



CITY OF DULUTH ADMINISTRATIVE ENFORCEMENT PROGRAM

Under a resolution adopted by the Duluth City Council, enforcement of a number of city ordinance and license violations will now be handled directly through the city's Administrative Enforcement Program in the form of administrative fines and fees. This is a civil rather than criminal process and is designed to expeditiously resolve an ordinance and license violation. It is in place of being criminally charged and going to court, so the fines aren't new – they are just processed in a different way. The goal of the program is to make it easier for the public to comply with ordinances, and easier to enforce.

The Citizen's Handbook is available for citizens to review the administrative fine process. If a citizen receives a ticket and is fined, the administrative fine handbook explains the process to either pay the ticket or appeal the ticket. Anyone wishing to appeal an administrative citation would request a hearing in writing to the City Clerk's Office and pay a hearing deposit. From there, the appeal will go before a hearing officer (an attorney who is not employed by the city) to make a decision in the best interest of the individual and the city.

The complete process is listed in the following citizen handbook.



CITY OF DULUTH
ADMINISTRATIVE ENFORCEMENT PROGRAM
CITIZEN HANDBOOK
January 2010

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INTRODUCTION

The Duluth Administrative Enforcement Program is being used to facilitate compliance with City Code in a manner that is efficient, fair, effective and accessible to Duluth residents. The procedure seeks to resolve alleged violations of City Code prior to the City's filing of any formal criminal or civil court action against the violator in the State of Minnesota Sixth Judicial District Court.

This procedural manual is intended to explain the process. You may obtain copies of the City Code section enacting the Administrative Enforcement Program or of any specific Duluth ordinance on the City's website at www.duluthmn.gov or by calling the City Clerk at (218) 730-5500.

AFTER RECEIVING A CITATION

When you receive a citation, you must respond within 10 calendar days. You have two options: (1) pay the amount of the fine listed on the citation and, if it includes an order to correct a condition of the property, correct the violation; or (2) mail or deliver in person a written request for appeal accompanied by an Appeal Deposit (see below) to the City Clerk, 411 West First Street, Room 330, Duluth, MN. 55802.

If you do nothing, you are admitting that you violated the City ordinance and the fine will increase by 25% if you do nothing. In addition, the City may bring criminal charges against you or file a civil action against you.

If you do not correct any condition on the property that led to the issuance of the citation, even if you pay the amount of the fine, the City may issue another citation and/or take other action in criminal or civil court to achieve compliance with the ordinances.

PAYING THE FINE

The City Council has established the amount of the fine for each ordinance violation. The amount of the fine payable for your citation will be listed on it. (Copies of the complete fine schedule are available from the City Clerk.) The fine may be paid with cash, check or money order. A check or money order must be made payable to the "City of Duluth" for the correct amount. You may pay in person at the City Clerk's Office. Alternatively, you may mail the bottom portion of the citation with your payment to:

City of Duluth
City Clerk's Office, Room 330
411 West First Street
Duluth, Minnesota 55802

Note: Do not send cash in the mail.

If the payment arrives more than ten (10) calendar days after your citation was issued, you will be required to pay an additional 25% late payment fee.

By paying the fine, you are admitting that you violated the City ordinance.

REQUESTING A HEARING

If you believe that you did not violate the City ordinance or if you wish to contest the citation, you may request a hearing. The Hearing Officer will be a lawyer who is not a City employee.

To request a hearing, you must mail or deliver in person a written request for a hearing to the City Clerk, 411 West First Street, Room 330, Duluth, MN. 55802, accompanied by an Appeal Deposit; the required amount of the Appeal Deposit is equal to one-half of the amount of the penalty shown on the citation. Your written request for appeal must contain the following information:

- (a) Either the bottom portion of the Citation or the identification number of the Citation;
- (b) A statement of the grounds for the appeal, the alleged facts supporting all grounds for appeal, the relief requested and any other information you think is important;
- (c) The address you want any communications mailed to.

Make certain that you allow at least one-half of the day for the hearing. Other cases may be scheduled at the same time and you may have to wait.

The City Clerk's office will send you confirmation of the date, time and location for your hearing and the name of the Hearing Officer.

BEFORE THE HEARING

1. Cost of Hearing:

The cost of a hearing is paid by the City; however you must pay an Appeal Deposit described above before a hearing will be scheduled. Failure to deposit the Appeals Deposit will result in the forfeiture of your right to a hearing and deemed an admission of the charges against you. Failure to pay the fine when due will result in the assessment of a 25% late fee and collection of the costs by appropriate legal means, which may include the assessment of the amount due against the property that was the subject matter of the civil fines.

