

PUBLIC SAFETY COMMITTEE

09-039-0

ORDINANCE NO. _____

AN ORDINANCE DECLARING STATUTORY AND CODE VIOLATIONS AS CIVIL OFFENSES, AUTHORIZING CIVIL PENALTIES THEREFORE, AUTHORIZING CORRECTIVE ORDERS AND ESTABLISHING HEARING AND ENFORCEMENT PROCEDURES WITH REGARD THERETO, ADDING A NEW CHAPTER 12 TO THE CODE AND REPEALING SECTIONS 2-7 AND 2-7.1 THEREOF.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That the Duluth City Code, 1959, as amended, is hereby amended to add a new Chapter 12 thereto, which Chapter 12 reads as follows:

CIVIL OFFENSES.

Sec. 12-1. Findings of fact and statement of purpose.

The city council hereby finds that the means of enforcing the City Code through existing civil and criminal court structures has proven inadequate, cumbersome, expensive and ineffective in enforcing the provisions of the Code and in encouraging compliance with Code requirements. The purpose of this Chapter 12 is to establish a system of administrative penalties and administrative orders to operate in conjunction with the existing civil and criminal enforcement mechanisms to more efficiently and effectively induce compliance with Code provisions and correction of conditions which constitute a violation of said Code. It is furthermore the purpose of this Chapter to establish procedures for administering said system, including provision of the opportunity to appeal to an impartial hearings officer from the imposition of any administrative penalty or administrative order.

Sec. 12-2. Definitions.

For the purposes of this Chapter, the following terms shall have the meanings hereinafter ascribed to them:

(a) Administrator. The city's chief administrative officer or such person or persons designated in writing by him or her to administer the program;

(b) Appeals deposit. An amount equal to one-half of the amount of the penalty for any violation as set forth in the penalty schedule;

(c) Code. Any provision of the Duluth City Code, 1959, as amended, from time to time, of any uniform code adopted by reference pursuant to said code and any provision of Minnesota Statutes the violation of which constitutes a misdemeanor or a petty misdemeanor pursuant to said statutes except as prohibited by Minnesota Statutes Section 169.999 or other specific statutory prohibition;

(d) Citation. Any written citation issued to any person charged with any violation as hereinafter described;

(e) Corrective order. An order to correct any condition constituting a property violation issued in conjunction with any citation;

(f) Delivery of citation. Either the date that a citation is physically presented to a violator or a date three days after a citation is deposited in the U.S. mail addressed to a violator as hereinafter provided for;

(g) Issuer. The person, authorized by section 12-4 below to issue citations, who issues any citation for any violation;

(h) Hearing officer. The person or persons designated by the city attorney to hear and decide appeals from the issuance of any citation for any violation and to hear and decide appeals from any corrective order related to any property violation;

(i) Penalty schedule. The schedule of penalties for violations of the Code adopted by the city council as provided for in Section 12-6 below;

(j) Property violations. Those violations which pertain to the existence or nonexistence of conditions on or pertaining to real property or personal property located on and having an impact on real property, which shall include such violations under the following chapters of the Code:

- (1) Chapter 10. Buildings;
- (2) Chapter 18. Erosion and Sediment Control;
- (3) Chapter 21. Fire Protection;
- (4) Chapter 24. Garbage and Other Solid Waste;
- (5) Chapter 28. Health and Sanitation;
- (6) Chapter 29. Hotels, Motels and Motor Courts;
- (7) Chapter 29A. Housing Code;
- (8) Chapter 30. Abandoned Property and Abandoned or Inoperative Vehicles;
- (9) Chapter 43. Sewers and Sewage Disposal;
- (10) Chapter 44, Signs;
- (11) Chapter 44A. Skywalk System;
- (12) Chapter 48. Water and Gas;
- (13) Chapter 50. Zoning;
- (14) Chapter 51. Water Resource Management;

(k) Violation. Any violation of the Code, including but not limited to the following provisions of the Code:

- (1) Chapter 4. Airports;
- (2) Chapter 5. Amusements;
- (3) Chapter 6. Animals and Fowl;
- (4) Chapter 8. Beverages;

