Addendum 1

CITY OF MINNEAPOLIS

ADMINISTRATIVE ENFORCEMENT AND HEARING PROCESS

BENCHBOOK FOR HEARING OFFICERS

City Clerk's Office
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1. Introduction

1.1 Intent

The Minneapolis Administrative Enforcement and Hearing Process was created by the City of Minneapolis as an alternative forum for enforcing City ordinances. The City previously used the criminal justice system for enforcement of its ordinances but found that system to be somewhat unsatisfactory.

A. The higher burden of proof does not appear appropriate for most administrative violations.

B. The potential of serving jail time does not appear appropriate for most administrative violations.

C. The criminal justice system does not always recognize City ordinance violations as serious or important.

D. Judges sometimes are unwilling to hold trial over what are perceived to be minor problem, or if a trial is conducted, only nominal penalties are imposed.

E. The cost of criminal prosecution often outweighs the penalty imposed.

The Administrative Adjudication and Enforcement Process is intend to avoid these disadvantages and to provide a forum which is more informal and less threatening to alleged violators.

1.2 Authority

The Minneapolis City Charter authorized the City Council to establish by ordinance a procedure for imposing a civil penalty not exceeding $2,000 for each violation of a city ordinance. This procedure must provide an opportunity for the accused to be heard by a neutral party.

The City Council adopted Minneapolis Code of Ordinances, Title 1, Chapter 2, to govern administrative enforcement of the ordinances, including imposition of civil penalties. Pursuant to this Chapter, enforcement is commenced by the issuance of an administrative citation. The recipient must pay a fine or request a hearing. If a hearing is requested, the procedures in this handbook are followed.

2. Pre-Hearing Procedure

2.1 Selection of Hearing Officers

The City will select a hearing officer from the list approved by the City Council. The City will select the hearing officer from this list by taking the first name appearing on the list, and working down the list. The City will contact the selected attorney -lawyer and indicate the division the hearing is for.

2.2 Self-Disqualification

Upon being assigned to a case, you must decide if there are grounds to self-disqualification. Grounds for such disqualification include:

A. Personal interest in the action.

B. Finance interest in the action.

C. Relationship to any party.

D. Former counsel for party. If any member of your firm would be disqualified under this provision, you are also disqualified.

E. Bias or prejudice.

If grounds for self-disqualification exist, they may be disclosed to the parties in writing and expressly waived by the parties in writing. Otherwise, you must notify the City of the disqualification, and another hearing officer will be selected.

2.3 Disqualification by Party

No later than five days before the date of the hearing, any party may file a written request with the City to remove the assigned hearing officer. The first such request by an accused will automatically be granted. Any subsequent request by an accused for the same matter and any request by the City will be referred to the assigned hearing officer, who will decide whether he or she cannot fairly and objectively hear the case. You must issue a written decision by the date of the hearing. If you grant the request, you should file the decision with the City as quickly as possible to allow for assignment of another hearing officer. If the request is not granted, you may either (a) file the decision with the City, who will mail it to the requesting party or (b) serve it upon the requesting party at the scheduled hearing.

2.4 Hearing Time and Date

The City must schedule a hearing in a timely manner after receiving the accused's request for a hearing. The City will contact you for an available date and schedule the time and place for the hearing. You will generally be expected to be available for one-half of a business day. More than one matter may be scheduled for hearing during that time.

2.5 Notice of Hearing

At least 10 days before the scheduled date, the City will send a notice of the hearing date, time, and location to you and all parties, unless a shorter time is accepted by all parties. The notice will indicate the division that the hearing is for.

2.6 Continuances

A continuance of the hearing may be granted only by the City, for good cause shown. Generally, continuances should be for no more than 10 days.

2.7 Pre-Hearing Communications

Except for a subpoena request (see below), there must be no ex parte communication between you and the parties or parties' representatives. All scheduling and continuances will be handled by the City.

2.8 Subpoenas

Upon your own initiative or upon written request of a party who demonstrates the need, you may authorize issuance of a subpoena for the attendance of a witness or the production of documents which are material to the matter being heard as it relates to Administrative Citation hearings. If you authorize a subpoena, notify the City department who will obtain the necessary subpoena from the Hennepin County District Court (which will issue the subpoena based on authority of the Minneapolis City Charter).