2. Contacting the Hearing Officer:

The Hearing Officer is chosen from an approved list of lawyers who are not City employees. You may not contact the Hearing Officer before the hearing to discuss your case. Direct all questions regarding your hearing to the City Clerk's Office at (218)-730-5500.

3. Witnesses and Subpoenas:

You may bring witnesses to the hearing. If the witness does not want to appear willingly, you may request that a subpoena be issued. Your request must be in writing stating the reason you need the subpoena and submitted to the City Clerk's Office at least seven (7) business days before the scheduled hearing date. If you request the presence of a City employee, that person will attend the hearing without the need for a subpoena if he or she has information that is relevant to your case. Your request for other people or documents will be given to the City Clerk who will decide if you have shown a valid need for a subpoena. If your request is granted, the City Clerk's Office will notify you that your subpoena is available to be picked up.

You must serve the subpoena by giving it directly to the person that you want to attend the hearing or who has custody of the documents that you want. At the time of the hearing, you must pay the person for appearing and the current mileage rate for travel to the hearing; the City Clerk will provide you with the current rates you must pay when you pick up your subpoena(s). A person served with a subpoena may file an objection with the Hearing Officer. The Hearing Officer may cancel or modify the subpoena. Failure to comply with a subpoena is a misdemeanor.

4. Changing the Assigned Hearing Officer:

If you have an objection to the assigned Hearing Officer, you may file a written request with the City Clerk's Office to change the assigned Hearing Officer. This request must be made no later than five (5) business days before the hearing. You do not need to provide a reason; your first request will be granted automatically. Any subsequent request for the same case will be directed to the assigned Hearing Officer who will decide whether he or she can fairly and objectively hear the case. If the Hearing Officer finds that he or she cannot fairly and objectively hear the case, the Hearing Officer will remove himself or herself and the City Clerk will assign a new Hearing Officer to your case.

THE HEARING

1. Failure to Appear:

If you fail to appear for the hearing, you are admitting the charges against you. You will forfeit your Appeal Deposit and will still be required to pay the full amount of the administrative penalty as set forth on the Citation; and if there is an outstanding corrective order pertaining to a condition on your property, you will still have to correct that condition. In addition, you may be subject to additional criminal penalties or civil lawsuit for any violations that continue to exist or are repeated. If the City representatives fail to appear without good cause, the charges against you will be dismissed.

If you have a valid reason for missing the hearing, you must contact the City Clerk's Office within one (1) business day after the scheduled hearing. Place your reasons in writing. The City will ask the Hearing Officer to decide whether you had a valid reason for your absence. Valid reasons include: death in the immediate family; documented illness which incapacitates you; a court order requiring you to appear for another hearing at the same time; and lack of proper service of the citation or notice of the hearing. Valid reasons do not include: forgetfulness; lack of transportation or child care; or inconvenience.

2. Hearing Procedure:

The Hearing Officer is an attorney who is not an employee of the City. The hearing will be informal, without strict rules of evidence but only evidence relevant to the violation for which the citation was issued will be heard. General grievances against the law you violated or against the issuing officer or the City in general will not be heard. The hearing will be tape-recorded and the Hearing Officer will keep a full record of the hearing. The Hearing Officer will decide whether you may make an opening and/or closing statement.

The City bears the burden of proving that a violation of City Code occurred and that you are the responsible party for the violation. Therefore, the City will present its case first through the testimony of its witnesses and, possibly, by presenting exhibits. You will have the right to cross-examine all of the City's witnesses. After the City has finished its case, you may present witnesses and exhibits, but you are not obligated to present any evidence. You can simply ask the Hearing Officer to decide the case on the evidence presented by the City. If you do decide to testify, you may do so after being sworn to tell the truth. All witnesses must be sworn.

3. Representation by an Attorney:

Attorneys are not permitted at the hearing, either yours or the City's. If you wish to assert a technical legal argument, you can provide a written memo to the Hearing Officer at the hearing. The parties must appear in person.

4. Decision:

The Hearing Officer will try to issue his or her decision verbally at the close of evidence. In any event, his or her decision will be issued or confirmed in writing and it will contain findings of fact and conclusions of law. The decision will be mailed to the parties after the hearing within 20 calendar days of the hearing.

If the Hearing Officer decides that you violated the City Code, the Hearing Officer has the authority to:

- (a) Impose the scheduled fine;
- (b) Order correction of any condition which constituted a property violation;
- (c) Upon a further finding that special circumstances or the interests of justice require modification of the penalty or the Corrective Order, affirm the Citation but:
 - (1) Reduce or stay imposition of any penalty previously ordered; or
 - (2) Modify the time for correction of any condition giving rise to any property violation; or
 - (3) Modify the Corrective Order.

