

ORDINANCE NO. 1384

AN ORDINANCE ADDING CHAPTER 33 TO THE FRIDLEY CITY CODE ENTITLED ADMINISTRATIVE ENFORCEMENT OF ORDINANCE VIOLATIONS

The City of Fridley does ordain, after review, examination and staff recommendation that Chapter 33, Administrative Citations, be added to the Fridley City Code as follows:

FRIDLEY CITY CODE CHAPTER 33 ADMINISTRATIVE ENFORCEMENT OF ORDINANCE VIOLATIONS (ORDINANCE NO. 1384)

33.01. PURPOSE

The City Council seeks to offer an alternative method of enforcement for City Code violations rather than relying solely on the judiciary for such relief. The formal judicial process does not provide an environment to adequately address the unique and sensitive issues that are involved in City Code violations, including, but not limited to: neighborhood concerns, livability issues, economic impact, public safety, physical limitations of the offenders, and the stigma and unintended consequences of being charged with or convicted of a misdemeanor offense. In addition, the methodical process of the court system process may not be conducive to dealing with the violations in a prompt and timely manner.

In order to provide more flexibility in addressing City Code violations on an individual basis that will be more efficient and effective and to ensure a process for administrative relief before engaging the judicial system, the City Council finds that an alternative enforcement process is necessary. Therefore, to protect the health, safety and welfare of the citizens of Fridley, the City Council intends to create a process for the use and imposition of administrative civil penalties that will provide the public and the City with an effective, alternative method for addressing City Code violations.

33.02. APPLICATION

The administrative procedures and penalties in this section may, in the discretion of the City, be used for any violation of the City Code or any violation of the terms and conditions of a City approval, including permits and licenses, required and granted under the City Code, and traffic offenses designated in Minnesota Statute § 169.999, in the amount designated in Minnesota Statute § 169.999, as it may be amended from time to time.

Except as expressly provided in this section, the provisions of this section 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 the City to enter property immediately or to seek other remedies in emergency or other situations as authorized by City Code, State law, or Federal law. Where differences occur between provisions of this section and other applicable City Code sections, this section controls to the extent of such differences. No provision of the City Code that provides a criminal procedure or penalty, or an

administrative or civil procedure or penalty, for a violation of the City Code shall preclude the application of this section in its entirety to such violation.

The penalties and procedures provided in this section shall be applicable to every section and chapter of the City Code. The penalties and procedures provided by this section shall apply to any amendment of the City Code, whether or not such penalty is reenacted in the amendment, unless otherwise provided in such amendment.

33.03. ENFORCEMENT AND ADMINISTRATIVE CITATION ISSUANCE

- A. Authority to Enforce. Only peace officers may issue Administrative Citations pursuant to Minnesota Statute § 169.999 related to traffic violations. The City shall not issue an Administrative Citation as authorized by Minnesota Statute § 169.999 to the holder of a commercial driver's license or the driver of a commercial vehicle in which the administrative violation was committed.

Any other violation of City Code may result in an Administrative Citation. Any persons employed by the City and designated by the City Manager to enforce the City Code are authorized to issue such citations. The City may only issue an administrative citation upon a determination of a violation of any regulation identified in Section 33.02. The City Manager, or their designee, is authorized to promulgate rules and forms to implement these procedures.

- B. Administrative Citation.

1. Any person with authority to enforce the City Code may, upon a reasonable belief that there has been a violation thereof, issue an Administrative Citation to the violator or party responsible for the violation in one of the following ways:
 - a. By personal service upon the owner of the property or an occupant of suitable age residing at the property where the violation occurred, or in the case of a business or corporation, the citation may be served upon a manager on the premises or to a corporate officer;
 - b. By first class mail to a person identified in Subsection (B)(1)a of this section;
 - c. By posting the citation in a conspicuous place on or near the main entrance when it reasonably appears the property is occupied but the occupants are not available or willing to accept personal service, and where the property is not a licensed rental dwelling;
 - d. By posting the citation in a conspicuous place on or near the main entrance and mailing by first class mail a notice of the citation to the owner of record where it reasonably appears the property is vacant or abandoned;

- e. By posting the citation in a conspicuous place on or near the main entrance and mailing by first class mail, notice of the citation to the licensee when the property is a rental dwelling licensed by the City; or
 - f. By posting the citation in a conspicuous place on a motor vehicle when the vehicle is vacant.
- 2. The City shall notify a recipient of an Administrative Citation of their right to contest the citation as outlined in Section 33.04. The City shall also appoint a neutral third party to hear and rule on challenges to administrative citations authorized by the City Code.
 - 3. The failure to pay an Administrative Penalty or petition for an Administrative Hearing within 14 business days after the citation is issued, or failure to attend a scheduled Administrative Hearing, constitutes a waiver of the violator's right to a future Administrative Hearing and is an admission of the violation.
 - 4. Any administrative fines assessed pursuant to Minnesota Statute § 169.999 shall be disbursed in accordance with Minnesota Statute § 169.999, subd. 5.

