



CITY OF LE SUEUR
REQUEST FOR COUNCIL ACTION

TO: Mayor and City Council
FROM: Justin Nielsen – Building Official
SUBJECT: Chapter 115 – Rental Regulations – Ordinance Second Reading
DATE: For the City Council Meeting of Tuesday, May 26, 2020

PURPOSE/ACTION REQUESTED

Perform the second reading of the updated Chapter 115: RENTAL REGULATIONS of the City of Le Sueur Code of Ordinances.

SUMMARY

The purpose of this action is to update the City of Le Sueur's Rental Regulations. The updates include adding sections 115.97 Recovery of Costs and 115.98 Administrative Citations and Civil Penalties. The addition of these sections will help the city recovery costs associated with enforcing the penalties of Chapter 115. Currently, Chapter 115 has no mechanism to recover the costs incurred by the City when issuing citations or criminally charging violators therefore, the costs associated with these actions must be absorbed by the City's budget. Enforcing these violations should not be the financial responsibility of the City and the taxpayers and should be covered solely by the offenders.

Attorney, Mike Couri reviewed the proposed ordinance. Unfortunately, his recommendations we're ready prior to the first reading but have been incorporated into the second reading and are outlined in the redline document.

PURPOSE/ACTION REQUESTED

Perform the second reading of the proposed ordinance updating Chapter 115 of the Le Sueur City Code. If approved, this ordinance will go into effect June 1, 2020.

ORDINANCE NO. 585

CHAPTER 115 – RENTAL REGULATIONS

THE LESUEUR CITY COUNCIL DOES ORDAIN

CHAPTER 115: RENTAL REGULATIONS

- Section: 115.97 Recovery of Costs
 115.98 Administrative Citations and Civil Fines
 115.99 Penalty

§ 115.97 RECOVERY OF COSTS.

- (A) *Costs incurred by city.* The costs of such work, including the costs of administration, enforcement and other related costs, including attorney's fees related to enforcement of this article, may be made a special assessment against the property involved, ~~or~~ may be made a personal obligation of the property owner, or may be certified to the County Auditor for collection with the property taxes under Minn. Stat. § 366.012, as the City Council shall determine is appropriate.
- (B) *Personal obligation.* The City Council may order that the charge shall be made a personal obligation of the property owner or assess the charge against the property involved. If the City Council orders that the charge shall be a personal obligation of the property owner, it shall direct the city attorney to collect the same on behalf of the city by use of all appropriate legal remedies.
- (C) *Special assessment.* If the City Council orders that the charge shall be assessed against the property, it shall be levied and collected as a special assessment in the manner provided by Minnesota Statutes §§ 429.061 to 429.101. Prior to submission of the assessment to the county, the City Council shall, on the date the assessment is adopted, add an administrative fee of up to 15 percent (depending on the amount of administrative and related expense otherwise included in the amount of the special assessment itself) of the amount then due. The assessment shall be payable in a single installment.
- (D) *Certification to County Auditor per Minn. Stat. § 366.012.* If the city council orders the charge shall be certified to the County Auditor per Minn. Stat. § 366.012, the property owner shall be notified in writing of such proposed certification prior to September 15th, and such charge shall be certified to the County Auditor prior to October 15th in any given year. Penalties and interest shall accrue on such charge in the same manner as provided for in the collection of property taxes.
- (E) *Repayment of funds.* All money recovered by payment of the charge or assessment or from the sale of the property at foreclosure sale shall be paid to the repair and demolition fund or other fund from which the costs were drawn.

§ 115.98 ADMINISTRATIVE CITATIONS AND CIVIL PENALTIES.

- (A) *Purpose.* The City Council finds that there is a need for alternative methods of enforcing the rental housing ordinance. While criminal fines and penalties have been the most frequent enforcement mechanism, there are certain negative consequences for both the

city and the accused. The delay inherent in the criminal justice system does not ensure prompt resolution of problems which affect the public interest. Individuals may resent being labeled as criminals for violation of administrative regulations. The higher burden of proof and the potential of being incarcerated do not appear appropriate for many administrative violations. The court system does not always regard city code violations as being important. 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. This method of enforcement is in addition to any other legal remedy that may be pursued for violation of this article.

(B) General Provisions.

