

..title

An Ordinance creating Chapter 53 of the Saint Paul Administrative Code entitled “Administrative Hearing Procedures”.

..Body

SECTION 1

Whereas...

SECTION 2

Section 53.1 of the Saint Paul Administrative Code is hereby established to read as follows:

53.1 Definitions: the following terms will have the following meanings:

- a) *Additional Administrative Remedy or Remedy* means a civil penalty provided for in the legislative code that is a payment, in addition to the payment of an Administrative Fine, to be paid to a victim, other than the City, for an Ordinance Violation; including but not limited to restitution and liquidated damages.
- b) *Administrative Citation* means written notice of violation of a City Ordinance which is not also a violation of state statute.
- c) *Administrative Hearing* means a hearing held to determine whether a Respondent violated a City Ordinance.
- d) *Administrative Hearing Officer* means the Presiding Officer over an Administrative Hearing who is either an employee of the City of Saint Paul or employed by or hired on a contract basis by the City of Saint Paul to conduct Administrative Hearings.
- e) *Administrative Law Judge* means an employee of the Minnesota Office of Administrative Hearings.
- f) *Administrative Fine or Fine* means the sum of the civil penalty imposed for violation of a City Ordinance, other than the Additional Administrative Remedy.
- g) *Appearance* means having a Final Disposition of an Administrative Citation.
- h) *Final Disposition or Disposition* means the earlier of:
 - 1) A failure to respond by a deadline set in this Chapter or City Ordinance;
 - 2) The payment and acceptance of a Proposed Penalty or penalty recommended by an Administrative Hearing Officer; or
 - 3) A determination by the City Council that a Responded committed an Ordinance Violation whether or not a penalty is imposed.
- i) *Department* means the Department that issued an Administrative Citation.

- j) *Director* means the Director of the department that issued the Administrative Citation, or their designee.
- k) *Matrix Penalty* means the presumptive Administrative Fine, Additional Administrative Remedy, and other penalties as described in the Ordinance imposed for violation of an Ordinance as stated in the Ordinance.
- l) *Ordinance* means the Chapter of the Saint Paul Legislative Code containing the Matrix Penalty that is being enforced by the Department.
- m) *Ordinance violation* means failure to comply with a specific requirement or prohibition within an Ordinance.
- n) *Penalty* means the Administrative Fine, Additional Administrative Remedies, and other civil penalties imposed by the City Council for violation of an Ordinance.
- o) *Presiding Officer* means an independent hearing examiner, who is either an Administrative Hearing Officer or Administrative Law Judge presiding over an Administrative Hearing.
- p) *Proposed Penalty* means the Administrative Fine, Additional Administrative Remedy and other civil penalties as described in the Ordinance proposed by the Department for violation of the Ordinance. If the Proposed Penalty is different from the Matrix Penalty, the Department must explain in writing the substantial and compelling reasons for deviation on the Administrative Citation.
- q) *Respondent* means the recipient of the Administrative Citation.
- r) *Settlement Discussion* means an optional process prior to issuance of an Administrative Citation involving the Department and a potential Respondent to discuss resolution of an alleged Ordinance Violation.
- s) *Warning Notice* means a written notice sent to a Respondent that the City believes, based on an investigation, has violated an Ordinance, and which outlines remedial procedures to be taken by the Respondent to avoid issuance of an Administrative Citation.

SECTION 3

Section 53.2 of the Saint Paul Administrative Code is hereby established to read as follows:

53.2 Administrative Citation Procedure

- a) *Warning Notice*. Unless the Ordinance outlines a separate procedure, prior to issuing an Administrative Citation, the Department must notify the potential Respondent of the Ordinance Violation, the steps that must be taken in order to comply with the Ordinance, and a deadline for compliance. A Warning Notice is not required for an identical second or subsequent Ordinance Violation, or if a Warning Notice has been given in the past 12 months for the same Ordinance violation. Engagement in a settlement discussion satisfies this requirement. A Warning Notice must be provided if the prior Administrative Citation resulted in imposition of a fine without appearance or response from the Respondent.

