-407 Payment of Penalty Without Correction of Violation**

If the offender pays the administrative civil penalty but fails to correct the Code violation, the city may issue a subsequent administrative citation, initiate criminal proceedings, or initiate any other proceedings or remedies available in order to enforce correction of the Code violation.

### **Section 2-408 No Payment of Penalty and No Correction of Violation**

- (a) If the offender fails to pay the administrative civil penalty and fails to correct the Code violation, the city may do any of the following, or any combination thereof:
  - (1) Issue a subsequent administrative citation, thereby commencing a new administrative penalties process;
  - (2) Find that the unpaid fee constitutes a lien upon the real property where the violation occurred, if the property or the improvements of the same were the subject of the violation;
  - (3) Find that the unpaid fee constitutes a personal obligation of the violator;

- (4) Suspend or revoke any licenses or permits issued by the city related to the violation;
- (5) Initiate criminal proceedings; and/or
- (6) Initiate other enforcement action authorized by law, including the cost of unpaid special charges as special assessments against the property benefitted to the extent allowed under Minn. Stat. 429.101.

### **Section 2-409 Contesting an Administrative Citation**

(a) An offender receiving an administrative citation may contest the alleged Code violation and the amount of the administrative civil penalty.

(b) In order to contest any part of the administrative citation, the offender must notify the City Clerk in writing within ten calendar days after the citation is mailed or personally served, stating that the offender contests the alleged violation, the amount of the penalty, or both, and pay the filing fee as listed in the fee schedule. If the violation is ultimately not upheld by the hearing officer after the Administrative Hearing Procedure, then City will refund the filing fee paid by the offender.

### **Section 2-410 Administrative Hearing Procedure**

- (a) *Hearing officers.* The City Council will periodically approve a list of lawyers or former judges, from which the City Clerk will randomly select a hearing officer to hear and determine a matter for which a hearing is requested. The hearing officer will be considered a public officer as defined by Minn. Stat. §609.415. The hearing officer must not be a city employee. The City Administrator or their designee 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.
- (b) *Notice of hearing.* Within ten (10) days of the request for a hearing, the City Clerk will schedule the hearing and will notify the violator of the date, time, and place for the hearing. Parties are expected to be available for two (2) hours. Notice of the hearing must be mailed to the violator or the property owner, if different from the violator, and the hearing officer at least ten (10) days in advance of the scheduled hearing, unless a shorter time is accepted by all parties. The notice must contain the names of the violator or property owner, the identity of the hearing officer, the location of the alleged violation and the type of alleged violation.
- (c) *Removal of hearing officer.* No later than five (5) days before the date of the hearing, the violator may make a written request that the assigned hearing officer be removed from the case. The City Clerk will automatically grant one (1) request for removal. A subsequent request must be directed to the assigned hearing officer who will decide whether they can fairly and objectively review the case. If the hearing officer determines they cannot fairly and objectively review the case, the hearing officer shall notify the City Clerk in writing at least one (1) day before the scheduled hearing date. The City Clerk will then assign another hearing officer. If the City Clerk is unable to assign a hearing officer from the City's approved Hearing Officer list, the City Clerk, upon approval by

City Council, may schedule a hearing before an independent hearing officer from the office of administrative law judges.

- (d) *Continuance.* A request for a continuance must be made to the City Clerk at least five (5) days prior to the scheduled date. Continuances will be granted only for good cause shown and for no more than ten (10) days from the originally assigned date.
- (e) *File transmittal.* Upon receipt of any request for a hearing the City Administrator or their designee will compile a file on each case consisting of the following:
  - (1) Copy of Compliance letter, if applicable;
  - (2) Copy of the citation issued;
  - (3) Copy of any case history in the issuing employee's department;
  - (4) Photographs and/or videotape of property or Code violation where available;
  - (5) Supplemental report detailing the facts in support of any determination that the offense constitutes a serious threat of harm to the public health, safety, or welfare; and
  - (6) Proof of mailing and/or posting of notice on the property if citation was not personally served on the violator

The file must be ready for the hearing officer to pick up on the business day preceding the scheduled hearing. Upon the request of the hearing officer, the City may send the file to the hearing officer electronically.

- (f) *Presentation of case.* 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 record the hearing and may 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.
- (g) *Decision.* The decision of the hearing officer must be in writing and contain findings of fact, conclusions of law, and an order. The decision will be mailed to the parties within ten (10) days after the hearing. The hearing officer has the authority to determine that a violation occurred, 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. 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 Compliance Letter;
  - (6) The violator's conduct after issuance of the notice of hearing;
  - (7) The good faith effort by the violator to comply;
  - (8) The impact of the violation upon the community;
  - (9) Prior record of Code violations; and
  - (10) Any other factors appropriate to a just result.

The hearing officer may not impose a fine greater than the established fine, except that the hearing officer may impose a fine for each week that the violation continues if the violation caused a serious threat of harm to the public health, safety, or welfare as determined by the hearing officer, or if the violator intentionally and unreasonably refused to comply with the code requirement. The hearing officer's decision and supporting reasons must be in writing.

- (h) *Failure to appear.* 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. "Good cause" is limited to: death in the immediate family or documented 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.
- (i) *Owner found in violation.* If the violation is upheld, then the violator must pay a fee toward the cost of the hearing in the amount listed in the fee schedule.

### **Section 2-411 Judicial review**

An aggrieved party may obtain judicial review of the decision of the hearing officer as provided in state law.

### **Section 2-412 Schedule of Administrative Civil Penalties.**

- (a) The city shall adopt a fee schedule of administrative civil penalties for city code violations by resolution.
- (b) The maximum amount of an administrative civil penalty may not exceed twice the maximum fine authorized by state law for misdemeanor offenses or the maximum fine authorized by state law for an administrative process.
- (c) Non-payment. If a civil penalty is not paid within the time specified, it will constitute:
  - a. 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
  - b. A personal obligation of the violator in all other situations.
- (d) Lien. A lien may be assessed against the property and collected in the same manner as taxes.
- (e) Personal obligation. A personal obligation may be collected by appropriate legal means.
- (f) Late Fees/Charges.
  - a. The fine will increase by ten percent (10%) for each week, starting ten (10) days after the citation was issued, that no action is taken to correct the violation.

- b. If payment arrives more than one (1) week after it was due, an additional ten percent (10%) of the fine may be assessed, together with interest, for each seven-day period, or part thereof, that the fine remains unpaid after the due date.
- (g) License revocation or suspension. Failure to pay a fine is grounds for suspending or revoking a license or permit related to the violation

### **Section 2-413 Additional Criminal Penalties**

The following are misdemeanors, punishable in accordance with state law:

- (1) Failure, without good cause, to pay a fine or request a hearing within ten (10) days after issuance of an administrative citation;
- (2) Failure, without good cause, to appear at a hearing that was scheduled under §2-410;
- (3) Failure to pay a fine imposed by a hearing officer within ten (10) days after it was imposed, or such other time as may be established by the hearing officer.

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 provisions based on a different set of facts. A different date of violation will constitute a different set of facts.