- 1) A violation of any provision of this article is an administrative offense which shall be subject to an administrative citation and civil fines. Each day a violation exists constitutes a separate offense.
- 2) An administrative offense shall be subject to a civil fine not exceeding \$2,000.00.
- 3) The City Council shall adopt by resolution a schedule of fines for offenses initiated by administrative citation. The City Council may also adopt a schedule of fees and expenses to be paid to administrative hearing officers.
- 4) The city administrator or his/her designee shall adopt procedures for administering the administrative citation program.

(C) Administrative Citations.

- 1) The owner's agent if known, and to any other person known to be responsible for the violation. In Any person authorized to enforce the provisions of this article may issue an administrative citation upon belief that a violation has occurred. The citation shall be issued in person or by first class mail to the owner of the rental property, or the case of a violation involving a motor vehicle, a copy of the citation shall also be attached to the motor vehicle. The citation shall state the date, time, and nature of the offense, the name of the issuing person, 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 thirty days after issuance of the citation. Payment of the fine constitutes admission of the violation. A late payment fee of ten percent of any scheduled fine amount shall be imposed.

(D) Administrative Hearing.

- 1) Any person(s) who have been accused of a violation can request and shall be granted a hearing in the matter before the City Council. Said hearing shall be held within 30 days following receipt of a written request for a hearing together with an affidavit setting forth the applicant's reasons for said hearing. At the hearing, the City Council shall first hear from the appropriate city official regarding the violation who shall then be subject to questioning by the City Council and the accused, then hear from the applicant who shall be subject to questioning by the City Council and the appropriate city official. The Council may rule immediately following the hearing and the action taken shall only be overturned by majority vote of the Council. The Council may also table its ruling until the following regularly scheduled Council meeting.
- 2) *Notice and hearing.* Notice of the hearing shall be served in person or by mail on the person(s) responsible for the violation at least ten days in advance of the

hearing, unless a shorter time is accepted by all parties. At the hearing, the parties shall have the opportunity to present testimony and question any witnesses, but strict rules of evidence shall not apply. The City Council shall record the hearing, receive testimony and exhibits, and provide the record of the proceeding and any exhibits to the city with the City Council's decision. The City Council shall receive and give weight to evidence admitted, including hearsay evidence which possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs.

- 3) Decision. The City Council has the authority to determine that a violation occurred; to impose the scheduled fine; to reduce, stay, or waive a scheduled fine either unconditionally or upon compliance with appropriate conditions; and to dismiss a citation. When imposing a fine for a violation, the City Council 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 citation or notice of hearing;
 - f. The good faith effort by the violator to comply;
 - g. The economic impact of the fine on the violator;
 - h. The impact of the violation on the community; and
 - i. Any other factors appropriate to a just result.

The City Council may exercise discretion to impose a fine for more than one day of a continuing violation, but only upon a finding that (i) the violation caused a serious threat of harm to or impact on the public health, safety, or welfare, or that (ii) the accused intentionally and unreasonably refused to comply with the requirements of this article. The City Council's decision and supporting reasons shall be in writing, served personally or by registered mail to the last known address of the person served. Service by registered mail shall be complete upon mailing.

- 4) *Failure to attend.* A failure to attend the hearing constitutes a waiver of the accused's right to an administrative hearing and an admission of the violation. The City Council may waive this result upon good cause shown. Examples of good cause are: death or incapacitating illness of the accused; 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, mistake, or intentional delay.

(E) Recovery of Civil Fine.

- 1) If a civil fine is not paid within the time specified, it shall constitute:
 - a. A lien against the real property upon which the violation occurred if the property or improvements on or use of the property was the subject of the violation and the property owner was found to be responsible for the violation, which shall be specified in the written decision of the hearing officer; or
 - b. A personal obligation of the violator in all other situations.

- 2) A lien as provided in this section may be assessed against the real property and certified to the county auditor for collection with real estate taxes.
- 3) A personal obligation may be collected by any available legal means.
- 4) A late payment fee of ten percent of the fine may be assessed for each 30-day period, or part thereof, during which the fine remains unpaid after the due date.
- 5) During the time that a civil fine remains unpaid, the city shall not grant or renew any license, permit, or other city approval sought by the violator or related to the property involved in the violation.
- 6) Failure to pay a fine shall be grounds for suspending or revoking a license, permit or other approval related to the violation.

§ 115.99 PENALTY.