- b) *Issuance of Administrative Citation.* Unless the Ordinance outlines a separate procedure, a Department may issue an Administrative Citation when a Respondent has failed to meet the terms of the Warning Notice, unless the Warning Notice is not required. The Administrative Citation must be approved by the Director and the City Attorney's Office. The Respondent will be provided a written Administrative Citation that must include the factual basis for that Administrative Citation and the Proposed Penalty. The Notice will inform the Respondent that they are entitled to a hearing to challenge the Administrative Citation, how to request such a hearing, and that the Respondent has 30 days from the date of the Notice to request the Hearing. If Respondent fails to respond within 30 days, the matter will be set on the consent agenda of the City Council for approval of the Proposed Penalty.

SECTION 4

Section 53.3 of the Saint Paul Administrative Code is hereby established to read as follows:

53.3 Administrative Citation Requirements

- a) *Determination of Type of Hearing.* The Administrative Citation must notify the Respondent of their options to respond, which are to:
1. Accept the Proposed Penalty. Payment of the Proposed Penalty will be considered to be a waiver of the hearing to which the Respondent is entitled, an acceptance of any non-monetary penalties, and an Appearance.
 2. Admit the facts outlined in the Administrative Citation, by submitting a written admission of the facts and waiver of right to administrative hearing, but request an opportunity to present arguments to the City Council of substantial and compelling mitigating circumstances that justify a departure from the Proposed Penalty.
 3. Request a hearing before the Presiding Officer to contest the facts of the Administrative Citation.
 4. Consequences of failure to respond – Failure to respond by the deadline will be considered an Appearance and an admission of the allegations contained in the Administrative Citation. If a Respondent fails to respond, the matter will be placed on the City Council consent agenda for imposition of the Proposed Penalty.
- b) *Additional procedures where required.* Where the provisions of any statute or ordinance require additional notice or hearing procedures, such provisions supersede inconsistent provisions of this Chapter. This includes, without limitation by reason of this specific reference, Minnesota Statutes Chapter 364 and Minnesota Statutes Section 340A.415.

SECTION 5

Section 53.4 of the Saint Paul Administrative Code is hereby established to read as follows:

53.4 City Council Adjudication Procedure

- a) *Respondent Submits Written Admission of Alleged Facts.* The City Council will schedule a public hearing. The City Council will provide the Respondent an opportunity to present oral and written arguments regarding the Proposed Penalty and whether there are substantial and compelling circumstances exist to justify deviation from the Matrix Penalty. Upon conclusion of that hearing, the City Council must consider the

entire record including admitted facts and arguments presented at the hearing. The City Council must determine what, if any, Penalty will be imposed, the determination of which must be made by resolution. If the Penalty issued by City Council deviates from the Matrix Penalty, the resolution must articulate the substantial and compelling reasons for deviation.

- b) *Following Administrative Hearing.* Upon receipt of the report from the Presiding Officer, the City Council will schedule a public hearing. The City Council will provide the Respondent and the Department an opportunity to present oral or written arguments alleging error on the part of the Presiding Officer in the application of the law or interpretation of the facts, and to present argument related to the Proposed Penalty. Upon conclusion of that hearing, the City Council must consider the entire record, including arguments presented at the hearing and the Presiding Officer's findings, conclusions, and recommendations. The City Council must determine what, if any, penalty will be imposed, the determination of which must be made by resolution. The City Council may accept, reject or modify the findings, conclusions, and recommendations of the Presiding Officer.
- c) *City Council action; resolution to contain findings.* Where the City Council imposes a Penalty, the resolution must contain its findings and basis for the imposition of the Penalty. In the event an Administrative Hearing has been held, the City Council may adopt all or part of the findings, conclusions and recommendations of the Presiding Officer, and incorporate the same in its resolution imposing a penalty.
- d) *Imposition of costs.* Upon request of the Department, and provided that the Respondent was notified of the request prior to the Administrative Hearing, the City Council may impose upon a Respondent some or all of the costs of the Administrative Hearing. These costs include, but are not limited to, the cost of the administrative law judge, stenographic and recording costs, copying costs, city staff and attorney time for which adequate records have been kept, rental of rooms and equipment necessary for the hearing, and the cost of expert witnesses. The City Council may impose all or part of such costs in any given case upon written findings that:
 - 1. The position, claim or defense of the Respondent was frivolous, arbitrary or capricious, made in bad faith, or made for the purpose of delay or harassment;
 - 2. The violation created a serious danger to the public health, safety or welfare;
 - 3. The violation involved unreasonable risk of harm to vulnerable persons, or to persons for whose safety the Respondent is or was responsible;
 - 4. The Respondent was sufficiently in control of the situation and therefore could have reasonably avoided the violation, such as but not limited to the failure to renew required insurance policies; or
 - 5. The Ordinance violation is listed as a violation that allows for imposition of costs.