- (5) Chapter 9. Bicycles;
- (6) Chapter 10. Buildings;
- (7) Chapter 11. Cigarettes;
- (8) Chapter 15. Dances and Dance Halls;
- (9) Chapter 18. Erosion and Sediment Control;
- (10) Chapter 21. Fire Protection;
- (11) Chapter 24. Garbage and Other Solid Waste;
- (12) Chapter 25. Gasoline Filling Stations;
- (13) Chapter 26. Harbors, Docks and Bridges;
- (14) Chapter 27. Hawkers, Peddlers and Transient

Businesses;

- (15) Chapter 28. Health and Sanitation;
- (16) Chapter 29. Hotels, Motels and Motor Courts;
- (17) Chapter 29A. Housing Code;
- (18) Chapter 30. Abandoned Property and Abandoned or

Inoperative Vehicles;

- (19) Chapter 33. Motor Vehicles and Traffic;
- (20) Chapter 34. Offenses--Miscellaneous;
- (21) Chapter 35. Parks and Recreation;
- (22) Chapter 36. Pawnbrokers and Metal Dealers;
- (23) Chapter 43. Sewers and Sewage Disposal;
- (24) Chapter 44. Signs;
- (25) Chapter 44A. Skywalk System;
- (26) Chapter 45. Streets, Sidewalks and Public

Grounds;

- (27) Chapter 47. Vehicles for Hire;
- (28) Chapter 48. Water and Gas;
- (29) Chapter 49. Weapons;
- (30) Chapter 50. Zoning;

(31) Chapter 51. Water Resource Management;

(1) Violator. A person alleged to have committed a violation or to be legally responsible for the commission of a violation under this Chapter.

Sec. 12-3. Alternative methods of enforcement.

(a) This chapter is intended to provide a nonexclusive and additional method of enforcement of the Code and nothing herein shall be taken as prohibiting or preventing the city from seeking to enforce the provisions of the Code by means of any other civil or criminal remedy available under law;

(b) Provided, however, if the city shall have initiated an enforcement action for any violation arising out of any specific set of facts and a hearings officer shall have determined that said facts do not establish the existence of a violation, no action to enforce such Code provision based on substantially identical facts shall thereafter be commenced pursuant to other available civil or criminal processes;

(c) The legal principles of res judicata and collateral estoppel shall apply to proceedings under this Chapter.

Sec. 12-4. Persons authorized to issue citations.

Any person otherwise authorized by law to issue a criminal summons for any violation of the Code or to take other authorized action to enforce the provisions of the Code shall be authorized to issue a citation for any violation under this Chapter.

Sec. 12-5. Appointment of hearings officer.

The city attorney shall, from time to time, appoint one or more persons to serve as hearings officers to hear appeals under this Chapter. Such hearings officers shall be persons licensed to practice law in the state of Minnesota as either active or retired

licensees in good standing. All hearings officers shall take an oath promising to enforce and uphold the laws, ordinances, rules and regulations of the state of Minnesota and the city of Duluth in a fair and impartial manner. The city shall compensate such hearings officers as determined by the city council by resolution.

Sec. 12-6. Penalty schedule.

(a) The city council shall adopt a penalty schedule setting forth the penalties to be assess for each violation under this Chapter, which penalty schedule said council may amend from time to time as it determines appropriate in order to encourage compliance with the Code;

(b) For property violations with regard to which a citation has been previously issued and which have not been corrected within the time provided for in Section 12-8(b) below, the amount of the penalty for any citation issued subsequently for such property violation shall be increased to an amount equal to twice the amount of the penalty assessed with regard to the most recently-issued citation for substantially the same violation.

Sec. 12-7. Issuance of citation for violation.

(a) Upon probable cause to believe that a violation has been committed and that the violator has committed the violation or is legally responsible for the commission of the violation or for allowing the condition constituting the violation to exist, an issuer is authorized to issue a citation, complying with the standards set forth below, to said violator;

(b) In the case of a violation which constitutes a property violation, the citation may, in addition, include a directive to eliminate the condition giving rise to the property violation;

(c) If reasonably practical, the issuer shall deliver the citation to the violator in person. If the violator is not present at the time that the citation is issued, cannot be reasonably contacted for the purpose of delivery of the citation or refused to accept delivery of the citation, the issuer may deliver the citation to the violator by depositing it in the U.S. mail addressed to the violator at an address of public record for violator, which may include but need not be limited to an address taken from area telephone directories, from records of the city assessor, from records of city-owned utilities or from other public sources. Delivery by such alternative means shall be deemed to be valid delivery and shall be deemed to be effective three days after the deposit of said citation in the U.S. mail.

