



CITY OF LE SUEUR
REQUEST FOR COUNCIL ACTION

TO: Mayor and City Council

FROM: Nate Sparks, City Planner
Jasper Kruggel, City Administrator

SUBJECT: Administrative Fines Ordinance – Second Reading

DATE: For the City Council Meeting of Monday, October 11th, 2021

PURPOSE

Consider waiving the second reading of an Ordinance No. 593, expanding the current administrative fines city code language to include building code compliance, adopting Ordinance, No. 593, consider approving a resolution outlining the summary publication of the ordinance, and consider authorizing the City Administrator to appoint a hearing officer group.

SUMMARY

Background

The City currently has an administrative fine ordinance that is only utilized for rectifying issues with rental housing licensing. A new ordinance has been prepared to use for general code enforcement. This would be the second reading of the ordinance.

Code Amendments

The amendments primarily involve an addition of Section 30.08 which has procedures for administrative fines. This includes a process for issuing a ticket and then the procedures for appealing a fine. The procedure is fairly standard and in use in many area communities. An appeal of a fine would go to a hearing officer that is appointed. Another amendment is to the rental housing section to reference this section instead of duplicating a procedure.

Code Enforcement Use

The purpose of this process is to gain compliance for code enforcement issues. The ordinance will allow for the City to engage a property owner with a process to gain compliance prior to issuing a ticket and going to the court system. This will show the courts that the City has made a good faith effort to gain compliance prior to initiating a criminal or civil court process.

The City will generally issue a warning letter first and then, if no resolution, give the property owner a ticket. The first ticket would be for \$75 and double with each subsequent offense. If no resolution, then the City can proceed to court or abatement and use the money gathered through the citation process to defray the taxpayers costs for all enforcement actions.

If a property owner feels that the citation is unwarranted, they can appeal the citation to a hearing examiner. It would be recommended that the Council delegate the authority for appointing a hearing examiner to the City Administrator. This person will act as the “judge” for any appeal and issue a final order. A failed appeal may be further appealed into the court system.

Direction was given to City Staff to update Section (D)(2) to include language that the hearing officer would be compensated. That language has been included in the attached version of Ordinance No. 593.

ACTION REQUESTED

Staff recommends the City Council take the following actions:

1. Motion to waive the second reading of Ordinance No. 593.
2. Motion to approve Ordinance No. 593.
3. Motion to approve Resolution R2021-040 – Summary Publication for Ordinance No. 593
4. Motion to authorize the City Administrator to appoint hearing officers for the appeals process outlined in Ordinance No. 593.

ORDINANCE NO. 593

AN ORDINANCE ADOPTING ADMINISTRATIVE CITATIONS & CIVIL FINES FOR CITY CODE VIOLATIONS

THE CITY OF LE SUEUR DOES ORDAIN:

Section 1. Code Added. Section 30.08 is hereby added to read as follows:

§ 30.08 ADMINISTRATIVE CITATIONS AND CIVIL FINES.

(A) Purpose. The administrative enforcement procedures established within this Chapter are intended to provide the City with an informal, cost-effective and more efficient supplement or alternative to criminal prosecution or civil litigation for certain violations of the adopted City Code. The City retains the right, at its sole discretion, to enforce provisions of this Code by bringing criminal charges or commencing civil litigation in any case where the City determines it is appropriate or necessary, but finds that an administrative process is beneficial to the residents of the City and further finds that that such a process is a legitimate and necessary alternative method of enforcing Code violations. This method of enforcement is in addition to any other legal remedy that may be pursued for violation of the City Code.

(B) General provisions.

(1) Administrative Offenses. Any violation of any section or chapter of the City Code, and any violation of the terms and/or conditions of any license, permit, or other approval issued pursuant to the City Code, is an administrative offense that may be subject to an administrative citation and administrative fines.

(2) Continuing Violations. Each day a violation exists constitutes a separate and distinct offense for which a separate penalty can be imposed. The City Administrator can exercise discretion in imposing an administrative fine for more than one day of a continuing offense.

(3) Schedule of Fines. The City Council shall adopt by ordinance, as part of the fee schedule, a schedule of administrative fines for offenses for which an administrative citation is issued. A current fee schedule shall be kept on file at City Hall.

(4) Code Compliance Officer. The Code Compliance Officer shall be any person so appointed to carry out such duties so assigned by the City Administrator, including but not limited to, the Building Official, Zoning Administrator, Public Works Director, City Clerk, Fire Chief, and any member of the Police Department.

(5) No Limitation on Remedies. Nothing herein is intended or shall require the city to utilize the administrative citation process or otherwise pursue the remedies outlined in this section. The City retains the right to pursue any and all other remedies authorized by law to enforce the City Code or penalize violations of city ordinances, including, but not limited to, issuance of a stop work order, abatement, criminal prosecution, and/or application for civil penalties or injunctive relief.