Any person who violates this chapter shall be punished according to the laws of the State of Minnesota. A violation of this chapter shall constitute a fine. Each day a person maintains a temporary or permanent residence in violation of this chapter constitutes a separate violation.

Effective Date: June 1, 2020

This Ordinance becomes effective from and after its passage and seven (7) days after its publication. This Ordinance was passed by the Common Council on May 25, 2020.

ATTEST:

Greg Hagg
Mayor

Stacy Lawrence
Communications & HR Director/City Clerk

ORDINANCE NO. 585
Chapter 115 – Rental Regulations

THE LESUEUR CITY COUNCIL DOES ORDAIN

CHAPTER 115: RENTAL REGULATIONS

Section:

115.97 Recovery of Costs - Updated
115.98 Administrative Citations and Civil Fines Penalties - Updated
115.99 Penalty - Updated

§ 115.97 RECOVERY OF COSTS.

(A) *Costs incurred by city.* The costs of such work, including the costs of administration, enforcement and other related costs, including attorney’s fees related to enforcement of this article, may be made a special assessment against the property involved, or may be made a personal obligation of the property owner, or may be certified to the County Auditor for collection with the property taxes under Minn. Stat. § 366.012, as the City Council shall determine is appropriate.

(B) *Personal obligation.* The City Council may order that the charge shall be made a personal obligation of the property owner or assess the charge against the property involved. If the City Council orders that the charge shall be a personal obligation of the property owner, it shall direct the city attorney to collect the same on behalf of the city by use of all appropriate legal remedies.

(C) *Special assessment.* If the City Council orders that the charge shall be assessed against the property, it shall be levied and collected as a special assessment in the manner provided by Minnesota Statutes §§ 429.061 to 429.101. Prior to submission of the assessment to the county, the City Council shall, on the date the assessment is adopted, add an administrative fee of up to 15 percent (depending on the amount of administrative and related expense otherwise included in the amount of the special assessment itself) of the amount then due. The assessment shall be payable in a single installment.

(D) *Certification to County Auditor per Minn. Stat. § 366.012.* If the city council orders the charge shall be certified to the County Auditor per Minn. Stat. § 366.012, the property owner shall be notified in writing of such proposed certification prior to September 15th, and such charge shall be certified to the County Auditor prior to October 15th in any given year. Penalties and interest shall accrue on such charge in the same manner as provided for in the collection of property taxes.

(E) *Repayment of funds.* All money recovered by payment of the charge or assessment or from the sale of the property at foreclosure sale shall be paid to the repair and demolition fund or other fund from which the costs were drawn.

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housing ordinance. While criminal fines and penalties have been the most frequent enforcement mechanism, there are certain negative consequences for both the city and the accused. The delay inherent in the criminal justice system does not ensure prompt resolution of problems which affect the public interest. Individuals may resent being labeled as criminals for violation of administrative regulations. The higher burden of proof and the potential of being incarcerated do not appear appropriate for many administrative violations. The court system does not always regard city code violations as being important. 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. This method of enforcement is in addition to any other legal remedy that may be pursued for violation of this article.

(B) General provisions.

(1) A violation of any provision of this article is an administrative offense which shall be subject to an administrative citation and civil **fin**es penalties and/or a misdemeanor. Each day a violation exists constitutes a separate offense.

(2) An administrative offense shall be subject to a civil **fine** penalty not exceeding \$2,000.00.

(3) The City Council shall adopt by resolution a schedule of **fin**es penalties for offenses initiated by administrative citation. The City Council may also adopt a schedule of fees and expenses to be paid to administrative hearing officers. ~~Review with fee schedule and add fees accordingly.~~

(4) The city administrator or his/her designee shall adopt procedures for administering the administrative citation program.

(C) Administrative citations.

(1) Any person authorized to enforce the provisions of this article may issue an administrative citation upon belief that a violation has occurred. The citation shall be issued in person or by first class mail to the owner of the rental property, or the owner's agent if known, and to any other person known to be responsible for the violation. In the case of a violation involving a motor vehicle, a copy of the citation shall also be attached to the motor vehicle. The citation shall state the date, time, and nature of the offense, the name of the issuing person, the amount of the scheduled **fine** penalty, and the manner for paying the **fine** penalty or appealing the citation.

(2) The person responsible for the violation must either pay the scheduled **fine** penalty or request a hearing within thirty days after issuance of the citation. Payment of the **fine** penalty constitutes admission of the violation. A late payment fee of ten percent of any scheduled **fine** penalty amount shall be imposed.

