

ARTICLE VII. - ADMINISTRATIVE ENFORCEMENT OF ORDINANCE VIOLATIONS

Sec. 2-331. - Findings.

The city council has determined that the health, safety, good order, general welfare, and convenience of the public is threatened by certain public nuisances or violations of this Code on property within the city limits and finds the 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. Accordingly, the city council finds that the use of abatement, administrative citations citationing, and administrative hearings is an addition to any other legal remedy that may be pursued. The city has the option to utilize any of the following three procedures to enforce this Code. These procedures may be used separately, or in combination, to alleviate the violation.

(Code 1978, § 5.20, subd. 1; Ord. No. 07-14, § 3, 9-11-2007; Ord. No. 08-32, § 2(5.20, subd. 1), 12-9-2008)

Sec. 2-332. - Abatement.

(a) *Application.* This article shall apply to the abatement of all public nuisances and other violations as defined within this Code unless another procedure is specifically provided.

~~(b) Hearing examiner and the administrative hearing.~~

~~(1) *Position created.* The position of hearing examiner is hereby created. The city administrator or his designee may, at their discretion and with approval of the city council, contract with third parties for the furnishing of all services of the hearing examiner as contained in this subsection and set the rate of compensation therefor in the city's rates and charges.~~

~~(2) *Duties of hearing examiner.* The hearing examiner shall have the following duties:~~

~~a. Set dates and hear all contested cases following appeals of orders of the city administrator or his designee.~~

~~b. Take testimony from all interested parties.~~

~~c. Make a complete record of all proceedings.~~

~~d. Affirm, repeal or modify the order of the city administrator and his designees, and prepare written findings of fact.~~

~~(c)~~(b) *Inspections and investigations.*

(1) *Periodic inspections.* The city administrator or ~~his~~ their designee shall cause to be inspected all public and private places within the city which might contain a public nuisance or violation as defined in this Code as often as practicable to determine whether any such conditions exist. The city administrator or his designee shall also investigate all reports of public nuisances located within the city.

(2) *Entry on public and private places.* The city administrator or his duly authorized agents may enter upon all public and private places at any reasonable time for the purposes of inspecting those places for public nuisances.

~~(d)~~(c) Abatement procedure.

(1) *Abatement authorization.* Upon a determination by the city administrator or ~~his~~ ~~their~~ designee that a public nuisance or violation of this Code exists on any public or private property within the city, the city administrator or his designee shall order the public nuisance or violation to be abated in a manner consistent with this Code.

(2) *Procedure for removal of public nuisances.* Whenever the city administrator or ~~his~~ ~~their~~ designee finds within reasonable certainty that a public nuisance or violation exists on any public or private property in the city, he shall:

