

ORDINANCE 2018-16

**ORDINANCE AMENDING FAIRMONT CITY CODE CHAPTER 2,
ARTICLE 1.5 ADMINISTRATIVE CITATIONS AND CIVIL
PENALTIES, SECTION 2-8 – ADMINISTRATIVE HEARING,
SECTION 2-9 – ADMINISTRATIVE REVIEW, 2-10 – JUDICIAL
REVIEW, SECTION 2-11 – RECOVERY OF CIVIL PENALTIES
AND SECTION 2-12 – CRIMINAL PENALTIES**

WHEREAS, after review of Fairmont City Code Chapter 2, Administrative Citations and Civil Penalties, it was determined that this section needed to be updated to be consistent with an updated plan to administer administrative citations; and,

NOW THEREFORE THE CITY OF FAIRMONT DOES ORDAIN, that Fairmont City Code Chapter 2, Administrative Citations and Civil Penalties shall be amended as follows:

Sec. 2-8 – Administrative hearing.

- (a) The city council shall periodically approve a list of people, from which the city administrator will randomly select a hearing officer to hear and determine a matter for which a hearing is requested. The hearing officer is a public officer as defined by Minnesota Statutes section 609.415. The hearing officer must not be a city employee. ~~The city administrator shall establish a procedure for evaluating the competency of the hearing officers, including comments from people charged with violations and city staff. These reports shall be provided to the city council.~~
- (b) The person charged with a violation may request a hearing before a single hearing officer. ~~or a panel of three (3) hearing officers.~~
- (c) The person charged with a violation shall have the right to request no later than five (5) days before the date of the hearing that the assigned hearing officer(s) be removed from the case. One such request for each case will be granted automatically by the city administrator. A subsequent request must be directed to the assigned hearing officer(s) who will decide whether he or she can fairly and objectively review the case. The city enforcement officer may remove a hearing officer(s) only by requesting that the assigned hearing officer(s) 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 shall assign another hearing officer(s).

- (d) Upon the hearing officer's own initiative or upon the written request of the person charged with a violation or the city, the officer may issue a subpoena for the attendance of a witness or the production of books, papers, records, or other documents that are material to the matter being heard. The party requesting the subpoena shall be responsible for serving the subpoena in the manner provided for in civil actions and for paying the fees and expenses of any witness. A person served with a subpoena may file an objection with the hearing officer promptly but no later than the time specified in the subpoena for compliance. The officer may cancel or modify the subpoena if it is unreasonable or oppressive. Any person who, without just cause, fails or refuses to attend and testify or to produce the required documents in obedience to a subpoena shall be guilty of a misdemeanor. Alternatively, the party requesting the subpoena may seek an order from district court directing compliance.
- (e) Notice of the hearing must be served in person or by mail on the person charged with the violation at least ten (10) days in advance of the hearing, unless a shorter time period is agreed to by all parties. At the hearing, the parties will have the opportunity to present testimony and question any witnesses, but strict rules of evidence shall not apply. The hearing officer shall tape record the hearing and receive testimony and exhibits. The officer shall receive and give weight to evidence, including hearsay evidence, which possesses probative value that is not outweighed by prejudicial effect.
- (f) 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 will consider the following factors:
- (1) The duration of the violation;
 - (2) The frequency or reoccurrence of the violation;
 - (3) The seriousness of the violation;
 - (4) The history of the violation;
 - (5) The violator's conduct after issuance of the notice of hearing;
 - (6) The good faith effort by the violator to comply;
 - (7) The economic impact of the penalty on the violator;
 - (8) The impact of the violation upon the community; and,

(9) Any other factors appropriate to a just result.

The hearing officer may exercise discretion to impose a fine for more than one day of the continuing violation, but only upon a finding that (1) the violation caused a serious threat of harm to the public health, safety, or welfare or that (2) the accused intentionally and unreasonably refused to comply with the code requirement. The hearing officer's decision and supporting reasons must be in writing.

