

City of Delano
County of Wright
State of Minnesota

Ordinance: O-20-07

An ordinance amending Chapter 1 of the Delano City Code by adding a new section 105.02 providing for administrative citations and fines.

The City Council for the City of Delano ordains:

That Chapter 1 of the Code of Ordinances, City of Delano, Minnesota is hereby amended by adding a new Section 105.02 regarding administrative citations and fines, which shall read as follows:

SECTION 105.02. ADMINISTRATIVE CITATIONS AND FINES

Subd. 1. Purpose. It is the intent and purpose of this Section to provide the City with an informal, cost-effective and efficient alternative to criminal prosecution or civil litigation for violations of the City Code. The City retains the right, at its sole discretion, to enforce provisions of the City Code by bringing criminal charges or commencing civil litigation in any case where the City determines it is appropriate or necessary, but finds that an administrative enforcement process is beneficial to the residents of the City and that such a process will provide a legitimate and necessary alternative method of enforcing Code violations that will facilitate compliance with the Code and reduce costs and delays in its enforcement.

Subd. 2. General Provisions

- A. **Administrative Offenses.** For purposes of this Section, "administrative offense" means any violation of the City's Nuisance Code, Chapter 8 of the City Code. An administrative offense may be subject to an administrative citation and administrative fines as provided in this Section.
- B. **Continuing Violations.** Each day that an administrative offense exists shall constitute a separate and distinct offense for which a separate penalty may be imposed.
- C. **Maximum Penalty.** An administrative offense may be subject to administrative fines not exceeding a cumulative total of \$2,000.
- D. **Schedule of Fines.** The City Council shall adopt by ordinance, as part of its fee schedule, a schedule of administrative fines for administrative offenses. A current fee schedule shall be kept on file at City Hall.
- E. **No Limitation on Remedies.** Nothing herein is intended or shall require the City to utilize the administrative citation process or otherwise pursue the remedies outlined in this Section. The City retains the right to pursue any and all other remedies authorized by law to enforce the City Code or penalize violations of City ordinances, including, but not limited to, issuance of a stop work order, abatement, criminal prosecution, or application for injunctive relief or other civil enforcement.

Subd. 3. Notice of Violation/Administrative Citation

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- A. **Notice of Violation.** The City Administrator, Code Enforcement Officer, Building Inspector, City law enforcement officers, any member of the City fire department, or any member of City staff to whom such authority is delegated by the City Administrator (the "Enforcement Officer") may enforce the provisions of the City Code and may enter the property on which the administrative offense is suspected with the consent of the property owner or occupant or upon securing a search warrant. Property inspections may also occur from adjoining properties with the permission of the adjoining property owner or from public right of ways. If the Enforcement Officer has a reasonable belief that an administrative offense exists, the Enforcement Officer shall notify the City Administrator. The Enforcement Officer may then deliver, either in person or by United States Certified Mail, written notice of violation to a person suspected or known to have committed an administrative offense and/or to the owner of property upon which an administrative offense has been or is being committed. The notice shall identify the administrative offense, the location of property upon which the administrative offense occurred or is occurring, the required corrective action, the time for compliance, and the opportunity to request an extension. Except in the case of a violation which constitutes an immediate danger to public health, safety or welfare for which immediate corrective action is required, the notice shall state that the alleged violator has, at the discretion of the Enforcement Officer, up to fifteen (15) days to correct or abate the administrative offense. If the alleged violator and/or owner of property upon which an administrative offense is being committed is unable to correct or abate the offense within the prescribed time, that person may submit a written request to the Enforcement Officer for an extension of no more than thirty (30) additional days. Any extension granted by the Enforcement Officer in the exercise of his or her sole discretion shall be in writing and shall specifically state the date of expiration. If the administrative offense is not corrected or abated as outlined in the notice within the prescribed time or any extension thereto, the Enforcement Officer may issue an administrative citation and fine as provided in Subd. 3.C. below.
- B. **Repeat Violations.** Notwithstanding the requirements of Subd. 3.A. above, an administration citation may be issued without prior delivery of a written notice of violation if the City Administrator or the Enforcement Officer determines that the alleged violation is a repeat violation. For purposes of this section, an alleged violation will be considered a "repeat violation" if:
1. It is committed by the same individual or entity or is committed on the same property as the initial violation;
 2. It is a violation of the same provision of Chapter 8 of the City Code as the initial violation;
 3. It is committed within two years after the initial violation;
 4. Written notice was sent for the initial violation as provided by Subd. 3.A;
 5. The initial violation resulted in the issuance of an administrative citation or imposition of another penalty which was either upheld on appeal or for which an appeal was not made.

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- C. **Administrative Citation.** Upon reasonable belief that an administrative offense has occurred and has not been corrected or abated as required by the written notice of isolation or approved extension thereof, the Enforcement Officer shall issue an administrative citation to the person responsible for the offense either by personal delivery or by certified mail. The Enforcement Officer shall also deliver a copy of the administrative citation to the City Administrator and, if the person responsible for the offense is not the property owner, shall deliver a copy of the administrative citation to the owner of property upon which the administrative offense has been or is being committed. The administrative citation must state the date, time, and nature of the offense, the name of the official issuing the citation, the amount of the administrative fine, and the manner for paying the fine or appealing the citation.

