

2005-Or-___

**AN ORDINANCE
of the
CITY OF
MINNEAPOLIS**

By _____

Amending Title 1, Chapter 2 of the Minneapolis Code of Ordinances relating to the Administrative Enforcement and Hearing Process.

The City Council of The City of Minneapolis do ordain as follows:

Section 1. That Section 2.70 of the above-entitled ordinance be amended to read as follows:

2.70. Schedule of civil fines. The city council will adopt by resolution a schedule of civil fines for administrative offenses. The adopted schedule of civil fines may include as a separate part of any specified civil fine a charge for actual costs of enforcement or emergency response directly related to the violation. City officials enforcing this chapter must adhere to this schedule of fines.

Section 2. That Section 2.100 of the above-entitled ordinance be amended to read as follows:

2.100. Administrative hearing procedures. (a) Service; Minnesota Rules of Civil Procedure. The Minnesota Rules of Civil Procedure govern with regard to service of process and calculation of time.

(b) Hearing officers. The city attorney will periodically approve a list of lawyers from which the city attorney will select a hearing officer to mediate and hear a matter for which a hearing is requested. The alleged violator requesting a hearing will have the right to request, no later than five (5) days before the date of the hearing, that the assigned hearing officer be removed from the case. One request for removal for each case will be granted automatically by the city attorney. A subsequent request will be directed to the assigned hearing officer, who will decide whether the hearing officer cannot fairly and objectively review the case. If such a finding is made, the hearing officer will remove himself or herself from the case, and the city attorney will 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 must not be a current employee of the City of Minneapolis.

- (c) Subpoenas. Upon the hearing officer's own initiative or upon written request of an interested party demonstrating the need, the hearing officer may issue an administrative subpoena for the attendance of a witness or the production of books, papers, records or other documents that are material to the matter being heard. The party requesting the administrative subpoena will be responsible for serving the subpoena and for paying the statutory fees and expenses of any witness. A person served with an administrative subpoena may file an objection with the hearing officer no later than the date specified in the administrative subpoena for compliance. The hearing officer may cancel or modify any portion of the administrative subpoena deemed unreasonable or oppressive. Any person who, without just cause, fails or refuses to comply with an administrative subpoena may be guilty of a misdemeanor. In the alternative, the party requesting the administrative subpoena may seek an order from district court directing compliance with the administrative subpoena.
- (d) Notice of hearing. A notice of the hearing must be served on the alleged violator. The notice must be served at least ten (10) days in advance of the scheduled hearing unless a shorter time is accepted by all parties.
- (e) Mediation. Immediately prior to any hearing, with the agreement of all parties, the hearing officer may attempt to mediate the dispute. If the dispute is settled as a result of mediation, the hearing will be canceled. Any mediated settlement must be commemorated by the hearing officer in writing and signed by the person responsible for the violation. A mediated settlement that calls for formal action by the city council is contingent on final city council approval and will be presented as a recommendation to the city council from the hearing officer.
- (f) Hearing procedure. If a mediated settlement cannot be reached, the matter will proceed to a hearing. At the hearing, the parties will have the opportunity to present testimony and question witnesses, but strict compliance with the Minnesota Rules of Evidence will not be required. The hearing officer will tape record the hearing and receive testimony and exhibits into evidence. The hearing officer will receive and give weight to evidence, including hearsay evidence, that possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs. The city will have the burden of proof to demonstrate by a preponderance of the evidence that a violation occurred and that the required corrective action, if applicable, is reasonable. The determination by the applicable department director as to the need for the required corrective action shall be accorded substantial weight by the hearing officer in determining the reasonableness of the required corrective action.
- (g) Authority of hearing officer. The hearing officer will have the authority to:
 - (1) Mediate and enforce a settlement of the dispute;

(2) Hear an appeal of a posting of a notice of noisy or unruly assembly under Section 389.65 and either uphold the posting or order the removal of the notice;

~~(2)~~(3) Determine whether a violation occurred;

~~(3)~~(4) Dismiss the administrative citation;

~~(4)~~(5) Impose the scheduled fine;

~~(5)~~(6) Reduce, stay, or waive a scheduled fine upon compliance with appropriate conditions; or

~~(6)~~(7) Increase the scheduled fine when the actual costs of enforcement are shown by a preponderance of the evidence to be greater than the amount of the scheduled fine.

(h) Imposition of civil fine by hearing officer. When imposing a fine for a violation, the hearing officer may consider any or all of the factors listed below:

(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 by the violator to comply;

(7) The economic impact of the fine on the violator;

(8) The impact of the violation upon the community;

(9) Prior record of city code violations; or

(10) Any other facts appropriate to a just result.

(i) Fines for continuing violations. The hearing officer may exercise discretion to impose a fine for more than one (1) day of a continuing violation but only upon a finding that:

(1) The violation caused a threat of harm to the public health, safety, or welfare; or

- (2) The violator unreasonably refused to comply with the code requirement. The hearing officer's decision and supporting reasons for continuing violations must be in writing.
- (j) Decision of the hearing officer.
- (1) The hearing officer must determine whether the city has established by a preponderance of the evidence that a violation has occurred and that the required corrective action is reasonable and must affirm, vacate or modify the city's decision regarding the alleged violation or corrective action.
 - (2) The hearing officer must issue a written decision and order to the alleged violator that contains the following information:
 - a. The decision regarding the alleged violation including findings of fact and conclusions thereon in support of the decision.
 - b. The required corrective action, if any.
 - c. The date and time by which corrective action must be completed.
 - d. The monetary penalty assessed based on the criteria set forth herein.
 - (3) The decision of the hearing officer must be served on the alleged violator.
- (k) Finality of decision. The decision of the hearing officer shall be final without any further right of administrative appeal.