The Hearing Officer cannot impose a fine greater than the established fine.

AFTER THE HEARING

1. Appeal:

The decision of the Hearing Officer cannot be appealed to anyone else in the City. You may, however, appeal the decision to the Minnesota Court of Appeals by a writ of certiorari pursuant to Minnesota Statutes Section 606.01. You should consult with a lawyer about how to do that.

2. Failure to Pay the Fine or Costs of Hearing:

If you do not pay the fine imposed by the hearing, the City has the authority to do one or more of the following:

- (a) Add a late fee of 25% of the amount due and owing;
- (b) Get a judgment against you and begin collection procedures;
- (c) Assess the amount of any penalty for a property violation against the property involved and have it collected with the property taxes;
- (d) Start a criminal prosecution against you in St. Louis County District Court charging you with the original violation.

FINE SCHEDULE

GENERAL RULE

All violations of city ordinances are Level Two Violations subject to a \$200 penalty, unless:

- The offense is listed below as a Level One or Three Violation;
- The enforcement officer indicates that the offense should be lowered to a Level One Violation because it is a minor infraction; or
- The enforcement officer indicates that the offense should be increased to a Level Three Violation because it involves critical unsafe conditions or significantly endangers life or property.

LEVEL ONE VIOLATIONS: \$50

Including, but not limited to:

- Curfew
- Tobacco Violations
- Underage Consumption of Alcohol (age 18 but not yet 21)
- Fireworks
- Noise Ordinance (loud car stereos)
- Barking Dog
- Rollerblading/Skateboarding
- Littering
- Snow shoveling

LEVEL TWO VIOLATIONS: \$200

Including, but not limited to:

Law Enforcement

- Panhandling
- Disorderly Conduct
- Urinating in Public
- Drinking in Public
- Sale of Alcohol/Tobacco to a Minor
- Disturbing the Neighborhood
- Graffiti
- Disorderly House/Social Host
- Unlawful Assembly
- Trespassing
- Minor Damage to Property/Vandalism

Solid Waste/Abandoned Property

- Abandoned or Inoperable Vehicles
- Abandoned Property (wrecked or derelict materials)
- Discarded or Accumulated Garbage, Rubbish, or Other Solid Materials
- Accumulated Yard Waste
- Hazardous Waste (paint, vehicle oil, needles, tires, batteries)

- Discarded Appliances, Furniture and Dead Animals
- Insufficient Garbage Containers
- Illegal Dumping

Housing

- Smoke and Carbon Monoxide Alarms
- Improper or Illegal Electrical
- Improper, Illegal or Leaking Plumbing
- Deteriorated or Leaking Roof
- Deteriorated Siding
- Peeling Paint (interior or exterior)
- Deteriorated or Failed Foundations
- Dilapidated Accessory Building (garage, shed, temporary structure)
- Illegal Bedroom
- Egress or Rescue Windows
- Deadbolt Door Locks
- Lack of Heat or Water
- Lack of Public Utilities
- Improper Rental use (less than 1 week)
- Garbage Houses

Building

- No Permits (construction, electrical, plumbing, heating, zoning)
- Unlicensed Contractor
- Uninspected Work
- Failure to Make Corrections (new construction or additions)

Zoning

- Business in a Residential Area
- Signs Without Permits
- Water Management
- Private Advertising on Public Property
- Multi-Family Dwelling in Single Family Zoning

Fire

- Testing/Inspection of Fire Extinguishers
- Electrical – Open Boxes
- Fire Protection System Maintenance
- Provide Address Numbers
- Egress – Emergency Illumination
- Electrical – Use of Extension Cords in Place of Fixed Wiring
- Exit Signs
- Ceiling Maintenance

LEVEL THREE VIOLATIONS: \$400

A violation conducted in such a manner that the violation significantly endangered life or property or involved critical unsafe conditions.

REPEAT VIOLATIONS: DOUBLE

Second or more offenses within one year - double the amount of the scheduled fine for the previous violation, up to a maximum of \$2,000. For example, if there were four occurrences of a Level One Violation, the fine for the fourth occurrence would be \$800 (first: \$100; second: \$200; third: \$400; fourth: \$800).

CONTINUING VIOLATIONS: FINE FOR EACH DAY

A fine for more than one day of a continuing violation may be imposed if (1) the violation caused a serious threat of harm to public health, safety, or welfare, or (2) the violator intentionally and unreasonably refused to comply with the Code requirements.