The party requesting the subpoena is responsible for serving it in the same manner as civil actions and paying fees and expenses of the witness. A person served with a subpoena may file an objection with you before time for compliance. You may cancel or modify the subpoena if it is unreasonable or oppressive.

You must notify the City department if someone fails to comply with a subpoena. Failure to comply with a subpoena is a misdemeanor and constitutes contempt of court.

3. Hearing Procedure

3.1 Reporting

You are required to report to the designated hearing location at least 5 minutes before the scheduled hearing. This will allow for any administrative tasks and last-minute changes. You may also review the file(s) at this time.

3.2 Failure to Appear

The failure of an accused to appear constitutes an admission of the violation. You may proceed to impose a penalty. If the City representatives fail to appear, the charge must be dismissed. If the absent person contacts you or the City with a reasonable time after the scheduled hearing, you will be asked to rule on whether there was a good cause for the absence. Examples of good cause are: death or incapacitating illness of the accused; a court order requiring the person to appear for another hearing at the same time; and lack of proper service of the citation or notice of hearing. Good cause does not include: forgetfulness and intentional delay.

3.3 Hearing Introduction

You should begin the hearing by introducing yourself and emphasizing your neutrality. You should also explain your role and how the hearing will proceed. You may also explain at this time the right to appeal.

Administrative Citation Advisory

The purpose of today's hearing is to hear your requested appeal of an Administrative Citation that was issued to you by the City of Minneapolis.

My name is _____. I am the hearing officer that has been assigned to hear cases today. I am attorney in private practice. I am not an employee or representative of the city, and I have no personal interest in the outcome of the hearing.

This is an administrative matter, not criminal. In a criminal case, the evidence presented must leave no reasonable doubt. At this hearing, the City must prove their case by a greater weight of the evidence. You are not required to give testimony, but if you plan on giving testimony, you would do so under oath. Because this is an administrative hearing, only a financial penalty can be imposed; you cannot face jail time.

The City will present their side of the case first. You'll then have an opportunity to ask the City's representative(s) questions about their testimony. Then, you'll be able to present your side of the case, if you would like to.

If you would like me to review any additional evidence you may have brought, hand it to the City's representative(s) first. If the City has no objections, they will then pass it to me.

This session is being recorded, so if you have a cell phone, please turn it off. Limit any background noise, as it can be picked up by the recorder. Only one person should speak at a time. If I ask you a question, please wait until I am finished before answering.

After everyone has had an opportunity to speak, I will take the matter under advisement, or I may tell you what my decision is today. Either way, you'll receive my decision in writing within two weeks. If I impose a fine, it will be due thirty days after the hearing, unless I specify otherwise.

If my decision is not satisfactory to you, you do have a right to further appeal through the Minnesota Court of Appeals. Instructions on that procedure will be included with the written decision.

Once your case is called, you may have a seat at the front table

Special Assessment Advisory

The purpose of today's hearing is to hear your requested appeal of a Special Assessment pending against your property that was issued by the City of Minneapolis.

My name is _____. I am the hearing officer that has been assigned to hear cases today. I am an attorney in private practice, I am not an employee or representative of the city, and I have no personal interest in the outcome of the hearing.

A representative from The Department of Regulatory Services is here today on behalf of The City. The City will present its side of the case first. You'll then have an opportunity to question the City's representatives about their testimony. Then, you'll be able to present your side of the case, if you'd like to. If you would like me to review any additional evidence you may have brought, hand it to the City's representative(s) first. If the City has no objections, the documents will then be passed me.

This session is being recorded, so if you have a cell phone, please turn it off. Limit any background noise, as it can be picked up by the recorder. Only one person should speak at a time. If I ask you a question, wait until I am finished speaking before answering.

After everyone has had an opportunity to speak, I will take the matter under advisement. You'll receive my decision in writing within fifteen days. If after fifteen days, you have not received the decision notice, please contact the City.

If my decision is not satisfactory to you, you do have a right to further appeal through District Court. Instructions on that procedure were included in the Notice of Intent to Assess letter and will be repeated in the decision letter you will receive.

Once your case is called, you may have a seat at the front table.

3.4 Hearing Procedure

A representative from the City may be present. The City will provide recording equipment and the hearing must be recorded. The hearing officer or their representative is responsible for starting and stopping the recording for each hearing.

