

TITLE II: ADMINISTRATIVE PENALTIES

Chapter

20 ADMINISTRATIVE PENALTIES

GENERAL PROVISIONS

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§ 20.01 PURPOSE.

The City Council determines that there is a need for alternative methods of enforcing the City Codes. 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 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.

§ 20.02 ALTERNATIVE METHODS OF ENFORCEMENT.

This administrative enforcement procedure seeks to gain compliance with certain provisions of the City Code prior to any formal criminal or civil court action. The administrative hearing process provided for in this Section shall be in addition to any other legal or equitable remedy available to the City for City code violations. 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 an administrative penalty or a criminal conviction for a violation of the same provision of the City Code based on a different set of facts. A different date of violation shall constitute a different set of facts and a separate offense.

§ 20.03 AUTHORITY TO ISSUE ORDER TO CORRECT LETTERS AND ADMINISTRATIVE CITATIONS.

The following City employees and agents are authorized to issue Order to Correct letters and administrative Citations for violations of the City Codes:

- (A) Licensed peace officers;
- (B) Building inspectors;
- (C) Animal Control Officer;
- (D) City Engineer;
- (E) Planning and Zoning Administrator;
- (F) Fire Chief or Fire Inspector of the Ghent Fire Department;
- (G) City Clerk;
- (H) An Appointed Authority of the City Council;

§ 20.04 ADMINISTRATIVE OFFENSES: SCHEDULES OF FINES AND FEES.

(A) A violation of any provision of the City Code or a violation of the terms and conditions of a City approval, including permits and licenses, required and granted under this Code is an administrative offense which may be subject to an Administrative Citation and civil penalties pursuant to this ordinance. Each day a violation exists constitutes a separate offense.

(B) An administrative offense may be subject to a civil penalty not exceeding one thousand (\$1,000) dollars per separate offense. Each violation of the city code is a separate offense.

(C) The City Council shall adopt by resolution a schedule of recommended fines for offenses initiated by Administrative Citation. The City Council is not bound by that schedule when a matter is appealed for administrative review.

(D) The City Council may adopt a schedule of fees to be paid to administrative Hearing Officers.

(E) The City Council shall adopt written Standard Operating Procedures for administering the Administrative Citation program.

§ 20.05 ORDER TO CORRECT ADMINISTRATIVE CITATIONS.

Upon the reasonable belief that an administrative offense has occurred, the City officials listed in §20.03 shall serve on the violator an order to correct the violation. If compliance is not achieved within the timeline prescribed in the order to correct the violation, the official is

authorized to issue an Administrative Citation. An Administrative Citation shall be presented in person or by first class mail to the person responsible for the violation. Service shall be deemed complete upon depositing the citation in the U.S. Mail, properly addressed to last known address of the person to be served and postage prepaid.

The citation shall minimally state the following:

- (A) Date, time and nature of the offense,
- (B) The relevant portion of the City Code that was allegedly violated,
- (C) The amount of the scheduled civil fine, and the manner for paying the fine,
- (D) That the City 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 or designated representative in writing within 14 days of the date of the citation in accordance with §20.09, and
- (E) That, where allowed, failure to pay the administrative civil penalty may result in it being assessed against the property as provided in Minnesota Statutes Chapter 429.

§ 20.06 EXCEPTIONS TO ISSUANCE OF ORDER TO CORRECT LETTER.

For violations of the following sections, the City shall not be required to issue a compliance letter and may proceed directly to the issuance of an Administrative Citation as provided in Section §20.05:

- (A) Repeat Offender. If a property owner commits a subsequent violation within 12 months after a compliance letter has been issued for the same or similar offense.
- (B) License Violations. For any license violations, including not having a license.
- (C) Traffic or Parking Violations. For traffic or parking violations issued.
- (D) Animal Violations. For any violations of the Ghent City Code related to animals.
- (E) Noise Violations. For any violation of the Ghent City Code related to noise restrictions.

§ 20.07 REASONABLE EXTENSIONS.

Following service of the Order to Correct, the City shall attempt to work with the owner to resolve the violation, including but not limited to responding to reasonable extensions for compliance. A property owner may request an extension to come into compliance, which may be granted or denied by the City. If an extension to come into compliance is requested and granted, and the property owner does not come into compliance by the extension date, an Administrative Citation shall be issued and the administrative fine imposed with the citation for the violation

shall not be rescinded. Additionally, a request for an extension to the compliance deadline shall constitute an admission to the violation, and a waiver of a right to request a hearing under §20.09.

§ 20.08 PAYMENT OF PENALTY AND CORRECTION OF VIOLATION.

If the violator pays the administrative civil penalty and corrects the City Code violation, no further action will be taken against the owner or the owner's real property for that same violation under the same set of facts. If payment is made but correction is not accomplished, a subsequent Administrative Citation may be issued, criminal proceedings may be initiated, or any other proceedings or remedies available in order to enforce correction of the violation. If no payment is made and no correction of the violation is made, the City may assess the administrative civil penalty against the violating property owner pursuant to Minnesota Statutes Chapter 429, issue a subsequent Administrative Citation and commence a new administrative process, initiate criminal proceedings, or initiate other enforcement action authorized by law, or a combination hereof.

