



INFO

## **Administrative Enforcement Program Citizen Handbook**

July, 2020

Enforcement of city ordinance and license violations is handled directly through the city's administrative enforcement program. This program is designed to expeditiously resolve violations of the city code through a civil process that is both easy to understand and straight-forward to enforce.

This citizen's handbook is intended to help citizens understand the administrative fine process. If a citizen receives a ticket and is fined, this handbook explains the process by which they could either pay or appeal the ticket/fine.

Anyone who would like to appeal a city-issued ticket or fine can submit a written request for a hearing to the Duluth city clerk's office along with a deposit fee. All appeals are heard by an attorney not employed by the city who will make a final determination.

## WHEN YOU RECEIVE A CITATION

If you receive a ticket or citation from the city of Duluth, **you must respond within ten (10) calendar days**. You may respond in either of two ways: (1) you can pay the amount of the fine provided on the ticket or citation; or (2) you can file a written request for a hearing to appeal.

**If you do not pay the fine or file a request for a hearing within ten (10) days, it will be assumed that you have admitted to the violation and your fine will increase by 25%.** Additionally, the city may bring criminal charges or file a civil action against you.

## PAYING THE FINE

The city council has established specific fines for violations of city ordinances. The amount of the fine payable will be listed on your citation. The fine may be paid in cash, check, or money order – credit card or electronic payments are not currently accepted. Checks or money orders must be made payable to the “city of Duluth” for the total amount due. You may pay in person at the city clerk’s office or mail the bottom portion of the citation with your payment to:

City of Duluth  
City Clerk’s Office, Room 318  
411 West First Street  
Duluth, MN 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 fee, you are admitting to the violation.

## 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 to appeal the citation or alleged violation. The hearing officer will be a lawyer who is not a city employee.

The cost of a hearing is paid by the city. However, you must pay an appeal deposit. The amount of the deposit is equal to one-half of the amount of the penalty shown on the citation. Your hearing will not be scheduled until the deposit has been paid. Failure to pay the appeal deposit will result in the forfeiture of your right to a hearing and will be deemed an admission to the citation.

To request a hearing, you must file a written request for a hearing, accompanied by an appeal deposit, to the city clerk at 411 West First Street, Room 318, Duluth, MN 55802. Your request and deposit must be received within ten (10) days of the date on which your citation was issued. **Failure to provide both a complete written request and deposit within ten (10) days of the date on which your citation was issued will result in forfeiture of your right of appeal.**

Your written appeal request must also 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 to which you would like all communications be mailed.

## **BEFORE THE HEARING**

Make certain that you allow at least several hours 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.

The city clerk's office will also send you the name of 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.

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 three (3) business days before the hearing. Any such request for reassignment must show good cause for the assigned hearing officer being unable to fairly hear the alleged violator's appeal.

Direct all questions and concerns regarding your hearing to the city clerk's office at (218) 730-5500.

## **WITNESSES & SUBPOENAS**

You may bring witnesses and documentation to the hearing. If a witness refuses to appear willingly or a request to provide documentation is denied, you may request that a subpoena be issued. Your request must be in writing and must explain why the subpoena is needed. The request must be submitted to the city clerk's office at least six (6) business days before the scheduled hearing date. 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. The city clerk's office will notify you as to whether your request has been granted.

You must give the subpoena directly to the requested witness or holder of requested documents. At the time of the hearing, you must pay the witness for appearing and the current mileage rate for travel to the hearing; the city clerk will provide you with the current rate you must pay when you pick up your subpoena(s).

A person served with a subpoena may, prior to three (3) days before compliance is expected with the subpoena, 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.

If you request the presence of a city employee, said employee will attend the hearing without the need for a subpoena if they have information that is relevant to your case.

## **THE HEARING**

### **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 remainder of the administrative penalty as set forth on the citation. If there is an outstanding corrective order pertaining to a condition on your property, you will still need to correct that condition. In addition, you may be subject to additional criminal penalties or civil lawsuits 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.

### **Hearing Procedure**

The parties must appear in person. The city bears the burden of proving that a violation of city code occurred and that you are responsible for the violation. The hearing will be informal, without strict rules of evidence. Only evidence relevant

to the violation for which the citation was issued will be heard. General grievances against the law, against the issuing officer, or against the city in general will not be heard.

The hearing will be recorded and the hearing officer will keep a full record as well. The hearing officer will determine whether opening and/or closing statements will be made.

As the city bears the burden of establishing that a violation occurred, the city will present its case first. The city's case may be made through witness testimony, evidentiary documentation, exhibits, or any other pieces of evidence with probative value. All witnesses must be sworn to tell the truth. 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 may ask the hearing officer to decide the case upon the evidence presented by the city. If you decide to testify, you may do so only after being sworn to tell the truth.

### **Representation by an Attorney**

The only attorney permitted at the hearing is the hearing officer. Neither you nor the city may bring an attorney. If you wish to assert a technical legal argument, you can provide a written memorandum to the hearing officer at the time of the hearing.

### **Decision**

Whenever possible, the hearing officer will try to issue their decision verbally at the end of the hearing. Regardless of whether the hearing officer is able to announce their decision at the hearing or not, a notification of the hearing officer's decision, including findings of fact and conclusions of law, will be issued to all parties as soon thereafter is practical.

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 finding of special circumstances or that the interests of justice require modification, affirm the citation but:
  - a. Reduce or stay imposition of any penalty previously ordered; or
  - b. Modify the time for correction of any condition giving rise to any property violation; or
  - c. Modify the corrective order.

The hearing officer cannot impose a fine greater than the established fine.

### **AFTER THE HEARING**

The decision of the hearing officer constitutes the final decision of the city. If you wish to appeal the decision, pursuant to Minnesota Statutes section 606.01, you may appeal to the Minnesota Court of Appeals within sixty (60) days of having received notice of the decision. It is encouraged that you seek legal counsel to determine your best course of action.

If you do not pay the fine imposed by the hearing, the city has authority to take any of the following actions:

- (a) Add a late fee equal to 25% of the amount due;
- (b) Obtain a judgment against you and initiate collection proceedings;
- (c) Assess the amount of any penalty for a property violation against the property involved and have it collected with the property taxes;
- (d) Initiate a criminal prosecution against you stemming from the original violation.