(C) Administrative Procedure.

(1) Administrative Notice. A Code Compliance Officer may issue, either in person or by United States first class mail, an Administrative Notice to a person suspected, alleged or known to have committed a Code Offense and/or to be the owner of property upon which a Code Offense is being committed. The Administrative Notice shall identify the Code Offense, the location upon which the Code Offense is alleged to have occurred or is occurring, and the corrective action for the Code Offense. The Administrative Notice may also state that the alleged violator has, at the discretion of the Code Compliance Officer, no more than twenty (20) days to correct or abate the Code Offense. Immediate compliance may be required upon the existence of a public health or safety condition. If the alleged violator and/or owner of property upon which a Code Offense is being committed is unable to correct or abate the Code Offense within the prescribed time, that person may request in writing an extension of no more than thirty (30) additional days from the Code Compliance Officer. Any extension granted by the Code Compliance Officer shall be in writing and shall specifically state the date of expiration, which shall be determined at the discretion of the Code Compliance Officer. If the Code Offense is not corrected or abated, as outlined in the Administrative Notice, within the prescribed time or any extension thereto, the Code Compliance Officer may issue a citation, as provided in Section 30.08(C)(3).

(2) Exceptions to Administrative Notice. For violations of any of the following, the City shall not be required to issues an Administrative Notice or compliance letter and may proceed directly to an administrative citation as provided for in Section 30.08(C)(3):

(a) Repeat Offenders. If the same owner or person commits a subsequent violation within 12 months after an administrative notice or citation has been issued for the same or similar offense, no compliance letter or administrative notice shall be required for the new violation.

(b) License Violations. For any license violations, including not having a license, no compliance letter or administrative notice shall be required.

(c) Building Code Order. For a violation of any official order from the Building Official, no compliance letter or administrative notice shall be required.

(3) Citation. Upon receiving no response or continued noncompliance following issuance of the Administrative Notice or Code Compliance letter as stated in Section 30.08(A), the Code Compliance Officer may issue a citation. The citation shall be given to the person responsible for the violation and/or to the owner of the property upon which the alleged violation has occurred, either by personal service or by United States first class mail. Said citation shall state the nature of the Code Offense, the time and date said alleged Code Offense occurred, the civil penalty applicable to that Code Offense as set forth in a schedule of civil penalties which shall be adopted by Resolution of the City Council from time to time, and the manner for paying the civil penalty or requesting a hearing before a Hearing Officer to contest the citation.

(4) Responding to a Citation. Once a citation is issued, the alleged violator and/or the owner of the property upon which the alleged violation has occurred shall, within ten (10) days

of the time of issuance of the citation, either pay the civil penalty set forth in the citation or request a hearing in writing according to the procedure set forth in Section 30.08(D)(1). The civil penalty may be paid either in person at City Hall, or by United States first class mail, postage prepaid and postmarked within said prescribed ten (10) days. Payment of the civil penalty shall be deemed to be an admission of the Code Offense. A late payment fee of 10% of any scheduled fine amount shall be imposed.

(5) Payment of Penalty.

(a) Payment of a Penalty and Correction of Violation. If the owner pays the administrative civil penalty and corrects the City Code violation, no further action will be taken against the owner or the owner's real property for that same violation.

(b) Payment of Penalty without Correction of Violation. If the owner pays the administrative civil penalty but fails to correct the City Code violation, the City may issue subsequent administrative citations, initiate criminal proceedings, or initiate any other proceeding or remedies available in order to enforce correction of the City Code violation.

(c) No Payment of Penalty and No Correction of Violation. If the owner fails to pay the administrative civil penalty and fails to correct the City Code violation, the City may do any of the following, or any combination thereof:

- i. Assess the administrative civil penalty against the property pursuant to Minnesota Statutes Chapter 429 or any other statutory authority.
- ii. Issue a subsequent administrative citation, thereby commencing a new administrative penalties process.
- iii. Initiate criminal proceedings.
- iv. Initiate any other enforcement action authorized by law.

(D) Appeal and Hearing.

(1) Requesting a Hearing. Any person receiving an administrative citation may contest the alleged violation and the amount of the administrative civil penalty. In order to contest any part of the administrative citation, the owner or individual contesting the citation must notify the City Clerk in writing within ten (10) calendar days after the citation is mailed or otherwise delivered. The written request shall state the name of the individual, indicate whether they are contesting the alleged violation, the amount of the penalty, or both and must also specify the reason and facts upon which the individual is contesting the citation.