Sec. 12-8 Citation--content.

(a) All citations for violations issued pursuant to this Chapter shall contain at least the following:

- (1) Date of issuance of the citation;
- (2) Name and address of violator;
- (3) Date of violation;
- (4) Location where violation occurred;
- (5) Citation to Code provision(s) violated;
- (6) Short description of Code provision violated;
- (7) Amount of penalty prescribed in the penalty schedule for such violation;
- (8) Date by which violator must either have paid the prescribed penalty or appealed the issuance of the penalty and paid the appeals deposit;
- (9) Place where the penalty must be paid or to which the request for appeal and the appeals deposit must be delivered;

(10) The name and signature of the issuer;

(11) An identification number unique to the citation;

(b) In the case of property violations, if a corrective order is issued to the violator as provided for in Section 12-6(b) above, in addition to the content specified in paragraph (a) above, the citation shall specify what corrective action must be taken and the date by which such corrective action shall be completed.

Sec. 12-9. Citation satisfaction.

Within ten days of the delivery of a citation to any violator, the violator shall either pay the amount of the penalty prescribed in the penalty schedule with regard to the violation to the administrator or shall deliver to the administrator a written request for appeal accompanied by the appropriate appeal deposit. Such request for appeal shall contain at least the following information:

(a) Either a legible photocopy of the citation being appealed from or the identification number of the citation being appealed from;

(b) A succinct and complete statement of the grounds for the appeal, of all alleged facts supporting all grounds for appeal, a statement of the relief requested and a statement of any other information Violator believes to be relevant to the appeal, the relief requested or both;

(c) The address to which any notifications, requests, directives or other information pertaining to the appeal or the appeals process should be mailed. Any communication mailed to Violator at the address provided shall be deemed to have been delivered three days after the date of mailing.

Sec.12-10. Administrative hearings procedure.

(a) Upon receipt of a notice of appeal and appeal deposit from any citation, the administrator shall schedule a date and time for a hearing before a hearings officer with regard to said appeal and shall mail notice thereof to the violator as herein provided for. Said date shall be not less than ten days after the date of mailing of the notice of hearing to the violator. Said notice shall state the date and time of the hearing, the location where the hearing is to be held and shall identify the hearings officer who will be scheduled to hear the violator's appeal;

(b) For good cause shown, a violator may request that their appeal be heard by a different hearings officer by causing to be received by the administrator not less than three days prior to the scheduled hearing date a written statement of facts supporting the allegation of good cause and a request for substitution of a different hearings officer. Upon such a showing of good cause which might reasonably render the assigned hearings officer unable to fairly hear violator's appeal, the administrator may re-assign the violator's appeal to be heard by a different hearings officer. If necessary, the administrator may re-schedule the date and time of the hearing to accommodate the assignment of a new hearings officer. Only one such re-assignment shall be available with regard to any one appeal;

(c) Upon good cause shown by the violator or by the city, the administrator may grant a continuance of the hearing on any appeal. The party requesting the continuance shall cause to be received by the administrator not less than three days prior to the scheduled hearing date a written statement of facts supporting the allegation of good cause and a request for continuance. Upon the grant of any such continuance, the administrator shall cause to be

delivered to the violator and the city a notice setting forth the date, time and place of the re-scheduled hearing;