The procedure should be informal, without strict rules of evidence. You should make such rulings and take such action as deemed necessary to conduct a dignified and orderly hearing. You will determine whether to allow opening and/or closing statements. The parties have the right to present testimony and cross-examine each other's witnesses. The City bears the burden of proving a violation and should proceed first.

You must administer an oath or affirmation to each witness and interpreter if present. You will receive testimony and exhibits and give weight to evidence, including hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs. Because this is a civil matter, you must find a violation only if the greater weight of the evidence supports such a finding.

3.5 Decision

You have the authority to determine that a violation occurred, to dismiss a charge, to impose the fine established in the City Council-approved schedule, and to reduce, increase, stay or waive the established amount of the fine either unconditionally or upon compliance with appropriate conditions only for the fine amount in front of you.

When a violation is found, you may consider any or all of the following factors in imposing a penalty:

A. the duration of the violation,

B. the frequency of reoccurrence of the violation,

C. the seriousness of the violation,

D. the history of the violation,

E. the violator's conduct after issuance of the notice of hearing, the good faith effort by the violator to comply,

F. the economic impact of the penalty on the violator, the impact of the violation upon the community,

G. the violator's record of prior City code violations, and

H. any other factors appropriate to a just result.

You may impose a fine greater than the established fine, when the actual costs of enforcement are shown to be greater than the amount of the scheduled fine. You may impose a penalty for each day of a continuing violation if (a) the violation caused a serious threat of harm to the public health, safety, or welfare or (b) the accused intentionally and unreasonably refused to comply with the city code requirement.

3.6 Filing the Decision

You should try to announce your decision at the end of the hearing. If you feel uncomfortable in doing so, because of the desire for time to review evidence and reflect or because of an emotional party, you may announce that you are taking the matter under advisement.

You must place your decision in writing with an explanation of your basis for the decision. A form will be provided for your convenience. The City will send notice of the decision to both of the parties.

If you take additional time to make a decision, you must provide a written decision to the City within ten (10) days.

4. Post-Hearing Procedures

4.1 Appeal

In most cases, your decision will be final without the right to make an administrative appeal. The aggrieved party may appeal your decision to the Minnesota Court of Appeals by writ of certiorari.

4.2 Time to Pay

The violator has 30 days within which to pay the fine. A late payment fee of 10% of the fine will be imposed after that time.

4.3 Consequences of Failure to Pay

If the violator does not pay the fine, the City may:

A. Assess the penalty against the real property in the city that was the subject of the violation, if the owner was responsible for the violation.

B. Suspend or revoke a City-issued license that is associated with the violation.

5. Administrative Matters

5.1 Hearing Officer Fees

The hearing officer must submit to the City a signed application for fees on the form provided. No fees will be paid if any of the officer's decisions have not been timely filed, without good cause, at the City. The fee will be $100 per hour or a portion thereof for hearings and $25 each for your action on a request for disqualification, for a subpoena, for quashing a subpoena, or for a finding of good cause for a non-appearance.

If a hearing is cancelled less than forty-eight (48) hours prior to the scheduled date and time, the assigned hearing officer will be paid $125 per cancelled session.

5.2 Custody of File

You should give all exhibits submitted at the hearing and tape recording to the appropriate City representative. If a party wishes to withdraw an exhibit, the department will make a copy to keep with the department's file. You are not expected to retain your notes regarding the matter.

6. Types of Hearings

6.1 Administrative Citation

A citation is issued by a City official for violations of the Minneapolis Code of Ordinances and some Minnesota Rules and Statutes. It's an administrative fine, issued instead of a criminal citation. Generally, a citation follows a notice of violation letter, but they can be issued immediately in certain cases. A citation is appealable by written objection up to twenty (20) days after the issue date. Please note that even when an appeal is filed or the citation is paid, the City is able to continue issuing additional citations until compliance is achieved.

Decisions from administrative citation hearings are appealable to the Minnesota State Court of Appeals.

