

## CHAPTER 35: ADMINISTRATIVE CODE ENFORCEMENT

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### § 35. 01 STATEMENT OF PURPOSE AND INTENT.

The city has determined that the enforcement of the city's code is an important public service and is vital to the protection of the public's health, safety and welfare. The city has determined that there is a need for alternative methods of comprehensive code enforcement using both administrative and judicial remedies. The city has also determined that because life-safety issues may be regulated through an administrative enforcement process, penalties for violation should be enhanced.

(Prior Code, § 2.60. 010)

### § 35. 02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ADMINISTRATIVE CODE ENFORCEMENT REMEDIES.** Administrative citations and civil penalties as contained in this article.

**CIVIL PENALTY.** The administrative civil penalty assessed and all costs incurred by the city from the first discovery of the violations until compliance is achieved. It includes, but is not limited to, staff time and expense in inspecting the property, sending notices, preparing reports and files.

**CODE ENFORCEMENT OFFICER.** Any city employee or agent of the city with the authority to enforce any provision of this code and issue notice of violations or administrative citations.

**RESPONSIBLE PARTY.** Any person or persons in charge of the premises or location, or the person or persons responsible for the event or incident, and includes any of the following:

- (a) The person or persons who own the property where the violation exists;
- (b) The person or persons in charge of the premises where the violation exists;
- (c) The person or persons using the premises when the violation exists;
- (d) If any of the above is a minor, a parent or guardian of such minor shall be the responsible party;

and

- (e) If any of the above is a business entity, the manager or onsite supervisor where the violation exists.

**ROLLING 12-MONTH PERIOD.** Any 12 consecutive months following a violation.  
(Prior Code, § 2.60. 020)

**§ 35. 03 GENERAL ENFORCEMENT AUTHORITY.**

For the purposes of this chapter, any code enforcement officer may issue notices of violation and administrative citations, inspect public and private property, and enforce any available administrative and judicial remedies. (Prior Code, § 2.60. 030)

**§ 35. 04 AUTHORITY TO INSPECT.**

Code enforcement officers may enter upon any property and make any examination and surveys necessary to perform their enforcement duties. Inspections may include the taking of photographs, samples or other physical evidence. If an owner, occupant or agent refuses permission to enter to inspect, the code enforcement officer may seek an administrative inspection warrant pursuant to the procedures provided for in South Dakota Codified Laws. (Prior Code, § 2.60. 040)

**§ 35. 05 ADMINISTRATIVE CITATIONS.**

(A) Any person violating any provision of this code for which a civil penalty may be assessed may be issued an administrative citation by a code enforcement officer as provided for in this chapter.

(B) A continuing violation of this code constitutes a separate and distinct violation each day that the violation exists.

(C) A civil penalty shall be assessed by means of an administrative citation issued by the code enforcement officer and shall be payable directly to the city.

(D) Penalties assessed by an administrative citation shall be collected in accordance with the schedule of civil penalties. (Prior Code, § 2.60. 050)

**§ 35. 06 ADMINISTRATIVE CITATION PROCEDURES.**

(A) A code enforcement officer may issue an administrative citation to a responsible party as described in this chapter. The citation shall be on forms approved by the city.

(B) If the responsible party is not an individual, the code enforcement officer shall attempt to issue the owner an administrative citation. If the owner cannot be located, the administrative citation may be issued in the name of the entity and given to a manager or on-site supervisor. A copy of the administrative citation shall also be mailed to the owner.

(C) The responsible party shall sign the administrative citation. If the responsible party refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity of the citation.

(D) If the code enforcement officer cannot locate a responsible party, the administrative citation may be mailed to the responsible party as prescribed in division (B) above.

(E) If no one can be located at the property, the administrative citation may be posted in a conspicuous place on or near the property and a copy subsequently mailed to the responsible party as provided in division (B) above.

