

ORDINANCNE NUMBER 97

**AN ORDINANCE AUTHORIZING ADMINISTRATIVE FINES**

Section 1 - Administrative procedures and penalties

Section 2 - Abatement of public nuisances

Section 1: **AMINISTRATIVE PROCEDURES AND PENALTIES.**

1.101 - Purpose.

The City Council finds that there is a need for alternative methods to enforce portions of City Code. While criminal fines and penalties have been used historically as enforcement mechanisms, negative consequences for both the City and the public can result. The delay inherent in the criminal justice system does not always ensure prompt resolution of offenses that immediately impact the livability of the community. Citizens may resent being labeled criminals for violations of administrative regulations. The higher burden of proof and the potential of incarceration are not always appropriate for many administrative violations. The criminal justice system often cannot give priority to City Code violations due to caseloads and more serious cases in the system. Accordingly, the City Council finds that the use of administrative citations and the imposition of civil penalties is a legitimate and necessary alternative method of enforcement and a way to reduce the burdens on our court system.

1.102 - Scope.

The administrative procedures and penalties in this Chapter may be used for violations of City Code Chapters 71 (Parking Regulations), 91 (Animal Control), and 92 (Health and Safety - Nuisance). The provisions of this Chapter may be used concurrently with, as an alternative to, or in addition to any other procedure or remedy, criminal or civil, the City may pursue under City Code, state law, or federal law, including but not limited to the Abatement provisions contained in §90.23. Nothing herein restricts the right of government agents to enter property or to seek other remedies in emergency or other situations as authorized by City Code, state law, or federal law.

1.103 - Definitions.

- (1) Citation. An administrative citation issued pursuant to this Chapter.
- (2) Board. A quorum of the City of Ashby City Council.

- (3) City Code. The Ashby City Code.
- (4) City Clerk. The Ashby City Clerk or designee.
- (5) Code Compliance Official. The Ashby City Clerk or designee.

#### 1.104 - Administrative Offenses; Schedules of Fines and Fees.

- (1) A violation of any provision of City Code Chapters 71, 91, and/or 92 is an administrative offense subject to a citation and civil penalties pursuant to this Chapter. Each day a violation exists constitutes a separate offense.
- (2) Each count of an administrative violation is subject to a civil penalty not to exceed the maximum fine that may be imposed for the same violation if it were prosecuted as a misdemeanor offense, abatement, or both unless otherwise provided;
  - (a) The civil penalty for a particular count shall be established as provided in subpart,(4) hereof;
  - (b) If a violator remedies a count of a violation and demonstrates that fact prior to the compliance date, the civil penalty for that count is waived.
- (3) A second or subsequent citation issued within 180 days of any same or similar citation is subject to a civil penalty of at least twice the previously imposed penalty but within the limits of any fine that could be imposed if the violation were prosecuted as a misdemeanor offense. If the violator remedies the violation prior to the compliance date, the full civil penalty for that particular Citation will be waived, civil penalties for previous citations will not be waived.
- (4) The City Council may adopt by resolution a schedule of recommended fines for offenses initiated by citation, and may designate those offenses for which a fine must be paid even if the violation is remedied. The resolution may also identify violations for which a fine only may be imposed for a first offense occurring within a specified time period, not to exceed three years. The resolution may also specify a filing fee to appeal to the Board. If no resolution is adopted, the following fees shall apply:
  - (a) 1<sup>st</sup> Administrative Citation \$100.00. If the violation is remedied by the compliance date, the fee will be nullified;
  - (b) 2<sup>nd</sup> Administrative Citation \$200.00 and/or abatement of nuisance;
  - (c) 3<sup>rd</sup> Administrative Citation \$400.00 and/or abatement of nuisance;
  - (d) 4<sup>th</sup> Administrative Citation \$800.00 and/or abatement of nuisance; and
  - (e) 5<sup>th</sup> Administrative Citation \$1000.00 and/or abatement of nuisance.
  - (f) Appeal Filing fee \$5.00.
- (5) The City Clerk is authorized to promulgate rules and forms to affect the procedures herein.

#### 1.105- Citation; Authorization to Issue and Contents.

- (1) The Code Compliance Officer is authorized to issue a citation, in a form adopted by the City Council that minimally complies with this section, upon reasonable belief that a code violation has occurred.