(D) Administrative hearing.

(1) Any person(s) who have been accused of a violation can request and shall be granted a hearing in the matter before the City Council. Said hearing shall be held within 30 days following receipt of a written request for a hearing together with an affidavit setting forth the applicant's reasons for said hearing. At the hearing, the City Council shall first hear from the appropriate city official regarding the violation who shall then be subject to questioning by the City Council and the accused, then hear from the applicant who shall be subject to questioning by the City Council and the appropriate city official. The Council may rule immediately following the hearing and the action taken shall only be overturned by majority vote of the Council. The Council may also table its ruling until the following regularly scheduled Council meeting.

~~(2) Subpoena. Upon the City Council's own initiative or upon written request of an interested party demonstrating the need, the City Council may issue a subpoena for the attendance of a witness or the production of books, papers, records or other documents which are material to the matter being heard. The party requesting the subpoena (or the city, if issued on the City Council's own initiative) is responsible for serving the subpoena in the manner provided for civil actions and for paying the fees and expenses of a witness. A person served with a subpoena may file an objection with the City Council promptly but no later than the time specified in the subpoena for compliance. The City Council may cancel or modify the subpoena if it is unreasonable or oppressive. A person who, without just cause, fails or refuses to attend and testify or to produce the required documents in obedience to a subpoena is guilty of a misdemeanor.~~

~~Alternatively, the party requesting the subpoena may seek an order from the district court directing compliance. If the accused fails or refuses to comply with a subpoena, the facts sought to be proved through compliance with the subpoena may be found by the City Council to have been admitted.~~

(3) *Notice and hearing.* Notice of the hearing shall be served in person or by mail on the person(s) responsible for the violation at least ten days in advance of the hearing, unless a shorter time is accepted by all parties. At the hearing, the parties shall have the opportunity to present testimony and question any witnesses, but strict rules of evidence shall not apply. The City Council shall record the hearing, receive testimony and exhibits, and provide the record of the proceeding and any exhibits to the city with the City Council's decision. The City Council shall receive and give weight to evidence admitted, including hearsay evidence which possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs.

(4) *Decision.* The City Council has the authority to determine that a violation occurred; to impose the scheduled **fine penalty**; to reduce, stay, or waive a scheduled **fine penalty** either unconditionally or upon compliance with appropriate conditions; and to dismiss a citation. When imposing a **fine penalty** for a violation, the City Council 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 citation or notice of hearing;
- f. The good faith effort by the violator to comply;
- g. The economic impact of the **fine penalty** on the violator;
- h. The impact of the violation on the community; and
- i. Any other factors appropriate to a just result.

The City Council may exercise discretion to impose a **fine penalty** for more than one day of a continuing violation, but only upon a finding that (i) the violation caused a serious threat of harm to or impact on the public health, safety, or welfare, or that (ii) the accused intentionally and unreasonably refused to comply with the requirements of this article. The City Council's decision and supporting reasons shall be in writing, served personally or by registered mail to the last known address of the person served. Service by registered mail shall be complete upon mailing.

(5) *Failure to attend.* A failure to attend the hearing constitutes a waiver of the accused's right to an administrative hearing and an admission of the violation. The City Council may waive this result upon good cause shown. Examples of good cause are: death or incapacitating illness of the accused; 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, mistake, or intentional delay.

(E) *Recovery of civil **fine penalties**.*

(1) If a civil **fine penalty** is not paid within the time specified, it shall constitute:

- a. A lien against the real property upon which the violation occurred if the property or improvements on or use of the property was the subject of the violation and the property owner was found to be responsible for the violation, which shall be specified in the written decision of the hearing officer; or
- b. A personal obligation of the violator in all other situations.

(2) A lien as provided in this section may be assessed against the real property and certified to the county auditor for collection with real estate taxes.

(3) A personal obligation may be collected by any available legal means.

(4) A late payment fee of ten percent of the **fine** penalty may be assessed for each 30-day period, or part thereof, during which the **fine** penalty remains unpaid after the due date.

(5) During the time that a civil **fine** penalty remains unpaid, the city shall not grant or renew any license, permit, or other city approval sought by the violator or related to the property involved in the violation.

(6) Failure to pay a **fine** penalty shall be grounds for suspending or revoking a license, permit or other approval related to the violation.

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