(F) The failure of any responsible party to receive notice shall not affect the validity of any proceedings taken under this chapter. (Prior Code, § 2.60. 060)

**§ 35. 07 APPEAL.**

(A) *Board of Appeals.* In order to provide for final interpretation and to hear appeals, the City Commission shall be the Board of Appeals for administrative citations.

(B) *Filing of appeal.* Any person may appeal an administrative citation by filing at City Hall within ten days from the date of the citation a written appeal containing:

- (1) A brief statement detailing with reasonable exactness the grounds of the appeal;
- (2) The appellant's name, address and telephone number; and

(3) A dated signature of the appellant or an agent on his or her behalf and, if signed by an agent, the name, address and telephone number of the agent.

(C) *Processing of appeal.* Upon receipt of any appeal filed, the Finance Officer shall inform the City Commission of the appeal at the next regular meeting of the City Commission. (ORD 1051, Effective 5.17.18)

(D) *Scheduling and notice of appeal hearing.* As soon as practicable after receiving the written appeal, the City Commission shall fix a date, time and place for the hearing of the appeal. Written notice of the time and place of the hearing shall be given by the Finance Officer at least ten days prior to the date of the hearing to the appellant. (ORD 1051, Effective 5.17.18)

(E) *Failure to appeal.* Failure of any person to file an appeal in accordance with the provisions of this section shall constitute a waiver of his or her rights to an administrative hearing and adjudication of the notice and order or any portion, thereof.

(F) *Staying of order under appeal.* Enforcement of any citation, notice and/or order shall be stayed during the pendency of an appeal therefrom which is properly and timely filed. (Prior Code, § 2.60. 070)

**§ 35. 08 ADMINISTRATIVE CITATION PENALTIES ASSESSED.**

(A) Any civil penalties assessed shall be payable to the city within ten days from the date of the administrative citation.

(B) Payment of the civil penalty shall not excuse the failure to correct the violations nor shall it bar further enforcement action by the city.

(C) If the responsible party fails to correct the violation, subsequent administrative citations may be issued for the same violations. The amount of the civil penalty shall increase at a rate specified in ordinance. (Prior Code, § 2.60. 080)

**§ 35. 09 FAILURE TO APPEAL OR PAY ADMINISTRATIVE CITATION PENALTIES.**

The failure of any person to file a timely appeal or pay the civil penalties within the time specified on the citation shall constitute an irrebuttable presumption that a violation has occurred. It may result in the City Attorney filing legal proceedings in magistrate or circuit court. Alternatively, the city may pursue any other legal remedy available to collect the civil penalty or correct the violation of city ordinance. (Prior Code, § 2.60. 090)

**§ 35. 10 REMEDIES NOT EXCLUSIVE.**

The procedures established in this chapter are in addition to other legal remedies established by law which may be pursued to address violations of this code. The use of this chapter shall be at the sole discretion of the city.  
 (Prior Code, § 2.60. 120)

**§ 35. 99 PENALTY.**

(A) *Civil penalty; list.* The following schedule lists the code provisions for which civil penalties may be cited under this chapter.

| <i>Code Provisions Applicable</i> |                                      |
|-----------------------------------|--------------------------------------|
| <i>Code Chapter No.</i>           | <i>Description</i>                   |
| 54                                | Garbage collection and recycling     |
| 90                                | Animals                              |
| 91, 92, 93, 94, 95                | Health and safety                    |
| 91                                | Abandoned vehicles                   |
| 91                                | Nuisances                            |
| 91                                | Mowing and discharge of mowing waste |
| 96                                | Snow and ice removal                 |
| 98                                | Street trees and shrubs              |
| 150                               | Lot vacation requirements            |
| 150                               | Property Maintenance Code            |
| 153                               | Canton zoning regulations            |

(Prior Code, § 2.60. 100)

(B) *Civil penalty; fines.* The civil penalties within any rolling 12-month period shall be as follows:

| <i>Violation</i>              | <i>Penalty</i> |
|-------------------------------|----------------|
| First violation               | \$100          |
| Second violation              | \$250          |
| Third or subsequent violation | \$500          |

(Prior Code, § 2.60. 110)