6.2 Special Assessment

There are several types of assessments:

- **Citation Assessment** - If a citation involving a violation at a specific property is not paid or either stayed or dismissed at a hearing, the City moves to collect the amount, plus ten (10) percent, by adding it to the property's taxes. Assessable citations include those issued by Housing Inspections Services, Fire Inspections Services, Zoning Enforcement, Construction Code Services, Environmental Management, and Public Works.
- **Reinspection Fee** - A reinspection fee is issued if a City official conducts a reinspection and finds that the violation still exists. The property taxpayer or rental property contact will receive a bill for the inspection. If it isn't paid, the City moves to collect the amount, plus $50 for administrative expenses, by adding it to the property's taxes.
- **Nuisance Assessment** - If a City official finds that conditions on a property constitute a public nuisance, they may issue a notice of violation requiring correction of the condition. Common

nuisance issues include overgrown vegetation, hazardous trees, rubbish, and inoperable vehicles. If the order is not completed, the City may authorize a contractor to correct the condition. At properties where two (2) or more notice of violation letters have been issued in the past twelve (12) months, notice is no longer required. The City moves to collect the amount charged by the contractor, plus an administrative expense, by adding it to the property's taxes.

- **Boarded Buildings Assessment** - If a structure is found to be vacant and open to trespass, or is deemed a safety hazard for other reasons, the City can have the structure boarded. The City moves to collect the cost of securing the structure by adding it to the property's taxes.
- **Vacant Building Registration Fee** - The annual Vacant Building Registration fee for residential and commercial properties is appealable at an assessment hearing. If a VBR fee is not prepaid or dismissed at a hearing, the amount is collected by adding it to the property's taxes.

In all cases, the property taxpayer or rental property contact will receive a notice of intent to assess letter and, if they wish to appeal, must file a written objection no later than fifteen (15) days before the hearing date listed in the notice. A special assessment is also sometimes referred to as a levy.

Decisions from special assessment hearings are appealable at the end of the levy year in Hennepin County District Court.

6.3 Rental License Revocation

In the event that a rental license holder is found to be out of compliance with the licensing standards listed in Minneapolis Code of Ordinances 244.1910, Minneapolis Code of Ordinances 244.1940 gives the City the power to initiate an action to deny, revoke, suspend, or not renew a rental license.

After being given proper notice of the City's intent to revoke a rental license by the City, an applicant must file an appeal within fifteen (15) days, which includes a $300 fee. At the hearing, the hearing officer hears all relevant evidence and argument, and may admit and give probative effect to evidence that possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs.

A recommendation is made by the hearing officer, which is forwarded to the Minneapolis City Council for a final decision to affirm, modify, or reverse the hearing officer's recommendation.

6.4 Adverse License Action Hearings

In the event that a holder of a business license is found to be out of compliance with the business license management responsibilities listed in Minneapolis Code of Ordinances 259.250, Minneapolis Code of Ordinances 244.555 gives the City to the power to initiate an action to deny, refuse to renew, revoke, or suspend a business license.

Upon determination by business licensing recommending adverse license action against a license issued or applied for pursuant to Titles 10, 11, 12, 13, or 14 of the Minneapolis Code of Ordinances, the matter may be referred to a hearing officer or directly to the appropriate committee of the Minneapolis City Council. At the hearing, the hearing officer hears all relevant evidence and argument, and may admit and give probative effect to evidence that possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs.

The hearing officer's recommendation is forwarded to the Minneapolis City Council, which has final authority to impose appropriate adverse license action.

6.5 Animal Declaration

A declaration by the City that an animal is dangerous or potentially dangerous is appealable before a hearing officer per Minneapolis Code of Ordinances 66.30. These declarations place certain requirements, like a muzzle and proper enclosure, on the ownership of that animal.

After being given notice of the intent to declare the animal dangerous or potentially dangerous, the owner or custodian of the animal must file an appeal in writing within fourteen (14) days, which includes a $250 fee. The hearing is then set within fourteen (14) days unless a later date is agreed to by both parties.

The hearing officer shall have authority to affirm, reverse, modify or amend the declaration or order as appropriate and to establish specific requirements or conditions. The decision is final unless appealed.

Minnesota State Statutes 347.50-565 also governs the declaration process.

6.6 Animal Destruction

An animal which has been involved in aggressive behavior or is found to be dangerous to the public may be destroyed per Minneapolis Code of Ordinances 64.100. If the animal has bitten a person, it will remain at a designated City facility through the end of the quarantine period.

After being given notice of the intent to destroy the animal, the owner or custodian of the animal must be requested within three (3) days. The hearing is then set within ten (10) business days unless a later date is agreed to by both parties.

Minnesota State Statutes 347.56 also governs the destruction process.