(d) Upon the written request of The violator or the city demonstrating the need therefore, delivered to the administrator not less than six days prior to the scheduled hearing date, the administrator 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 hearing of the violation. A fee of \$25 shall be charged to any violator for the issuance of each such subpoena. The party requesting the administrative subpoena shall be responsible to cause any such subpoena to be served in the manner provided for in the *Minnesota Rules of Civil Procedure* and for pay all fees and expenses of any witness subpoenaed. In addition the hearings officer, on their own motion, may cause such subpoena to be issued in which case the city shall be responsible for service thereof and for fees and expenses. Any person served with such an administrative subpoena who deems compliance therewith to be unreasonable or oppressive may appeal therefrom by causing to be received by the administrator not less than three days prior to the date scheduled for compliance therewith a written statement of facts supporting the allegation of unreasonableness or oppressiveness. The administrator may cancel the subpoena, affirm it or modify it, mitigating those factors rendering it unreasonable or oppressive. Any person who, without just cause, fails or refuses to comply with any administrative subpoena shall be guilty of a misdemeanor. In addition, the party requesting the administrative subpoena may seek an order from district court directing compliance with the administrative subpoena;

(e) Neither the city nor the violator shall be represented at the hearing by an attorney. Provided that, where relevant or where requested by the hearings officer, either party may submit a legal memorandum relevant to the issues being heard;

(f) At the hearing, the hearings officer may hear and rely on any testimony or other evidence they deem to be reasonably reliable, including, in the exercise of their discretion, hearsay testimony. Strict compliance with the *Minnesota Rules of Evidence* will not be required. The proceedings shall be either recorded by a recording clerk recording the evidence in summary form or by means of an audio recording, and a record of all testimony and of all evidence considered shall be maintained for at least 60 days after the close of the hearing. The interpretation of technical codes such as building codes, electrical codes and other such codes by those regularly engaged in their enforcement and interpretation shall be given substantial weight;

(g) In all hearings the city shall have the burden of proving by a preponderance of the evidence that the alleged violation has occurred and that the violator is the person or one of the persons legally responsible therefore;

(h) If any violator fails to appear for any scheduled hearing, the violation shall be deemed to have been admitted by such violator, the hearings officer shall impose such penalty or order or both as they deem appropriate and the violator shall be deemed to have waived any further right of appeal.

Sec. 12-11. Decision of hearings officer.

Upon the conclusion of the hearing of any appeal, the hearings officer shall issue written findings of fact, conclusions of law, and their decision. If possible the hearings officer shall verbally

render their decision at the conclusion of the hearing in the presence of the violator and the city, but, in any event, written findings, conclusions and the decision shall be issued as soon thereafter as practical and shall be mailed by the administrator to violator. Said decision may:

(a) Upon a finding that the City has failed to prove that the violation has occurred or that the violator is a person legally responsible therefore, dismiss the citation. In the event that the citation is dismissed, the appeals deposit shall be returned to the violator;

(b) Upon a finding that the city has proven that the violation has occurred and that the violator is a person legally responsible therefore, affirm the citation. In the event that the citation is affirmed, the appeals deposit shall be applied to the amount of the penalty;

(c) Upon a finding that the city has proven that the property violation has occurred and that the violator is legally responsible therefore, affirm the citation and order the violator to correct the condition giving rise to the property violation by a specified date;

(d) Upon a finding that the city has proven that the violation has occurred and that the violator is legally responsible therefore but upon a further finding that special circumstances or the interests of justice requires modification of the penalty or the corrective order, affirm the citation but reduce or stay imposition of any penalty previously ordered or modify the time for correction of any condition giving rise to any property violation or modify the corrective order;

(e) The decision of the hearings officer shall be final, subject to the right of appeal as set forth in Section 12-12 below.
Sec. 12-12. Judicial review.

Any party aggrieved by the decision of the hearings officer may appeal said decision by petitioning the Minnesota court of appeals for a writ of certiorari pursuant to Minnesota Statutes, Section 606.01.

Sec. 12-13. Enforcement of decision.

Upon mailing of a notice to a violator that the citation appealed from is valid, the violator shall within ten days of the mailing of said notice:

(a) Pay the full amount of the penalty to the administrator.

(b) In the case of a property violation, commence performance of the corrective order and complete the same within the time provided for by the hearings officer's decision;

(c) Commence an appeal as provided for in Section 12-12 above.

Sec. 12-14. Late payment charge.

There shall be added to any penalty not paid within the times prescribed for payment thereof in sections 12-9 or 12-13(a) above an amount equal to 25 percent as a late payment charge.

