

CITY OF LAKE ELMO
WASHINGTON COUNTY, MINNESOTA

ORDINANCE NO. 08-028

AN ORDINANCE AMENDING CHAPTER 10 OF THE LAKE ELMO CODE OF ORDINANCES FOR THE CITY OF LAKE ELMO, WASHINGTON COUNTY, MINNESOTA, RELATED TO PENALTIES FOR VIOLATIONS OF THE CITY CODE, AND AMENDING SECTION 10.99 TO DELETE THE SAME IN ITS ENTIRETY AND SUBSTITUTE THE FOLLOWING THEREFOR:

THE CITY COUNCIL FOR THE CITY OF LAKE ELMO ORDAINS:

Section 1: Amendment. The Section title of Section 10.99 and the provisions of that section of the Code of Ordinances for the City of Lake Elmo is hereby amended to delete the same in its entirety and provide the following therefor:

§ 10.99 PENALTIES.

(A) Prohibited Acts.

1. Any person must not to any of the following:
 - a. violate, fail to comply with, or assist, authorize, or permit the violation of a provision of this Code;
 - b. violate, fail to comply with, or assist, authorize, or permit the violation of the terms and conditions of a City approval, including permits and licenses, required or granted under this Code; or
 - c. Knowingly make or submit a false statement, document, or material omission in connection with an application or procedure required by this Code.
2. No section of part of this Code designating the duties of an official, employee, or appointee of the City may be construed to make that person liable for the penalties provided herein.

(B) Penalties.

1. A person who violated Section 10.99(A) is guilty of a misdemeanor and upon conviction will be punished in accordance with State law; provided, that if a different punishment is stated in this Code, that provision governs the punishment for the violation.

2. Designation as a petty misdemeanor means that upon conviction the sentence will be in accordance with State law. If not designated as “petty misdemeanor,” a violation is a misdemeanor as set forth above in paragraph 1.

3. Each calendar day that Section 10.99(A) is violated constitutes a separate offense.

4. A violation of Section 10.99(A) constitutes sufficient grounds for denial of an application required by this Code that is related to the violation.

5. Action prohibited by Section 10.99(A) may, at the option of the City, void a City approval that is related to the violation.

6. The City Attorney may institute a legal proceeding in the name of the City of Lake Elmo to prevent, restrain, remedy, or abate a violation of Section 10.99(A).

7. Nothing in this Section prevents the City from taking other action permitted by law, and the penalties and remedies provided here and under other law are cumulative.

(C) Administrative Citations and Civil Penalties.

Sections 10.00(C) through 10.99(K) govern administrative citations and civil penalties for violations of the City Code.

(D) Purpose.

The City Council finds that there is a need for alternative methods of enforcing this code. While criminal citations have been the most frequent enforcement mechanism, there are certain negative consequences for both the city and the accused. The delay inherent in that system does not ensure prompt resolution. Citizens resent being labeled as criminals for violations of administrative regulations. The higher burden of proof and the potential of incarceration do not appear appropriate for most administrative violations. The criminal process does not always regard city code violations as being important. Accordingly, the city council finds that the imposition of civil penalties, including the use of administrative citations, is a legitimate and necessary alternative method to enforce and create compliance with the city code. The use of administration citations as a method of enforcement is in addition to any other legal remedy that may be pursued for city code violations.

(E) General Provisions.

1. A violation of the City Code or that acts prohibited in Section 10.99(A), in addition to being possible criminal violations, is an administrative offense that may be subject to administrative citations and civil penalties. Each day a violation exists constitutes a separate offense. The city may elect to pursue either the administrative offense or the applicable criminal offense, but not both for the same offense date.

2. The city council must adopt by resolution a schedule of fines for offenses initiated by administrative citation. The city council may adopt a schedule of fees to be paid to administrative hearing officers. Administrative hearing officers are not bound by that schedule when a matter is appealed to the hearing officer for administrative review.

3. An administrative offense may be subject to a civil penalty not exceeding two thousand dollars (\$2,000.00) per violation, plus cost of remediation if incurred by the city.

4. The City Administrator must adopt procedures for administering the administrative citation program.

(F) Notification of Violation.

1. Following a complaint or a routine inspection of a Code violation, the City Administrator or designee may issue a notification of a code violation upon verification that a violation has occurred. The person responsible for the violation will be given reasonable opportunity to correct the violation based on the nature of the offense.

2. It is the obligation of the person responsible for the violation to contact the City regarding compliance.

(G) Administrative Citation.

1. If the violation is not corrected, the City Administrator or designee may issue an administrative citation of a Code violation upon verification that a violation has occurred. The citation must be issued in person or by mail to the person responsible for the violation, or attached to the motor vehicle in the case of a vehicular offense. The citation must state the date, time, and nature of the offense, the name of the issuing officer, the amount of the scheduled fine, and the manner for paying the fine or appealing the citation.