33.04. ADMINISTRATIVE HEARINGS

- A. Request for Hearing. Anyone in violation of any section of the City Code may either pay the Administrative Penalty, as defined by Section 33.05, or petition the City for an Administrative Hearing pursuant to Section 33.04(E).
- B. Hearing Examiner. The position of Hearing Examiner is hereby created. The City Manager, or their designee, may, at their discretion, contract with third parties for the furnishing of all services of the Hearing Examiner as contained in this chapter and set the rate of compensation therefor.
- C. Qualifications. The Hearing Examiner shall be an individual trained in law; however, it shall not be required that the Hearing Examiner be currently licensed to practice law in the State of Minnesota.
- D. Duties. The Hearing Examiner shall have the following duties:
 - 1. Set dates and hear all contested cases;
 - 2. Take testimony from all interested parties;
 - 3. Examine all facts, evidence and testimony presented;
 - 4. Make a complete record of all proceedings including findings of fact and conclusions of law; and

5. Affirm, dismiss or modify the Administrative Citation and/or the Administrative Penalty assessed.

E. Hearing Procedure. Any person issued an Administrative Citation within the City of Fridley may petition the City, in writing, for an Administrative Hearing before a Hearing Examiner.

1. All such petitions shall identify with specificity the basis for the objection to the Administrative Citation and the interpretation of the City Code, as well as summarizing any evidence the petitioner intends to present. Such requests shall be filed in writing to the City Manager, or their designee, within 14 business days after the ordinance violation citation is issued.
2. The City will confirm request of an Administrative Hearing and include information on the Administrative Citation Hearing Fee as outlined in this ordinance. This fee will be refunded if the Administrative Citation is dismissed, but not if affirmed or modified.
3. All Administrative Hearings will take place at the Fridley Civic Campus (7071 University Avenue NE, Fridley, MN 55432) between 8:00 a.m. and 8:00 p.m. Monday through Friday. The Hearing Examiner may schedule an alternative date and time upon the written consent of all parties subject to the Administrative Hearing.
4. The Hearing Officer shall provide all parties involved with a Notice of Hearing at least seven business days prior to the Administrative Hearing.
5. All Administrative Hearings will be recorded with an audio recording device. A transcript of the Administrative Hearing will be transcribed and retained pursuant to the Minnesota Government Data Practices Act.
6. The Hearing Examiner will take testimony from the petitioner and any corroborating witnesses who wish to testify. The Hearing Examiner will then take testimony from the City. Both the petitioner and the City may appear with legal counsel.
7. The Rules of Evidence do not apply. The Hearing Examiner will determine the admissibility of any evidence and/or testimony.
8. The Hearing Examiner shall render a written decision to affirm, dismiss or modify the City's Administrative Citation. Within 15 business days after the Administrative Hearing, the Hearing Examiner shall provide written findings of fact, conclusions of law and if applicable, issue a timeline to pay any penalties and fees. The decision of the Hearing Examiner shall be final.
9. Judicial review. An aggrieved party may obtain judicial review of a final decision of the Hearing Examiner in a court of competent jurisdiction within the time limit prescribed by law.

- F. Failure to Appear. The failure to attend the hearing constitutes a waiver of the petitioner's rights to an Administrative Hearing and an admission of the violation. The Hearing Examiner may waive this result upon good cause shown. "Good cause" may be determined by the Hearing Examiner and may include: death in the immediate family or documented incapacitating illness of the accused; a court order requiring the petitioner to appear for another hearing at the same time; and lack of proper service of the administration citation or notice of the hearing.
- G. Failure to Pay Is Separate Violation. The following are separate violations of the City Code, punishable as misdemeanors in accordance with State law:
 - 1. Unless a notice of appeal has been timely filed, failure to pay the fine within the time required after issuance of an Administrative Citation.
 - 2. Failure to pay a fine imposed by a Hearing Examiner within 30 days after it was imposed, or such other time as may be established by the Hearing Examiner, unless judicial review has been sought for the matter in accordance with State law.

