

Section 320 – Administrative Citations

Section 320.01 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.

Section 320.03 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, except that if a determination is made by the hearing officer pursuant to the hearing process detailed in Section 320.19 that a violation did not occur, the City may not then proceed with criminal prosecution of the same act or conduct.

Section 320.05 Authority to Issue Order to Correct Letters and Administrative Citations. The following City employees and agents are authorized to issue compliance letters and administrative citations for violations of the City Codes:

- 1) Licensed peace officers, the Crime Prevention Specialist, and Community Service Officers of the Brainerd Police Department;
- 2) City Building Official;
- 3) Building Inspectors;
- 4) Housing Inspector;
- 5) Animal Control Officer;
- 6) City Engineer;
- 7) City Planner;
- 8) Fire Chief, or Fire Inspector of the Brainerd Fire Department

Section 320.07 Administrative Offenses; Schedules of Fines and Fees.

Subd. 1 A violation of any provision of the City 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.

Subd. 2 An administrative offense may be subject to a civil penalty not exceeding \$2,000.

Subd. 3 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.

Subd. 4 The City Council may adopt a schedule of fees to be paid to administrative hearing officers.

Subd. 5 The City Council shall adopt written procedures for administering the administrative citation program.

Section 320.09 Order to Correct; Administrative Citations. Upon the reasonable belief that an administrative offense has occurred, the City officials listed in Section 320.05 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 state the following: date, time and nature of the offense, citing the relevant portion of the City Code that was allegedly violated, the amount of the scheduled civil fine, and the manner for paying the fine, a statement 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 Administrator or designated representative in writing within 10 days of the date of the citation, and a statement that failure to pay the administrative civil penalty may result in it being assessed against the property as provided in Minnesota Statutes Chapter 429.

Section 320.11 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 320.09.

- 1) Repeat Offender. If the same owner commits a subsequent violation within 12 months after a compliance letter has been issued for the same or similar offense.
- 2) License Violations. For any license violations, including not having a license.
- 3) Traffic or Parking Violations. For traffic or parking violations issued under Sections 1300, 1305, 1310 and 1315 including obstruction of fire hydrants or fire lanes.
- 4) Animal Violations. For any violations of City Code Section 900.03 (Running at Large) or City Code 900.21 (Dangerous Dogs).
- 5) Noise Violations. For any violation of City Code Section 2014 (Noise Related Issues).

Section 320.13 Reasonable Extensions. Following service of the compliance letter, the City shall attempt to work with the owner to resolve the violation, including but not limited to responding to reasonable extensions for compliance.

Section 320.15 Payment of Penalty and Correction of Violation. If the owner 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. 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 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.

Section 320.17 Request for Hearing. An owner or occupant may contest the administrative citation and the amount of the fine by requesting a hearing, in writing, within 10 days of the date of the citation, to the City Administrator or designated representative.

Section 320.19 Administrative Hearing Procedures.

Subd 1. Hearing Officers. The City Council will periodically approve a list of lawyers, from which the City Administrator 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 Administrator. A subsequent request must be directed to the assigned Hearing Officer who will decide whether the Hearing Officer can 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 Administrator 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 of the City of Brainerd.

Subd 2. Notice of Hearing. Notice of the hearing must be served in person or by first class mail to the person responsible for the violation no less than 20 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.

Subd 3. 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 indigency by clear and convincing evidence.

Proof of indigency 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. However, the Hearing Officer at the time of the hearing shall 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.

Subd 4. 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.

Subd 5. 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;
- 6) The good faith effort of the violator to comply;
- 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.

Subd 6. 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.

Subd 7. 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. If the Hearing Officer determines that no violation occurred, the City may not proceed with criminal prosecution for the same act or conduct. 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.

Section 320.21 Payment of fines. Prior to any assessment for unpaid fines, the City shall seek payment of the fines by notifying the owner of the property in writing of the fine imposed.

Section 320.23 Assessment Procedure. Unpaid fines including an administrative charge of \$25.00 plus interest of the total balance will be assessed pursuant to Minnesota Statutes, Chapter 429, against the property of the owner charged with the violation. For uncorrected or continued violations, the City will correct the violation and assess the charges for doing so.

(Added Ord. 1191 – 2003, Ord. 1356 - 2010)