

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) Community Development Director;
- 8) Assistant Planner
- 9) Fire Chief, or Fire Inspector of the Brainerd Fire Department

(Amended Ord. 1524 – 2022)

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.

Subd. 2 The schedule of fines for offenses initiated by administrative citation shall be:

- 1st Citation: \$100
- 2nd Citation: \$200
- 3rd Citation: \$300

The City Council is not bound by this schedule when a matter is appealed for administrative review.

(Amended Ord. 1524 – 2022)

Subd. 3 After the issuance of three (3) citations, the offense shall be brought before the Safety & Public Works Committee for determination of further action to correct the violation. Such actions may include but are not limited to abatement, issuance of further administrative citations in an amount determined by the Committee, or legal action. The determination of the Safety & Public Works Committee shall then be referred as a recommendation to the City Council for final approval.

(Amended Ord. 1524 – 2022)

Subd. 4 After issuance of three (3) citations, the following nuisance violations shall be administratively abated.

1. Garbage & Rubbish
2. Grass & Weeds in Excess of 6"
3. Animal Feces
4. Nuisance on a Public Sidewalk for Snow and Ice

Subd. 5 Repeat Offender. If the same property owner commits a subsequent violation within 12 months after abatement of the property for the same or similar offense for a violation listed in the above paragraph, the following schedule shall be:

- 1st Citation \$300
- Administrative Abatement

The City Council is not bound by this schedule when a matter is appealed for administrative review. Staff may bring repeat offenses to the Safety & Public Works Committee for determination of further action.

Subd. 6 The City Council may adopt a schedule of fees to be paid to administrative hearing officers.

Subd. 7. The administration of the administrative citation program shall be conducted solely on a complaint driven basis. Offenses of a nature that may result in bodily harm, damage to property, or significant blight may be brought before the Safety & Public Works Committee without a complaint for determination whether to implement the administrative citation program or take other action. The determination of the Safety & Public Works Committee shall then be referred as a recommendation to the City Council.

(Amended Ord. 1524 – 2022; 1547 - 2023)

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. Violations relating to property maintenance and Zoning Code violations related to accessory structures shall be corrected within thirty (30) days of the date of the order to correct. All other violations of the Code shall be corrected within ten (10) days of the date of the order to correct.

(Amended Ord. 1524 – 2022; Ord. 1555 - 2023)

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 the 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 the Board of Administrative Citation Appeals 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. If the tenth day is a Saturday, Sunday, or holiday, the appeal period shall extend to the next business day.

(Amended Ord. 1555 – 2023)

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. Board of Administrative Citation Appeals. The City Council shall serve as the Board of Administrative Citation Appeals.

Subd 2. The Board of Administrative Citation Appeals shall act upon all administrative citation appeals and it shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with enforcing the Ordinance. Any party may appear at the hearing in person or by agent or attorney.

Subd 3. 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 10 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 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 Board shall record the hearing and receive testimony and exhibits and the full record of the hearing shall be kept.

Subd 5. Authority of the Board of Administrative Citation Appeals. The Board 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 Board 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. Decision of the Board of Administrative Citation Appeals. The Board shall issue a decision at the hearing after receiving testimony from all parties and shall serve a copy of such order upon the appellant or petitioner by mail. The reasons for the Board's decision shall be stated in the letter. Any fines or penalties imposed must be paid no later than 30 days of the date of the Board'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. The decision of the Board 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.

(Amended Ord. 1555 – 2023)

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)