(2) Hearing Officer. The hearing officer shall be a neutral third party appointed by the City Council and shall preside over the hearing and make any judgment as authorized. The hearing officer shall be compensated by the City in a reasonable manner under the direction of the City Administrator.

(3) Conduct at Hearing. A hearing officer shall conduct an informal hearing to determine if a violation has occurred. The hearing officer shall consider the record and any additional evidence presented at the hearing and accepted into the record by the hearing officer before making a determination. The officer shall 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. The City will have the burden of proving the existence of a violation and the reasonableness of any required corrective action by a preponderance of the evidence. The determination of the enforcement officer will be given substantial weight by the hearing officer in determining the reasonableness of any required corrective action.

(4) Authority of Hearing Officer. The independent hearing officer has the authority to do any of the following, or a combination thereof:

- (a) Make a finding that a violation has occurred;
- (b) Reduce, stay, or waive a scheduled administrative civil penalty either unconditionally or upon compliance with reasonable conditions;
- (c) Require compliance with the City Code within a specified timeframe;
- (d) Make a finding that no violation has occurred and dismiss the administrative citation.

(5) Owner/Individual Found in Violation. If the violation is sustained by the hearing officer, the violator shall pay the penalty imposed plus an additional Administrative Hearing Fee as prescribed by the City's Fee Schedule to cover the cost of the hearing within ten (10) days of the date of the decision.

(6) Failure to Appear. Failure to appear at the hearing shall result in a default judgment against the party who fails to appear. If the owner fails to appear, the administrative citation shall be sustained. If the City fails to appear, the administrative citation shall be dismissed.

(E) Judicial Review. The Hearing Officer's decision is final without any further right of administrative appeal. Further appeal shall be to the Le Sueur County District Court.

(F) Violation a Misdemeanor. The following are misdemeanors, punishable in accordance with state law:

(1) Failure to pay an administrative fine imposed by administrative citation within ten (10) days after it has been imposed unless the matter is appealed to the City as provided herein.

(2) Failure to pay an administrative fine within ten (10) days after it has been imposed by the hearing officer, or such other time as may be established by the hearing officer, unless the matter is appealed to district court as provided herein. If the final determination in the administrative penalty process is a finding that no violation occurred, 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 prosecution for a violation for the same provision based on a different set of facts. A different date of violation will constitute a different set of facts.

Section 2. Code Amended. Section 115.98 is hereby amended to read as follows:

115.98 Administrative Citations and Civil Fines.

(A) The City may utilize the Administrative Citations and Civil Fines procedure established in Section 30.08 of the City Code to gain enforcement of this Chapter.

(B) The utilization of the process established by Section 30.08 does not limit any other remedy established herein including, but not limited to, revocation of a license.

Section 3. Code Amended. That the City's Fee Schedule shall hereby be amended to include the following fees:

Administrative Enforcement Penalties:

1st Offense: \$75

2nd Offense: \$150

3rd Offense: \$300

4th Offense: \$600

5th Offense and beyond: \$1000

Administrative Hearing Fee: \$75

Section 4. Effective Date. This Ordinance becomes effective from and after its passage and seven (7) days after its publication.

THIS ORDINANCE WAS PASSED BY THE CITY OF LE SUEUR COMMON COUNCIL ON October 11th, 2021.

ATTEST:

Shawn Kirby
Mayor

Stacy Lawrence
City Clerk

CITY OF LE SUEUR, MINNESOTA
CITY COUNCIL RESOLUTION **R2021-040**

RESOLUTION APPROVING A SUMMARY PUBLICATION FOR ORDINANCE NO. 593
AMENDING THE LE SUEUR CITY CODE REGARDING ADMINISTRATIVE AND CIVIL
FINES

WHEREAS, the city of Le Sueur (the "City") is a municipal corporation, organized and existing under the laws of Minnesota; and

WHEREAS, as authorized by Minnesota Statutes, Section 412.191, subd. 4, the City Council has determined that publication of the title and summary of Ordinance No. 593 will clearly inform the public of the intent and effect of the Ordinance; and

WHEREAS, a printed copy of the Ordinance is available for inspection during regular office hours in the office of the City Clerk.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL THAT:

The following summary of Ordinance NO. 593 is approved for publication:

"The City of Le Sueur adopted regulations stipulating the method by which the City can issue administrative citations and civil fines for code violations. The ordinance included an update to the fee schedule to include the amounts of the fines and a process for appeals. The full ordinance is available for review at the City Clerk's Office."

PASSED by the City Council of the City of Le Sueur on this 11th day of October 2021.

ATTEST

Mayor

City Clerk

VOTE: ___ KIRBY ___ KROGMANN ___ LOOSE
 ___ SCHLUETER ___ SULLIVAN ___ SWANBERG