~~(g) Except for matters subject to administrative review under section 2-9, the decision of the hearing officer is final without any further right of administrative appeal. In a matter subject to administrative review under section 2-9, the hearing officer's decision may be appealed to the city council by submitting a request in writing to the city clerk within ten (10) days after the hearing officer's decision.~~

(g) The failure to pay the fine or request an appeal within thirty (30) days after the citation or the failure to attend the hearing constitutes a waiver of the violator's rights 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" are: death or incapacitating illness of the person charged with a violation; a court order requiring the person charged to appear for another hearing at the same time; and lack of proper service of the citation or notice of the hearing. "Good cause" shall not include: forgetfulness and intentional delay.

~~Sec. 2-9.—Administrative review.~~

~~(a) The hearing officer's decision in any of the following matters may be appealed by any party to the city council for administrative review:~~

~~(1) An alleged failure to obtain a permit, license, or other approval from the city council as required by an ordinance;~~

~~(2) An alleged violation of a permit, license, other approval, or the conditions attached to the permit, license, or approval, which was granted by the city council; and~~

~~(3) An alleged violation of regulations governing a person or entity who has received a permit, license, or approval granted by the city council.~~

~~(b) The appeal shall be heard by the city council after notice of the hearing is served in person or by registered mail upon the person charged. The notice shall be served at least ten (10) days in advance of the hearing. The parties to the hearing shall have an opportunity to present oral and written arguments regarding the hearing officer's decision.~~

- ~~(c) The city council shall consider the record, the hearing officer's decision, and any additional arguments before making a determination. The council is not bound by the hearing officer's decision, but may adopt all or part of the officer's decision. The council's decision must be in writing.~~
- ~~(d) If the council makes a finding of a violation, it may impose a civil penalty not exceeding two thousand dollars (\$2,000.00) per day per violation, and may consider any or all of the factors contained in section 2-8(e). The council may also reduce, stay, or waive a fine unconditionally or based on reasonable and appropriate conditions.~~
- ~~(e) In addition, to imposing a civil penalty, the council may suspend or revoke any city-issued license, permit, or other approval associated with the violation, if the procedure in city code section 14-24 has been followed. The hearing required in that section shall be satisfied by the hearing before the hearing officer with the right of appeal to the city council.~~

Sec. ~~2-9-10~~. – Judicial review.

An aggrieved party may obtain judicial review of the decision of the hearing officer ~~or the city council~~ in accordance with state law. The request for judicial review shall be filed in Martin County District Court and served upon the city clerk within thirty (30) days of the final decision of the hearing officer ~~or city council~~.

Sec. ~~2-10~~ ~~11~~. – Recovery of civil penalties.

- (a) If a civil penalty is not paid within the time specified, it shall constitute:
- (1) A lien upon 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
 - (2) A personal obligation of the violator in all other situations.
- (b) A lien may be assessed against the property and collected in the same manner as taxes.
- (c) A personal obligation may be collected by any appropriate legal means.
- (d) A late payment fee of ten (10) percent of the fine shall be assessed for each thirty (30) day period, or part thereof, that the fine remains unpaid after the due date.
- (e) During the time that a civil penalty remains unpaid, the provisions of City Code section 14-24 shall apply to any license, permit, or other city approval sought by the violator or for property under the violator's ownership or control.
- (f) Failure to pay a fine is grounds for suspending or revoking a license associated with the violation.

Sec. 2-~~11~~ 12. – Criminal penalties.

The following are misdemeanors, punishable in accordance with state law:

- (1) Failure, without good cause, to pay a fine or request a hearing within thirty (30) days after issuance of an administrative citation.
- (2) Failure, without good cause, to appear at a hearing which was scheduled under section 2-8.
- (3) Failure to pay a fine or comply with conditions imposed by a hearing officer within thirty (30) days after it was imposed, or such other time as may be established by the hearing officer, ~~unless the matter is appealed under section 2-9.~~
- (~~4~~) ~~Failure to pay a fine or comply with conditions imposed by the city council within thirty (30) days after it was imposed, or such time as may be established by the city council.~~

Motion by: Council Member Ruth Cyphers

Seconded by: Council Member Tom Hawkins

All in Favor: Council Members Ruth Cyphers, Wayne Hasek, Tom Hawkins, Bruce Peters and Jim Zarling

Opposed: None

Abstained: None

Absent: None

PASSED, APPROVED AND ADOPTED THIS 27th day of August 2018.

Deborah J. Foster, Mayor

Patricia J. Monsen, City Clerk

1st Reading: August 13, 2018

2nd Reading: August 27, 2018