

CITY OF MONTROSE
COUNTY OF WRIGHT
STATE OF MINNESOTA

ORDINANCE NO. 2008-02

**AN ORDINANCE AMENDING THE MONTROSE CITY CODE TO PROVIDE
FOR ADMINISTRATIVE ENFORCEMENT OF CODE REGULATIONS**

The City Council of the City of Montrose ordains as follows:

SECTION 1. The Montrose City Code is hereby amended to add Title III, Chapter 35, **Administrative Enforcement of Code Regulations** which shall read as follows:

Section

- 35.01 Purpose and intent.
- 35.02 Definitions
- 35.03 Procedure
- 35.04 Appeal to Hearing Officer
- 35.05 Appeal of Hearing Officer Decision
- 35.06 Failure to Pay
- 35.07 Subsequent Violations

35.01 PURPOSE AND INTENT.

The Administrative enforcement procedures established within this Chapter are intended to provide the City of Montrose with an informal, cost-effective and more efficient alternative to criminal prosecution or civil litigation for certain violations of the adopted City Code and Zoning Ordinance. The City of Montrose retains the right, at its sole discretion, to also enforce provisions of this Code and the Zoning Ordinance 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. The penalties imposed by this Chapter may be in addition to any other enforcement mechanism available to the City of Montrose for violations of the City Code and Zoning Ordinance.

35.02 DEFINITIONS.

For purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CODE COMPLIANCE OFFICER. Any officer of the Wright County Sheriff's Department, any employee of the City of Montrose, or any person or company contracted to provide code enforcement services who has received official authority by the Montrose City Council to enforce the City Code. There may be more than one person designated as Code Compliance Officer at any given time.

CODE OFFENSE. A violation of any section, subdivision, paragraph or provision of the Montrose City Code and is subject to a civil penalty determined according to a schedule adopted by Resolution of the Montrose City Council from time to time and payable directly to the City Treasurer. Each day the violation exists constitutes a separate Code Offense.

OWNER. An individual, association, syndicate, partnership, corporation, limited liability company, trust or any other legal entity holding an equitable or legal ownership interest in land, buildings, structures, dwelling unit(s) or other property.

PERSON. A natural person of either sex, a firm, partnership, corporation, limited liability company, any other association of people, and includes the manager or agent of that person or organization.

35.03. PROCEDURE.

(A) *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 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 occurred or is occurring, and the recommended 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, up to fifteen (15) days to correct or abate the Code Offense. 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 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. 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 below.

(B) *Citation.* A Code Compliance Officer is authorized to issue a citation upon the belief that a Code Offense has occurred, whether or not an Administrative Notice has first been issued in regard to said Code Offense. The citation shall be given to the person responsible for the violation and/or to the owner of the property upon which the 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 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.

(C) *Responding to a Citation / Payment.* Once a citation is issued, the alleged violator and/or the owner of the property upon which the violation has occurred shall, within fifteen (15) 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 this Section. 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 fifteen (15) days. Payment of the civil penalty shall be deemed to be an admission of the Code Offense.

35.04 APPEAL TO HEARING OFFICER.

(A) *Requesting a Hearing.* Any person contesting a citation issued pursuant to this Chapter may, within fifteen (15) days of the time of issuance of the citation, request a hearing before a Hearing Officer. Any request for a hearing before a Hearing Officer shall be made in writing on a form provided by the City for such a request and either delivered personally to the City at City Hall or mailed to the City by United States first class mail, postage prepaid and postmarked within said prescribed fifteen (15) days. The hearing shall be held at City Hall within thirty (30) days of the date the City received a timely written notice that a hearing has been requested. 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. A determination of good cause shall be made by the Hearing Officer, but does specifically not include forgetfulness or intentional delay.

(B) *Hearing Officer.* The City Council shall by Resolution from time to time appoint a list of persons authorized to act as a Hearing Officer. The Hearing Officer is authorized to conduct an informal hearing to determine if a Code Offense has occurred. The Hearing officer may be compensated by the City for such hearings and related findings. The Hearing Officer shall have the authority to uphold or dismiss the citation or reduce, stay or waive the civil penalty imposed upon such terms and conditions as the Hearing Officer shall determine. The Hearing Officer's decision shall be made in writing on a form provided by the City for such purpose. A copy of the Hearing Officer's decision shall be served by United States first class mail upon

the person requesting the hearing. The Hearing Officer's decision is final, except for appeal of the Hearing Officer's decision in limited cases to the City Council, as set forth below.