The citation must be issued 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 an employee on the premises or to a corporate officer;
  - (b) By U.S. first class mail to a person identified in Subsection 1.105 (1) (a);
  - (c) By posting the citation in a conspicuous place on or near the main entrance where 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 U.S. Mail a notice of the citation to the owner of record where it reasonably appears the property is vacant or abandoned; or
  - (e) By posting the citation in a conspicuous place on or near the main entrance and mailing by first class U.S. Mail, notice of the citation to the Licensee where the property is a rental dwelling licensed by the City.
- (2) Contents of Citation. The citation must state the date, time, and nature of the offense, the identity of the person issuing the citation, the amount of the scheduled fine, the manner of paying the fine or appealing the citation, a date by which the fine must be paid, a compliance date or range of dates, if any, and the manner and time for taking an appeal. If a compliance date or range of dates is given, the citation must state the action that must be taken to achieve compliance, and it must conspicuously state that if compliance is not achieved within the stated time, the City may thereafter abate the violation without further warning and with assessment of the costs therefore to the subject property. Any compliance date must be not less than seven nor more than 30 days following the date the citation is issued; provided, however, that in an emergency situation that poses an immediate threat to public safety, health or welfare, an earlier compliance date may be set. The compliance date may be extended by the Code Compliance Official for up to 30 days following the date of the citation upon a determination by the Code Compliance Official that a reasonable plan for remedying the violation exists. The plan must be agreed to in writing by the owner of the property for an extension to be granted. Unless an appeal is taken or compliance is achieved before the compliance date, no further notice is necessary prior to the entry on the property by City officials or their agents and assignees to abate the violation and assess the costs of abatement to the property.
  - (3) The owner or occupant of the property must pay the fine and, if required, come into compliance, or appeal, in a manner consistent with Subsection 1.105 (4), within any time period specified on the citation. Unless the violation is a second or subsequent violation pursuant to Subsection 1.104 (3) or is a violation for which a fine is imposed pursuant to Subsection 1.104 (4), the fine will be waived if compliance is achieved by the

compliance date. Voluntary compliance after the citation is issued and/or payment of the fine constitutes admission of the violation. The Code Compliance Official may extend the time for appeal only on a showing of good cause. Payment of the fine does not forgive continued violation of City Code.

- (4) Contents of Appeal. The appeal must be in writing and executed by the owner of the property. The appeal must minimally state the name and mailing address of the person that caused the violation, that person's relationship to the property involved, and a brief statement why the citation is in error.

#### 1.106 -Appeal Procedure.

- (1) The City Clerk, upon receipt of a proper notice of appeal, shall stay any fine or abatement action until the time for appeals under this Section has run.
- (2) Within 10 days of the date of the Citation or prior to the deadline for compliance, whichever is sooner, any party aggrieved by the Citation may appeal the Citation to the Board. The appeal must comply with Subsection 1.105 (4), and must be served in person or by U.S. Mail on the City Clerk.
- (3) Upon receipt of a proper appeal under Subsection 1.106 (2), the City Clerk shall place the matter before the Board for a hearing which shall be held no earlier than 10 days after receipt of the notice, unless otherwise agreed to by the parties. Notice of the hearing must be served in person or by U.S. Mail on the person or persons to whom the Citation was issued. At the hearing, the parties may present documents and testimony, and may question witnesses, and the Mayor shall preside over the hearing. The Board must record the hearing and receive testimony and exhibits. The Board must rule by majority vote on objections, and receive and give weight to evidence, including reliable hearsay evidence that possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs. The hearing may be continued from time to time at the discretion of the Board.
- (4) At any time before the hearing, or before the hearing is adjourned, the Code Compliance Official may modify the citation to change counts or include additional counts, with notice to the person bringing the appeal. If not made during the hearing, the notice must be in writing and given to the person or served by U.S. Mail.
- (5) The Board must affirm or rescind the citation, as it may have been modified under Subsection 1.106 (4), and provide written notice of its determination to the parties. If a citation consists of more than one count, the Board may consider each count independently. A majority of the members present must agree in order to affirm a citation or any particular count. A failure to adopt a motion to affirm constitutes a rescission. The Board may reconsider the motion to affirm at any time before the hearing is finally adjourned. The Board's determination, if the Citation or any particular count of the Citation is affirmed, revokes the stay of the applicable fine and compliance dates, if any, and payment and compliance must occur within 10 days of the date of the notice of determination, unless an aggrieved party perfects a court-ordered stay with the deposit of an appropriate supersedeas bond under the Minnesota Rules of Civil Procedure.
- (6) The Board's decision is final without any further right of administrative appeal. Further

appeal shall only be by writ of certiorari to the Minnesota Court of Appeals.