§ 20.09 REQUEST FOR HEARING.

A person issued An Administrative Citation may contest the Administrative Citation and the amount of the fine by requesting a hearing, in writing, within 14 days of the date of the citation, to the City Clerk. A hearing request must be made in writing and executed by the violator or property owner or person with an ownership interest in the property. It must minimally state the name and mailing address of that person, the person's relationship to the property involved, and a brief statement why the citation is in error and that a hearing is being requested.

Upon receiving a request for a hearing to request an Administrative Citation, the City may do any of the following:

- (A) Withdraw the Administrative Citation in consultation with the City Attorney.
- (B) Schedule a hearing as provided in this section and §20.19; or
- (C) Where appropriate, withdraw the Administrative Citation and proceed to prosecute the violation as a criminal matter in the Lyon County District Courts.

§ 20.10 ADMINISTRATIVE HEARING PROCEDURES.

(A) Hearing Officers. The City Council will periodically approve a list of lawyers and/or arbitrators, from which the City Council will select a Hearing Officer to hear and determine a matter for which the hearing is requested. The person who has requested the hearing has the right to request, no later than 15 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 by the City Council. A subsequent request must be directed to the assigned Hearing Officer who will decide whether the Hearing Officer is unable to 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 Council 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 employee or elected official of the City of Ghent.

(B) Notice of Hearing. Notice of the hearing must be served in person or by first class mail to the person cited not less than 30 days in advance of the scheduled hearing, unless a shorter time is accepted by both parties. Service shall be deemed complete upon depositing the Notice of Hearing in the U.S. Mail, properly addressed to last known address of the person to be served and postage prepaid.

(C) Payment for Cost of Hearing. The cost of the hearing shall be borne solely by the non-prevailing party. The City shall provide an estimate of the cost of the hearing at the time of the request for hearing. The City Council has the authority to reduce the non-prevailing party's costs where that party can demonstrate indigence by clear and convincing evidence. Proof of indigence can be demonstrated by the party's receipt of means tested governmental benefits or a demonstrated lack of assets or current income. Such proof shall be presented to the City Council for determination subsequent to the hearing.

The Hearing Officer at the time of the hearing may also make specific findings as to whether or not the party is indigent with said findings presented to the City Council. In all cases, where the party requesting the 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 hearing shall be charged to the requesting party.

(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 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 has the authority to determine that a violation did or did not occur, to dismiss a citation or 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:

- (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 and/or citation;
- (6) The good faith efforts of the violator to comply with City Code provisions;
- (7) The economic impact of the penalty on the violator;
- (8) The impact of the violation upon the community;
- (9) Any other factors appropriate to a just result.

(F) 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 on a finding that the violation caused a serious threat of harm to the public health, safety, or welfare, or 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.

(G) Decision of the Hearing Officer. The Hearing Officer shall issue a decision in writing to both parties within 10 days of the hearing. Any fines or penalties imposed must be paid no later than 30 days of the date of the Hearing Officer's order. If the fine is not paid, the City may assess the civil penalty against the owner's property pursuant to Minnesota Statutes Chapter 429 where appropriate. If the Hearing Officer determines that no violation occurred, the City may not proceed with criminal prosecution for the same act or conduct under the same set of facts. The decision of the Hearing Officer is final and may only be appealed to the Minnesota Court of Appeals by petitioning for a writ of certiorari pursuant to Minnesota Statute Section 606.01.

(H) Failure to Attend. 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 or an immediate family member; a court order requiring the accused to appear for another hearing at the same time; or lack of proper service of the citation or notice of the hearing as determined by the Hearing Officer. "Good cause" does not include forgetfulness or intentional delay.

§ 20.11 SCOPE.

The administrative procedures and penalties in this Chapter may be used for any violation of City Code. The provisions of this Chapter may be used concurrently with or in addition to any other procedure or remedy, criminal or civil, the City may pursue under City Code, state law, or federal law.

Nothing herein restricts the right of government agents to enter property immediately or to seek other remedies in emergency or other situations as authorized by City Code, state law, or federal law.

§20.12 CRIMINAL PENALTIES.

The following are misdemeanors:

(A) Failure, without good cause, to pay a fine or request a hearing within 30 days after issuance of an administrative citation.

(B) Failure, without good cause, to appear at a hearing that was scheduled under §20.10.

(C) Failure to pay a fine imposed on or before its due date, or such other date as may be established under this Chapter.

§ 20.13 EFFECT OF INVALIDATION OF THIS CHAPTER.

Should a Court of competent jurisdiction determine at any time that one or more provisions of this Chapter are invalid or unenforceable, the City may then exercise any remedy otherwise available to it, without regard to any actions under this Chapter, including, but not limited to, initiating a civil or criminal case against a person violating the Ghent City Code in the same manner as if this Chapter was not adopted.