2. The person responsible for the violation must either pay the scheduled fine or request a hearing within seven (7) days after issuance of the citation. Payment of the fine or failure to request a hearing within seven (7) days after issuance of the citation constitutes admission of the violation. A late payment fee of ten

percent (10%) of the scheduled fine amount may be imposed under subsection (J) of this section.

(H) Administrative Hearing.

1. Notice of the hearing must be served in person or by mail on the cited party at least ten (10) days in advance, unless a shorter time is accepted by all parties. The cost of the hearing will be split equally between the city and the person responsible for the violation. At the hearing, the parties will have the opportunity to present testimony and question any witnesses, but strict rules of evidence will not apply. The hearing officer must tape record the hearing, and may receive testimony and exhibits. The officer must 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.

2. The City Council will periodically approve a list of lawyers, arbitrators, and qualified neutral third parties from which the City Administrator will randomly select a hearing officer to hear and determine a matter for which a hearing is requested. The cited party will have the right to request that the assigned hearing officer be removed from the case. That request must be made no later than five (5) days before the date of the hearing. One request for each case will be granted automatically by the city administrator. A subsequent request must be directed to the assigned hearing officer who will decide whether he or she cannot fairly and objectively review the case. The city enforcement officer may remove a hearing officer only by requesting that the assigned hearing officer find that he or she cannot fairly and objectively review the case. If such a finding is made, the officer shall remove himself or herself from the case, and the City Administrator 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 City employee. The city administrator will establish a procedure for evaluating the competency of the Hearing Officers, including comments from accused violators and city staff.

3. The hearing officer has the authority to determine that a violation occurred, to dismiss a citation, to impose the scheduled fine, and to reduce, stay, or waive a scheduled fine either unconditionally or upon compliance with appropriate conditions. When imposing a penalty for a violation, the hearing officer may consider any or all of the following factors:

- a. The duration of the violation;
- b. The frequency or 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;
- f. The good faith effort by the violator to comply;
- g. The economic impact of the penalty on the violator;
- h. The impact of the violation upon the community; and
- i. Any other factors appropriate to a just result.

The hearing officer may exercise discretion to impose a fine for more than one day of continuing violation, but only upon a finding that:

- a. The violation caused a serious threat of harm to the public health, safety, or welfare; or that
- b. The accused intentionally and unreasonably refused to comply with the code requirement. The hearing officer's decision and supporting reasons must be in writing.

4. The failure to attend the hearing constitutes a waiver of the violator's right to an administrative hearing and an admission of the violation. A hearing officer may waive this result upon good cause shown. Examples of "good cause" include but are not limited to death or incapacitating illness of the accused or the accused's family member; a Court Order requiring the accused to appear for another hearing at the same time; and lack of proper service of the citation or notice of the hearing. "Good cause" does not include forgetfulness or intentional delay.

(I) Judicial Review.

An aggrieved party may obtain judicial review of the decision of the Hearing Officer by proceeding by Petition for a Writ of Certiorari in District Court pursuant to Minnesota Statutes Section 484.03.

(J) Recovery of Civil Penalties.

- 1. If a civil penalty is not paid within the time specified, it will constitute:
 - a. A lien on the real property upon which the violation occurred if the property or improvements on the property was the subject of the violation and the property owner was found responsible for that violation; or
 - b. A personal obligation of the violator in all other situations.

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 appropriate legal means, including correction of the violation by the city at the expense of the property owner. If correction of the offense requires entrance upon the property, a warrant must first be secured by the city.

4. A late payment fee of ten percent (10%) of the fine may be assessed for each thirty (30) day period, or part thereof, that the fine remains unpaid after the due date.

5. Failure to pay a fine is grounds for suspending or revoking a license or permit related to the violation.

6. Failure to pay a fine is grounds for denial of future city permits.

(K) Double Jeopardy.

If the final adjudication in the administrative penalty procedure is a finding of no violation, then the City may not prosecute a criminal violation in District Court based on the same set of facts. This does not preclude the City from pursuing a criminal conviction for a violation of the same provision based on a different set of facts, or a separate date of violation or offense.

Section 2, Severability. If any provision of this ordinance or its application to any person is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected. Remaining sections of the ordinance shall be interpreted to give effect to the spirit of the ordinance prior to removal of the portions declared invalid.

Section 3. Effective Date. This Ordinance shall take effect from upon publication of the Ordinance in the City's official newspaper.

PASSED BY THE CITY COUNCIL OF THE CITY OF LAKE ELMO, MINNESOTA,
THIS 20th DAY July, 2010.

APPROVED: _____



Dean Johnston, Mayor