(C) *Conduct of Hearing.* At the hearing, the parties will have the opportunity to present testimony, documents and exhibits and question witnesses. The Hearing Officer shall tape record the proceedings and receive testimony and exhibits. Strict rules of evidence will not apply. The Hearing Officer shall receive and give weight to evidence, including hearsay evidence, that possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.

35.05 APPEAL OF HEARING OFFICER DECISION

(A) The Hearing Officer's decision shall be appealable to the City Council only for the following matters:

- (1) an alleged failure to obtain a required permit, license, or other approval from the City Council as required by the City Code;
- (2) an alleged violation of a permit, license, or other approval, or the conditions attached to the permit, license or approval, that was issued by the City Council; or
 - a. an alleged violation of regulations governing a person or entity who has received a license issued by the City Council.
- (3) An appeal to the City Council of the Hearing Officer's decision shall be made in writing on a form provided by the city for such an appeal and shall be served on the City Clerk by United States first class mail, postage prepaid, within ten (10) days after the date of the Hearing Officer's decision.
- (4) A timely appeal will be heard by the City Council after a notice of hearing is served by the City upon the appellant in person or by certified mail at least ten (10) days in advance of the date of the hearing. The parties to the hearing will have an opportunity to present oral or written arguments regarding the Hearing Officer's decision.
- (5) The City Council shall consider the record, the Hearing Officer's decision, and any additional arguments before making a determination. The City Council is not bound by the Hearing Officer's decision, but may adopt all or part of the Hearing Officer's decision. The City Council's decision may be voted upon and given at the hearing or may be given in writing within fifteen (15) days of the hearing.

- (6) The failure of the appellant to appear in front of the City Council or participate in the appeal constitutes a waiver of the violator's right of appeal and an admission of the violation. The Council may waive the result upon good cause shown. The determination of a showing of good cause shown shall be made solely at the discretion of the City Council but does not include forgetfulness and intentional delay.

35.06 FAILURE TO PAY

(A) In the event a person charged with a Code Offense fails to pay the civil penalty and correct or abate the Code Offense for which a citation was issued within the prescribed time, a late charge of fifteen percent (15%) shall be imposed thereon for each seven (7) days the civil penalty remains unpaid and the Code Offense remains uncorrected or unabated beyond the due date.

(B) An unpaid civil penalty and accrued late charges will constitute a personal obligation of the person(s) to whom the citation was issued and the City shall have the right to collect such unpaid civil penalty and accrued late charges, together with the City's costs and reasonable attorney's fees, in criminal or civil proceedings.

(C) Pursuant to Minn. Stat. Chapter 429.101., Minn. Stat. Chapter 514.67 and other applicable law, a lien in the amount of the civil penalty and any accrued late charges may be assessed against the property where the Code Offense occurred and collected in the same manner as taxes. Any such assessment shall not preclude the City from issuing additional citations for a continuing Code Offense, nor shall it preclude the City from making additional assessments against the same property resulting from a continuing or new Code Offense.

(D) The City may suspend or revoke a license or permit or other approval associated with the Code Offense if the civil penalty and accrued late charges are not timely paid.

35.07 SUBSEQUENT VIOLATIONS

If a second citation for a Code Offense is issued by the City to the alleged violator and/or owner of the property upon which the violation has occurred within twenty four (24) months of the issuance of a previous citation for the same Code Offense, the civil penalty shall increase by 25% over the scheduled civil penalty amount. If a third citation for a Code Offense is issued by the City to the alleged violator and/or the owner of the property upon which the violation has occurred within twenty four (24) months of the issuance of a previous citation for the same Code Offense, the civil penalty shall increase by 50% over the scheduled civil penalty amount. If a fourth citation for a Code Offense is issued by the City to the alleged violator and/or the owner of the property upon which the violation has occurred within twenty-four (24) months of the issuance of a previous citation for the same Code Offense, the civil penalty shall increase by 100% over the scheduled civil penalty amount.

SECTION 2. This Ordinance shall take effect upon its passage and publication according to law.

ADOPTED by the City Council of the City of Montrose, Wright County, Minnesota this 25th day of February, 2008.

IN FAVOR: *Beaton, Knobel, Kauffman, Nelson, Petersen*

OPPOSED: *Ø*

CITY OF MONTROSE

Charlie Nelson
Charlie Nelson, Mayor

Barbara Swanson
Barbara Swanson, City Clerk