SECTION 6

Section 53.7 of the Saint Paul Administrative Code is hereby established to read as follows:

53.7 Administrative Fine Penalty Matrices. Each ordinance that is to be enforced by Administrative Citation must identify which of the matrices below will apply to each type of violation of that ordinance, in addition to additional consequences for each Ordinance Violation, if any. Ordinance Violations assigned to Matrix A and B will be heard by an Administrative Hearing Officer. Ordinance Violations assigned to Matrix C will be heard by an Administrative Law Judge. In the event more than one Ordinance Violation is on a single

citation, if any violation is from Penalty Matrix C all Ordinance Violations from that citation will be heard by an Administrative Law Judge.

a) *Matrix A.*

1 st Violation	2 nd Violation	3 rd Violation	4 th Violation
\$ Fine	\$ Fine	\$ Fine	\$ Fine

b) *Matrix B.*

1 st Violation	2 nd Violation	3 rd Violation	4 th Violation
\$ Fine	\$ Fine	\$ Fine	\$ Fine

c) *Matrix C.*

1 st Violation	2 nd Violation	3 rd Violation	4 th Violation
\$ Fine	\$ Fine	\$ Fine	\$ Fine

SECTION 7

Section 53.6 of the Saint Paul Administrative Code is hereby established to read as follows:

53.6 Determination of Penalty

- a) *Presumptive penalties for certain violations.* Every Ordinance enforced by Administrative Citation must include which of the three matrices listed in Sec. 53.7(a)-(c) apply to each Ordinance Violation. The Matrix Penalty for a single Administrative Citation may exceed the Matrix Penalty for a single Ordinance Violation due to multiple Ordinance Violations in one (1) Administrative Citation. The Matrix Penalty is presumed to be appropriate for every case; however the Department or the City Council may deviate from that penalty where there exist substantial and compelling reasons to do so. When deviating from these standards, the Department or the City Council must provide written reasons that specify why the penalty selected was more appropriate.
- b) *Multiple violations.* An Administrative Citations will be treated as a "First Violation" provided that any prior Administrative Citation issued by the Department are not yet final. The Matrix Penalty for each such violation will fall under the "1st Violation" column on the Penalty Matrix. The total amount of fine imposed may be aggregated such that the City may impose a Matrix Penalty each violation articulated on any Administrative Citation.
- c) *Violations occurring after the Date of Final Disposition.* Only Ordinance Violations occurring after the Date of Final Disposition of a prior Administrative Citation can be considered a "2nd Violation" for purposes of determining the Matrix Penalty. The same procedures shall apply to a second, third or fourth Administrative Citation.
- d) *Subsequent appearances.* Upon a second, third or fourth violation by a particular Respondent:
 - (1) For Penalty Matrix A, the Ordinance Violation for the violation or violations giving rise to the subsequent appearance must be the same Ordinance Violation(s).

- (2) For Penalty Matrix B and C, the Ordinance Violation for the violation or violations giving rise to the subsequent appearance may be any Ordinance Violation.
- e) *Computation of time.*
1. *Second Violation.* A second violation within _____(XX) months of Final Disposition will be treated as a Second Violation for the purpose of determining the Matrix Penalty.
 2. *Third Violation.* A third violation within _____ (XX) months of the first Final Disposition will be treated as a Third Violation for the purpose of determining the Matrix Penalty.
 3. *Fourth Violation.* A fourth violation within _____(XX) months of the first Final Disposition will be treated as a Fourth Violation for the purpose of determining the Matrix Penalty.
 4. Any violation not covered by subsections (1), (2) or (3) above will be treated as a First Violation. Measurement of the xx-, xx-, or xx-month period shall be as follows: The beginning date will be the earliest violation's Date of Final Disposition, and the ending date will be the date the new violation occurred. In the case of multiple new violations, the ending date to be used shall be the date of the violation last in time.