- a. Notify the affected property owner by personal service, ~~posting on primary door of structure~~, U.S. mail, or by certified mail that the nuisance or violation must be abated ~~within the time designated on the notice, or 14 days from the date of service of the notice. Service by U.S. mail or certified mail shall be deemed complete upon mailing.~~
 1. The notice shall state with specificity the nature of the nuisance or violations and the requirements for compliance.
 2. ~~With the exception to abatements for long grass, weeds and exigent public health or safety issues, any notice that accompanies a fine, citation, or pending abatement~~ ~~The notice~~ shall also state that the property owner may, within 14 days of the date of the order, request a ~~settlement conference hearing~~ ~~before the hearing examiner~~ ~~Planning Manager or Community Development Director, or for appeals of the settlement conference, City Council, and shall set out the procedure by which that hearing may be requested.~~
 3. ~~(i)~~ The notice shall also state that failure to abate the nuisance or violation, or request a hearing within the applicable time periods will result in abatement procedures, and that the cost of abatement with penalties and interest will be billed to the property owner. Pursuant to applicable state statutes, any unpaid fees and fines will be charged against the benefited property via special assessment under Minnesota Statutes for certification to the county auditor and collection along with current taxes the following year or in annual installments not exceeding ten, as the council may determine in each case.
 - ~~ii. Notwithstanding the 14 day notice described in subsection 2-332(d)(2)a. above, and in the case of a public nuisance defined in section 30-3 relating to grass, weeds, or noxious growths of vegetation upon public or private property exceeding eight inches in height, the notice shall also state that in the event more than one abatement process for the same public nuisance has been undertaken on the same property within the previous 12-month term, the nuisance or violation must be abated within five business days from the date of service of the notice.~~
 - ~~iii. Notwithstanding subsection 2-332(d)(2)a. 2. the notice shall state that the property owner may within five business days of the date of the order, request a hearing before the hearing examiner and shall set out the procedure by which the hearing may be requested.~~
4. The notice shall state that any items removed from the property by the city or the city's designee will be held for 15 days prior to disposal. Within those 15 days, the property owner can reclaim any items held by the city or the city's designee after paying all fees incurred by the city associated with the abatement. If the property owner does not contact the city within 15 days to reclaim the items, all items will be disposed of or sold. Any abated items that are reclaimed and returned to the property by the property owner that are found to be in violation of this article shall be abated immediately by the city.
5. Any item that is deemed hazardous, considered a public health nuisance or consists of brush, wood, or grass clippings may be disposed of immediately and is exempt from the holding period.
6. A property owner may waive the 15-day holding period and request all abated items are immediately disposed of provided that it is requested at least 48 hours prior to the scheduled abatement, excluding weekends and observed holidays.

b. Upon expiration of the time required by the notice, the city administrator or his designee shall notify the property owner of the date on which the nuisance or violation will be abated and proceed with the abatement, unless a request for a hearing has been timely filed.

c. The city shall, within seven days after any appeal period has expired or as soon as it can be reasonably accomplished, have the property abated in accordance with this section.

d. Once a property has been approved for abatement, the City reserves the right to enter the property to remove the public nuisance completely; if the work is not able to be fully carried out in one day, the City can return until the nuisance is completely abated.

(3) Hearing procedure. Any property owner who feels aggrieved by an order of the city administrator or ~~his~~ ~~their~~ designee issued pursuant to this article may request a hearing before the ~~hearing examiner~~ City Council.

a. *Request.*

1. Such request shall identify with specificity the basis for the property owner's objection to the interpretation of this Code and notice of violation.

2. Such request shall be filed in writing with the ~~Community Development Department~~ ~~office of the chief of police~~ within 14 days after the date of the service of the notice by the city administrator or ~~his~~ ~~their~~ designee.

3. Such request shall include a filing fee as established by the city's rates and charges. This fee will be refundable to the petitioner if found to be the prevailing party.

b. *Settlement conference.*

1. The ~~chief of police~~ ~~Planning manager~~ or ~~Community Development Director~~ shall schedule a settlement conference, to be conducted no more than ten days after receipt of the hearing request and filing fee. A later date may be mutually agreed upon by the parties. The settlement conference will be held between the city and the property owner to encourage a resolution prior to a ~~hearing~~ ~~Settlement Hearing~~ brought before City Council.

2. If after the conference, no resolution has been made, the ~~chief of police~~ ~~Planning Manager~~, ~~Community Development Director~~, or his designee shall notify the ~~hearing examiner~~ property owner of the date, time and place of a ~~Settlement~~ hearing.

~~c. d.~~ *Conference Resolution.*

1. ~~The hearing examiner shall render a decision~~ A decision shall be made to affirm, repeal or modify the order of the city at the conclusion of the ~~conference~~ ~~hearing~~. Within 14 days after such hearing, the findings of fact and final decision shall be provided to the property owner. ~~the hearing examiner shall provide written findings of fact.~~

2. Any person aggrieved by the decision ~~of the hearing examiner~~ reached during the settlement conference may appeal that decision to the city council by filing notice, in writing, of such appeal with the ~~office of the chief of police~~ ~~Community Development department~~ within ~~24 hours or next business day~~ 10 days of the decision reached during the Settlement Conference. ~~, of the hearing examiner's decision.~~

3. Within 30 days of the filing of a notice of appeal of the ~~Conferences~~ ~~hearing examiner's~~ decision, the city council shall review the decision and findings of fact reached during the ~~Settlement Conference~~ ~~of the hearing examiner~~ and shall affirm, repeal or modify that decision.