Subd. 4. Administrative Fines; Paying or Request for Hearing. Within fifteen (15) days after service of the citation, the alleged violator must either pay the administrative fine or deliver a written request for an appeal of the citation and fine to the City Administrator. Payment of an administrative fine or failure to request an appeal within the required time period constitutes admission of the violation and waiver to right of appeal.

Subd. 5. Administrative Fines; Late Payment or Failure to Pay.

- A. A late payment fee of ten percent (10%) of the fine may be assessed for each 30-day period or part thereof that the fine remains unpaid after the due date
- B. If an administrative fine is not paid within the time specified, it will constitute:
1. A lien on the real property upon which the violation occurred if the property or improvements on the property was the subject of the violation and the property owner was notified of the violation; and
 2. A personal obligation of the violator.
- C. If the property or improvements on the property was the subject of the violation and the property owner was responsible for the violation, the amount of unpaid fine may be specially assessed and collected against the property upon which the violation occurred in the same manner as taxes.
- D. A personal obligation may be collected by any appropriate legal means
- E. During the time that an administrative fine remains unpaid the person or property responsible for paying the fine shall be ineligible to receive any license, permit or other approval required by the City Code or otherwise to be issued by the City
- F. Failure to pay an administrative fine, unless the fine is under appeal, is grounds for suspension or revocation of a license, permit or other approval related to the violation

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Subd. 6. Appeal: Administrative Hearing

- A. A citation may be appealed to a panel of two (2) Councilmembers and one (1) member of the Planning Commission (the "Appeal Panel").
- B. The alleged violator may request an appeal by submitting a written request to the City Administrator either in person or by mail within 10 days of the issuance of the citation. The Appeal Panel will endeavor to hear the appeal within 30 days after the date an appeal request has been received, and in no event later than 60 days after the City Administrator's receipt of the appeal request, unless a later time is agreed to by the parties. At the hearing, the parties may present testimony and documentary evidence and question witnesses, but strict compliance with Minnesota Rules of Evidence will not be required. The hearing must be audio recorded.
- C. Upon the Appeal Panel's own initiative or upon written request of an interested party demonstrating the need, the Appeal Panel may require the attendance of a witness or submission of photographs, papers, records or other documents that are material to the matter being heard. Failure or refusal without just cause to attend and testify or to produce the required documents may be a consideration in the Appeal Panel's decision and recommendation.
- D. The Appeal Panel shall consider the record and any additional evidence presented at the hearing before making a determination. The Appeal Panel shall receive and give weight to any evidence, including hearsay evidence that possesses probative value commonly accepted by reasonable and prudent people in conduct of their affairs. The City will have the burden of proving the existence of a violation and the reasonableness of any required corrective action by a preponderance of the evidence. The determination of the Enforcement Officer will be given substantial weight by the Appeal Panel. The Appeal Panel shall prepare written findings and conclusions detailing its decision.
- E. The Appeal Panel has the authority to determine that a violation occurred, dismiss a citation, impose the scheduled fine, reduce, stay or waive a scheduled fine either unconditionally or upon compliance with appropriate conditions, or increase the fine over the amount set forth in the fee schedule if the actual costs of enforcement (including, but not limited to, the costs of the administrative hearing) are shown by a preponderance of the evidence to be greater than the amount of the scheduled fine, provide that the administrative fines plus the actual costs of enforcement do not exceed \$2,000. Late charges may be assessed in addition to the fine and are not included in the calculation of the maximum penalty per offense. When imposing an administrative fine for a violation, the review panel may consider any or all of the following factors:
 - 1. The duration of the violation;
 - 2. The frequency or reoccurrence of the violation;
 - 3. The seriousness of the violation;
 - 4. The history of the violation;

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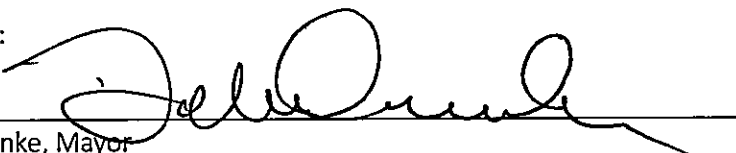
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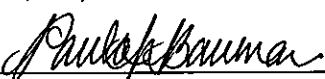
5. The good faith effort by the violator to comply with the notice of violation;
 6. The economic impact of the fine on the violator;
 7. The impact of the violation upon the community; and
 8. Any other factors appropriate to a just result.
- F. The City may suspend or revoke a City-issued license, permit, or other approval associated with the violation, subject to any applicable procedural requirements contained in the City Code. Suspension or revocation of a license, permit or other approval is authorized regardless of whether additional penalties (such as administrative fines) are imposed for the violation.
- G. Failure to attend a scheduled hearing constitutes a waiver of the violator's right to an administrative hearing and an admission of the violation. The Appeal Panel may waive this result upon a showing of good cause. Examples of "good cause" include, but are not limited to: death or incapacitating illness of the accused or a close family member; a court order requiring the accused to appear for another hearing at the same time; and lack of proper service of the citation or notice of the hearing. "Good cause" does not include forgetfulness or intentional delay.

Subd. 7. Judicial Review. An aggrieved party may obtain judicial review of the decision of the Appeal Panel by applying to a court of competent jurisdiction.

Adopted by the City Council of the City of Delano, Minnesota this day of **JUNE 16, 2020**

Approved:


Dale Graunke, Mayor


Attest: Paula Bauman, Administrative Services Coordinator