Sec. 12-15. Enforcement.

In the event that any violator fails to pay any penalty or other amounts owing under this Chapter or fails to comply with any corrective order, the city shall have the right to:

(a) Collect any sums owed to the city under this Chapter by any legally allowable means;

(b) In the case of failure to complete any corrective order resulting from any property violation, seek and be entitled to an

order from the district court mandating that the violator complete the corrective order in accordance with its terms;

(c) Itself contract with a contractor for implementation of the corrective order, entering upon the property of violator when necessary to do so, and to charge and collect from the violator the city's costs of so correcting the condition giving rise to the corrective order together with the city's reasonable costs of administering said correction. Provided, however, that where otherwise required by law, the city shall obtain authorization from a court of competent jurisdiction to enter onto violator's property to perform such corrective work;

Sec. 12-16. Assessment.

In addition to the remedies provided for above, in the event that any Violator fails to pay any amount Owed to the city under this Chapter with regard to any property violation, the city shall have the right to assess the amount owed against the property with regard to which the property violation arose in the manner set forth in this Section, which property shall be deemed to have been benefitted thereby;

(a) On or before June 1 of each year, the administrator shall transmit to the city assessor a list of properties upon which property violations have occurred and with regard to which property violations there is outstanding any moneys pursuant to this Chapter in the immediately preceding 15 months, together with the amount due with respect to each such property. For each such property, a collection fee in the amount set by city council resolution shall be added to reimburse the city its administrative costs;

(b) Upon the receipt of such list, the city assessor shall make an assessment roll containing, in columns, the name of the

owner of each lot or parcel of land separately assessed, if known to him, together with a description of each such lot or parcel of land and the amount of such assessment. The assessment roll shall include the collection fee set forth in paragraph (a) above;

(c) On or before July 1 of each year, the city assessor shall certify the assessment roll to the city council. The assessor shall recommend that the city council by resolution confirm such assessment. To each assessment a collection fee shall be added in an amount set by council resolution to reimburse the city its administrative assessment costs. Immediately thereafter notice of the confirmed assessment and its amount, including the collection fees, shall be sent by the city treasurer by mail to the apparent owner of each lot or parcel of land assessed. Such notice shall indicate that the assessment is due and payable on or before October 1 of the year when confirmed and that failure to make payment by such date shall render the assessment delinquent. After any appeals are heard and determined, the city council shall confirm the entire assessment roll by resolution;

(d) After the city council confirms the assessment roll, the city treasurer shall file with the county auditor, during the time set by law for such filings, a certified statement of all assessments delinquent under this Chapter, describing the land affected and giving the amount of the assessment, with ten percent penalty added, after which the assessment shall follow the provisions of Article IX of the City Charter.

Section 2. That Sections 2-7 and 2-7.1 are hereby repealed.

Section 3. That this ordinance shall take effect and be in force 30 days from and after its passage and publication.

Approved:

Department Director

Approved as to form:

Attorney

POLICE/ATTY REA:blj 7/9/2009

Approved for presentation to council:

Chief Administrative Officer

Approved:

Auditor

STATEMENT OF PURPOSE: This ordinance creates an administrative remedy for the enforcement of City Code violations and of some violations of state laws through a civil penalty and order process and provides a mechanism for appeal from a citation or order for correction.

The ordinance denominates such offences as are generally listed in the ordinance as "violations" and further denominates those violations which involve real property or conditions existing on real property as "property violations." In general all violations are subject to penalties established by the council by resolution. For those Violations which are property violations, in addition to being subject to a penalty the city can issue a corrective order requiring the violator to correct the conditions causing the violation.

Persons receiving a citation for any violation who feel that the issuing person is mistaken about the existence of the violation or that they are not responsible for the violation will have the right to appeal the citation and the appeal will be heard by an independent hearings officer who will be appointed by the city attorney but will be sworn to be neutral. Further appeal will be available in the form of a petition for a writ of certiorari to the court of appeals.

The city will have the right to collect any unpaid penalties and to enforce any unperformed corrective order through the normal civil channels and, in addition, with regard to property violations, will have the right to assess the property affected.