~~e~~ d. *Settlement Hearing.*

1. A settlement hearing shall be conducted during the first practical City Council meeting after an appeal request from the settlement conference is received. Appeals to the Settlement conference must be received within ten days of final resolution of the conference. ~~no more than ten days after the hearing examiner receives notice of the request,~~ unless a later date is mutually agreed to by the ~~hearing examiner,~~ the property owner and the city.
2. Both the property owner and the city may appear at the hearing with counsel and may call such witnesses and present such evidence relevant to the case. ~~as is determined by the hearing examiner to be relevant.~~
3. Any history of the property owner's prior violations shall be deemed relevant and admissible as evidence.

~~d. Resolution.~~

- ~~1. The hearing examiner shall render a decision to affirm, repeal or modify the order of the city at the conclusion of the hearing. Within 14 days after such hearing, the hearing examiner shall provide written findings of fact.~~
- ~~2. Any person aggrieved by the decision of the hearing examiner may appeal that decision to the city council by filing notice, in writing, of such appeal with the office of the chief of police within 24 hours or next business day, of the hearing examiner's decision.~~
- ~~3. Within 30 days of the filing of a notice of appeal of the hearing examiner's decision, the city council shall review the decision and findings of fact of the hearing examiner and shall affirm, repeal or modify that decision.~~

The city shall take no action to abate any nuisance or violation while the matter is still pending.

(4) *Implementation of ~~hearing examiner settlement conference~~ or city council determination.* Upon a final determination by the ~~hearing examiner settlement conference~~, or the city council, if the determination of the ~~settlement conference hearing examiner~~ is appealed, the city shall implement the decisions accordingly.

- a. If it is determined during the ~~by the hearing examiner settlement conference~~ or the city council hearing that no public nuisance or violation exists, then the city shall notify the affected property owner in writing to confirm the determination of the ~~hearing examiner settlement conference~~ or city council and all abatement processes shall be ceased.
- b. If the ~~hearing examiner settlement conference~~ or the city council finds that a public nuisance or violation of this Code does exist, then the city shall notify the affected property owner by personal service, *posting notice on primary entry to home*, or by certified mail that the nuisance must be abated within 14 days from the date of service of the notice. Service by certified mail shall be deemed complete upon mailing.
 1. The order shall also state that failure to abate the nuisance within the applicable time period will result in summary abatement procedures, and that the cost of abatement will be assessed against the subject property.
 2. Upon expiration of the time required by the notice, the city administrator or his designee may abate the nuisance or violation.

(5) *Abated property storage.*

- a. Any items, *other than hazardous materials, public health nuisances, and grass, weeds, and brush* removed from the property by the city or the city's designee will be held for 15 days prior to disposal.
- b. Within those 15 days, the property owner can reclaim any items held by the city or the city's designee after paying all fees incurred by the city associated with the abatement.
- c. If the property owner does not contact the city within 15 days to reclaim the items, all items will be disposed of or sold.
- d. Any abated items that are reclaimed and returned to the property by the property owner that are found to be in violation of this article shall be abated immediately by the city *without the need to begin a new abatement process*.
- e. *The property owner may request the items stored to be disposed of anytime within the 15-day storage period, excluding weekends and observed holidays. The property owner will only be billed for the time stored until the disposal request is made.*

(6) *Record of abatement costs and billing.* The *City Administrator* ~~chief of police~~, or ~~his~~ *their* designee, shall keep a record of the costs of abatement performed under this article and shall report monthly to the finance officer all work performed for which the property owners shall be billed. The invoices shall state and certify the description of the land, lots or parcels involved and the amount assessable to each.