33.05. PENALTIES AND PAYMENT

- A. Application. An Administrative Citation may be issued in conjunction with, or in lieu of, any other remedy available to the City.
- B. Administrative Penalties and Fees. The City Council shall adopt by ordinance a schedule of penalties and fees for violations of City Code and the enforcement of this chapter.
 - 1. Any penalties and fees for those Administrative Citations issued pursuant to Minnesota Statute § 169.999, subd. 1, shall be not exceed the limits described in Minnesota Statute § 169.99, subd. 5.
 - 2. Unless expressly provided otherwise in the City Code, each day a violation exists constitutes a separate administrative offense.
 - 3. When an Administrative Citation is issued and served as described in Section 33.03(B) of this Chapter, the party receiving service has up to 14 business days to pay the Administrative Citation fee as outlined in Chapter 11 of the Fridley City Code. If payment is not received, or an Administrative Hearing is not requested within 14 business days of the citation being issued, a late fee will be incurred. The Administrative Penalty Late Fee is outlined in Chapter 11 of the Fridley City Code.
- C. Payment Process.
 - 1. A party who has received an Administrative Citation must, within 14 business days after the Administrative Citation is issued, pay the amount of any fine set forth therein, unless that party has requested an Administrative Hearing as authorized by this

chapter. If the Administrative Citation penalty is upheld in full or in part by the Hearing Examiner, the petitioner must make payment to the City within 14 business days of the issuance of the Hearing Examiner's decision, unless another term is prescribed therein.


2. Any fine may be paid in person at City Hall, by mail or by other method set forth by the City.
 3. Payment of any fine shall be deemed a final admission of the violation, and thereafter the City shall not bring a criminal charge for the same violation. Ongoing or continuing violations shall constitute a new violation for each day that it is occurring.
 4. Payment of a fine shall not excuse the failure to satisfy compliance orders referenced in the Administrative Citation and such payment shall not bar further enforcement activity by the City for a continuing violation, including without limitation, the issuance of additional Administrative Citations.
- D. If an Administrative Penalty imposed by an Administrative Citation is not paid within the time specified, it constitutes a personal obligation of the violator and a lien upon the real property upon which the violation occurred, if the property or improvements on the property were the subject of the violation and the property owner was responsible for that violation.
- E. Assessment. Any persons employed by the City and designated by the City Manager to enforce the City Code shall keep a record of the costs of ordinance violations and shall provide detailed reports to the City Manager or their designee regarding all matters related to each violation. In the event the Administrative Penalty is unpaid and it is not possible for the City to place a lien on any real property, the City may list the total unpaid charges for each assessment against each separate lot or parcel to which they are attributable. The City Council may then spread the charges or any portion thereof against the property involved as a special assessment under other pertinent statutes, for certification to the County Auditor and collection the following year along with current taxes. Such assessment shall be payable in a single installment or by up to ten equal annual installments as the City Council may provide, pursuant to Minnesota Statute § 429.101.
- FE. License and Permit Issuance. Failure to pay an Administrative Penalty shall be grounds for suspending, revoking or not renewing a license or permit related to the violation. During the time that an Administrative Penalty remains unpaid, no City approval will be granted for a license, permit, or other City approval sought by the violator or for property under the violator's ownership or control. For purposes of this restriction, any company that is owned in whole or in part by the violator shall also be considered to be subject to these restrictions, regardless of corporate structure.
- GF. Disposition of Penalties. All penalties collected pursuant to this Chapter shall be paid to the City Treasurer and deposited in the appropriate fund and with the appropriate parties.

H. Maximum Penalty. As noted in Section 33.05(B)(2), each day a violation exists is a separate offense. The maximum amount of an Administrative Penalty charged for a single offense, as determined by the City, may not exceed twice the maximum fine authorized by State law for misdemeanor offenses, or the maximum fine authorized by State law for an administrative process.

33.06. EXEMPTION

A. This section of the City Code shall apply to all violations of the City Code, except for those situations where applicable sections of the City Code and/or State law prescribe other procedures or rules.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF FRIDLEY THIS
12TH DAY OF OCTOBER, 2020.**



Scott J. Lund, Mayor

ATTEST:



Daniel Tienter, City Clerk

First Reading: September 28, 2020

Second Reading: October 12, 2020

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