#### 1.107 - Recovery of Civil Penalties.

- (1) If a civil penalty is not paid within the time specified, it constitutes:
  - (a) A personal obligation of the violator; and
  - (b) 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 given notice of the violation.
- (2) A lien may be assessed against the property and collected in the same manner as taxes.
- (3) A personal obligation may be collected by any appropriate legal means.
- (4) If a payment in full is not received by the City of Ashby by October 1st, a 10% fee will be added to the fine when it is assessed.
- (5) During the time that a civil penalty remains unpaid or the violator remains out of compliance, 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.
- (6) Failure to pay a fine or otherwise comply with a citation is grounds for suspending, revoking, denying, or not renewing a license or permit associated with the violation.

## Section 2 - **ABATEMENT OF PUBLIC NUISANCES**

#### 2.101 - Declaration of Policy.

The City Council of the City of Ashby has determined that the health, safety, good order, general welfare, and convenience of the public are threatened by certain public nuisances on property within the City limits. It is declared to be the intention of the Council to abate these nuisances, and this Chapter is enacted for that purpose.

#### 2.102 - Application.

This Chapter shall apply to the abatement of all public nuisances as defined anywhere within this Code unless another procedure is specifically provided.

#### 2.103 - Hearing Examiner.

- (1) Position Created. The position of Hearing Examiner is hereby created. The Ashby City Clerk will act as the Hearing Examiner for all public nuisance

hearings.

- (2) Duties of Hearing Examiner. The Hearing Examiner shall have the following duties:
  - (a) Set dates for all hearings on appeals of Citations issued by the Code Compliance Official and ensure that notice thereof is properly given.
  - (b) Make a complete record of all appeal hearings.
  - (c) Ensure that the Board's decisions on appeals of Citations are properly served on the parties who appeal.

#### 2.104 - Inspection and Investigation.

- (1) Periodic Inspection. The Code Compliance Official in conjunction with the Grant County Sheriff's Office shall cause to be inspected all public and private places within the City which might contain a public nuisance as defined in this Code as often as practicable to determine whether any such conditions exist. The Code Compliance Official in conjunction with the Grant County Sheriff's Office shall also investigate all reports of public nuisances located within the City.
- (2) Entry on Public and Private Places. The Code Compliance Official or their duly authorized agents may with the owner's or occupant's consent enter upon all public and private places at any reasonable time for the purposes of inspecting those places for public nuisances and general compliance with applicable local, state and federal laws. If the owner or occupant refuses to consent to such inspection, the Code Compliance Official or duly authorized agents are authorized to obtain administrative search warrants to allow for the inspection; provided, however, that no search warrant is needed in the case of emergencies, plain view searches, and other situations where neither state nor federal law requires a search warrant.

#### 2.105 - Abatement of Nuisances.

Upon a determination by the Code Compliance Official that a public nuisance exists on any public or private property within the City, the Code Compliance Official shall cause an administrative Citation to be issued pursuant to this Chapter.

#### 2.106 - Procedure for Removal of Public Nuisances.

- (1) If a nuisance is not abated within the compliance period stated in the Citation, the City may proceed with abatement as set forth in this Chapter or §90.23.
- (2) The City shall take no action to abate any nuisance prior to the expiration or the compliance period stated in a Citation or while any appeal of the matter is still pending.
- (3) The Code Compliance Official shall keep a record of the costs of abatements done under this Chapter and shall report monthly to the City Clerk or other appropriate

officer all work done for which assessments are to be made, stating and certifying the description of the land, lots or parcels involved and the amount assessable to each.

- (4) On or before October 1 of each year, the City Clerk shall list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributable under this Chapter. The 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 no more than 10 equal annual installments, pursuant to Minnesota Statutes, Section 429.01, Subdivision 2.

2.107 - Interference Prohibited.

It is a misdemeanor for any person to prevent, delay or interfere with the Code Compliance Official or their agents while they are engaged in the performance of duties set forth in this Chapter.

Passed by the Ashby Council this 10<sup>th</sup> day of June, 2021. Published on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

---

Thomas Grover, Mayor

---

Attest: Jacqueline Schmitz, Clerk