(7) *Certification of unpaid abatement costs to county auditor.* On or before September 1 of each year, the finance officer shall list the total unpaid charge for each abatement or administrative citation against each separate lot or parcel to which they are attributable under this article. After notice and hearing as provided in Minn. Stats. § 429.061, the council may then spread the charges against property benefited as a special assessment under Minn. Stats. § 429.101 and other pertinent statutes for certification to the county auditor and collection along with current taxes the following year, or in annual installments, not exceeding ten, as the council may determine in each case.

(e) *Interference prohibited.* It is a misdemeanor for any person to prevent, delay or interfere with the city or its agents while they are engaged in the performance of duties set forth in this article.

(Code 1978, § 5.20, subd. 2; Ord. No. 07-14, § 3, 9-11-2007; Ord. No. 08-32, § 2(5.20, subd. 2), 12-9-2008; Ord. No. 11-06, § 2B, 4-26-2011)

Sec. 2-333. - Administrative citation.

- (a) *Application.* An administrative citation may be issued in conjunction with, or in lieu of, prosecution or abatement for any violation of any section of this Code, as described by resolution of the city council and is subject to the administrative hearing process described herein.
- (b) *Notice.* ~~Any member of the police department and his assigns~~ *The Chief of Police and their designees, as well as the City Administrator and their designees,* upon determining there has been a violation, shall notify the violator, or person responsible for the violation, or in the case of a vehicular violation, by attaching to said vehicle notice of the violation, said notice setting forth the nature, date, time of the violation, the name of the official issuing the notice and the amount of the scheduled initial penalty and where applicable, any other charges relating thereto.
- (c) *Penalties.* Upon expiration of the time required by the notice and the nuisance has not been abated by the property owner, an administrative citation may be issued.
 - (1) *An administrative civil penalty may be imposed per the city's rates and charges for each violation.*

~~(1) For the first violation within a 12-month period, an administrative civil penalty shall be imposed per the city's rates and charges.~~

~~(2) For the second violation with a 12-month period, an administrative civil penalty shall be imposed per the city's rates and charges.~~

~~(3) For the third violation within a 12-month period, an administrative civil penalty shall be imposed per the city's rates and charges.~~

(d) *Payment.* Once such notice is given, the person responsible for the violation shall, within 14 days of the time of issuance of the notice, pay full satisfaction of the stated violation, scheduled to the city finance department. The penalty may be paid in person or by mail and payment shall be admission of the violation.

(e) *Appeals.* Any disputes and appeals shall be heard during the settlement conference or appeals hearing, ~~by the hearing examiner~~ unless otherwise defined, and shall follow procedure set forth in this article.

(f) *Failure to pay.* If a violator fails to pay the penalty imposed by this section, the matter may be abated, certified to property records and/or prosecuted, in accordance with this article.

(g) *Duties of the police chief.* The police chief may delegate and supervise the work of city employees implementing and administering the administrative citation process for the police department. The police chief and his assigns shall make and have custody of all records necessary and shall keep proper accounts of the proceeds received.

(h) *Duties of City Administrator.* The City Administrator or their designee(s) may delegate and supervise the work of the city employees implementing and administering the administrative citation process for all other departments. They shall make and have custody of all records necessary and shall keep proper accounts of the proceeds received.

(Code 1978, § 5.20, subd. 3; Ord. No. 07-14, § 3, 9-11-2007; Ord. No. 08-32, § 2(5.20, subd. 3), 12-9-2008)

Sec. 2-334. - Prosecution.

Nothing in this article shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this article.

(Code 1978, § 5.20, subd. 4; Ord. No. 07-14, § 3, 9-11-2007; Ord. No. 08-32, § 2(5.20, subd. 4), 12-9-2008)

Sec. 2-335. - Scheduled penalties.

Penalties and costs of abatement procedures shall be imposed according to the rates and fee schedule duly established and adopted annually by ordinance.

(Code 1978, § 5.20, subd. 5; Ord. No. 07-14, § 3, 9-11-2007; Ord. No. 08-32, § 2(5.20, subd. 5), 12-9-2008)