SECTION 8

Section 53.7 of the Saint Paul Administrative Code is hereby established to read as follows:

53.7 Hearing Procedures. The following procedures apply to hearings before an Administrative Law Judge and Administrative Hearing Officer.

- a) *Opportunity to be Heard.* The Respondent will be provided an opportunity to present evidence and argument as well as confront adverse testimony or evidence by reasonable cross-examination and rebuttal evidence. The Presiding Officer will hear all evidence as may be presented on behalf of the City and the Respondent, and will receive and give weight to evidence, including hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. The Presiding Officer may in their discretion permit other interested persons the opportunity to present testimony or evidence or otherwise participate in such hearing. The burden of proof will be on the City, by a preponderance of the evidence.
- b) *Record.* The Presiding Officer will receive and keep a record of all proceedings including testimony and exhibits. A copy of the recording and exhibits may be obtained from the City Clerk/Department. The hearing will not be transcribed.
- c) *Respondent may be represented.* The Respondent may represent themselves or choose to be represented by an attorney, but must appear at the hearing regardless.
 1. *Respondent to Notify City of Representative.* If Respondent intends to be represented by another, Respondent must provide the City Attorney the name and address of the individual who will represent Respondent at the Hearing, by mail or electronic means.
 2. *City to Notify Respondent of City Attorney.* After Respondent requests an Administrative Hearing, the City will provide Respondent notice of the name and

contact information for the City Attorney assigned to the Administrative Hearing, by mail or electronic means.

- d) *Exchange of Evidence and Witness Lists.* No less than seven (7) days prior to the Administrative Hearing, the City must send Respondent or Respondent's designated representative, by mail or electronic means, a list of proposed witnesses and copies of all evidence to be offered by the City during the Administrative Hearing. No less than seven (7) days prior to the Administrative Hearing, the Respondent must send the assigned City Attorney, by mail or electronic means, a list of proposed witnesses and copies of all evidence to be offered by the Respondent during the Administrative Hearing. No evidence may be offered, and no witness may testify unless the above-referenced information has been provided.
- e) Final Decision of Presiding Officer.
1. If the matter is heard before the Administrative Hearing Officer, the Administrative Hearing Officer will issue a decision at the end of the hearing regarding whether the Ordinance has been violated and what penalty should be imposed.
 - i. If the Administrative Hearing Officer determines that the Ordinance has not been violated, the matter is dismissed.
 - ii. If the Administrative Hearing Officer determines that the Ordinance has been violated, the Respondent may:
 1. Accept the penalty. Payment of the penalty recommended by the Administrative Hearing Officer will be considered to be a waiver of the City Council hearing and an acceptance of any non-monetary penalties; or
 2. Submit a written request for an appeal before City Council. Such a request must be received by the City within thirty (30) days of the date of the Administrative Hearing. Upon request for a City Council appeal, the Administrative Hearing Officer's determination will be put in writing and a public hearing will be held before the Council regarding whether Respondent has violated the Ordinance and what penalty, if any, will be imposed.
 3. If Respondent fails to pay or request a public hearing before the Council within thirty (30) days of the date of the Administrative Hearing, the matter will be set on the consent agenda for imposition of the penalty recommended by the Administrative Hearing Officer.
 2. If the matter is heard before an Administrative Law Judge, the Administrative Law Judge will issue written findings of fact, conclusions of law, and a recommendation as to the appropriate penalty. The Respondent or the Department may file exceptions to the report of the Administrative Law Judge within thirty (30) days of receipt of the report. If no party files exceptions to the report of the Administrative Law Judge, the matter will be set on the consent agenda before the City Council. If either party files exceptions to the report of the Administrative Law Judge, the City Council will schedule the matter for a public hearing.

SECTION 9

Section 53.8 of the Saint Paul Administrative Code is hereby established to read as follows:

Section 53.8 Severability

The provisions of this chapter are severable, and if any provisions of this chapter, or application of any provisions of this chapter to any circumstance, are held invalid, the application of such provisions to other circumstances and the remainder of this chapter will not be affected.

SECTION 10

This Ordinance will take effect and be in force thirty (30) days following passage, approval, and publication.