

Enacted July 16, 2002

ORDINANCE NUMBER 15

AN ORDINANCE RELATING TO ADMINISTRATIVE CITATIONS AND CIVIL PENALTIES FOR VIOLATION OF DISTRICT ORDINANCES.

PART I.

Purpose

Section 1.01. The Board of Directors finds that there is a need for educating the public and for alternative methods of enforcing the District ordinances. There are certain negative consequences for both the District and the accused when criminal fines and penalties are the only available enforcement mechanism. Criminal law enforcement personnel and the criminal enforcement process do not always regard District ordinance violations as having sufficient priority. The delay inherent in that system does not ensure prompt resolution. Reluctance to label citizens as criminals for violations of ordinances may discourage enforcement. The higher burden of proof and the potential of incarceration do not appear appropriate for administrative enforcement. Accordingly, the Board 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 District ordinance violations. The District thus enacts this ordinance in order to fully execute its duties as provided in Minnesota Statutes, Sections 103B.651 to 103B.691.

PART II.

General Provisions

Section 2.01. Administrative offense. A violation of a provision of the District ordinances is an administrative offense that may be subject to an administrative citation and civil penalties. Each day a violation exists constitutes a separate offense.

Section 2.02. Civil penalty. An administrative offense may be subject to a civil penalty not exceeding \$1,000.00, plus any costs, including restitution or abatement, as provided herein.

Section 2.03. Amount of civil penalty. The Board of Directors must adopt by resolution a schedule of civil penalties for offenses initiated by administrative citation. The Board of Directors is not bound by that schedule when a matter is appealed to it for administrative review.

Section 2.04. Procedures. The Board of Directors must appoint one or more education and enforcement officer and adopt procedures to administer the administrative citation program.

Section 2.05. Enforcement authority. The Board of Directors must authorize by resolution the appointment of one or more education and enforcement officers and any persons other than sworn peace officers who shall enforce District ordinances by means of administrative citation.

Part III.

Administrative Citation

Section 3.01. Citation issuance. A person authorized to enforce provisions of the District ordinances may issue an administrative citation upon probable cause that a code violation has occurred. The citation must be issued in person or by mail to the person alleged to be responsible for the violation or may be attached to the watercraft or vehicle in the case of a watercraft or vehicle offense. The citation must state the date, time, and nature of the offense, the name of the authorized enforcement person issuing the citation, the amount of the scheduled civil penalty, and the manner for paying the civil penalty or appealing the citation.

Section 3.02. Responsibility of the accused. The person responsible for the violation must either pay the scheduled civil penalty or request a hearing within ten days after personal service of the citation or 13 days after mailed service of the citation. Payment of the civil penalty constitutes admission of the administrative violation. A late payment fee of 10 percent of the scheduled civil penalty amount may be imposed under Section 7.04. Admission of an administrative violation shall not be admission to any crime.

Section 3.03. Criminal option. Participation by any charged person in these administrative enforcement proceedings is voluntary. Any charged person may withdraw from these proceedings at any stage and elect to have the matter treated as a criminal proceeding by so informing the District or its representatives. The administrative citation will be withdrawn and a criminal citation or complaint issued for the same offense.

PART IV.

Administrative Hearing

Section 4.01. Hearing officer. The Board of Directors will periodically appoint a hearing officer to hear and determine a matter for which a hearing is requested. The accused will have the right to request no later than five days before the date of the hearing that the assigned hearing officer be removed from the case. One request for each case will be granted automatically by the Board. A subsequent request must be directed to the

assigned hearing officer who will decide whether he or she has reason to withdraw. If the hearing officer withdraws, the District Staff will assign another hearing officer. The hearing officer is not a judicial officer but is a public officer as defined by Minn. Stat., §609.415.

Section 4.02. Orders. Upon the hearing officer's own initiative or upon written request of an interested party demonstrating the need, the officer may issue an administrative order served in the manner for serving subpoenas in a civil action 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 order is responsible for serving the order in the manner provided for civil actions and for paying the fees and expenses of a witness. A person served with an order may file an objection with the hearing officer promptly but no later than the time specified in the order for compliance. The hearing officer may cancel or modify the order 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 such an order may be subject to such penalties, including default, as the hearing officer may deem fair under the circumstances. Alternatively, the party requesting the order may seek an order from district court directing compliance.

Section 4.03. Notice. Notice of the hearing must be served in person or by mail on the person responsible for the violation at least 10 days in advance, unless a shorter time is accepted by all parties.

Section 4.04. Evidence. At the hearing, the parties will have the opportunity to present testimony and question any witnesses, but strict rules of evidence will not apply. The hearing officer must tape record the hearing and receive testimony and exhibits. The officer must 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. In a case of alleged pollution, alleged safety or sanitation violations, or alleged detriment to the quality of waters or wildlife, evidence of an improper or prohibited action may be considered sufficient proof without demonstrating that the action resulted in actual harm.

Section 4.05. Determination. The hearing officer has the authority to determine that a violation occurred; to dismiss a citation; to impose the scheduled civil penalty; to reduce, stay, or waive a scheduled civil penalty either unconditionally or upon compliance with appropriate conditions; to refer the matter to the Board for suspension or revocation of a District-issued license; to order the accused person to cease and desist from conduct in violation; to order the performance remedial measures; and to impose or recover costs, including restitution and abatement of a nuisance or hazardous condition, as may be incurred by the District and other parties in conducting these proceedings and in undertaking cleanup or remedial measures. When imposing a penalty for a violation, the hearing officer 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) subsequent remedial measures taken by the violator after issuance of the citation;
- (f) the good faith effort by the violator to comply;
- (g) the economic impact of the penalty on the violator;
- (h) the impact of the violation upon the community;
- (i) the impact of the violation upon the environment of the lake, shoreland, or watershed; and
- (j) any other factors appropriate to a just result.

Section 4.06. Limited appeal Except for matters subject to administrative review under Part V, the decision of the hearing officer is final without any further right of administrative appeal. In a matter subject to administrative review under Part V, the hearing officer's decision may be appealed to the Board of Directors by submitting a request in writing to the District staff within 10 days after the hearing officer's decision.

Section 4.07. Failure to attend hearing. When the accused fails without good cause to attend the hearing, the hearing officer will either renotice the civil citation or refer the matter for criminal prosecution. Failure to appear a second time constitutes withdrawal from these administrative proceedings and the hearing officer will refer the matter for criminal prosecution. Examples of "good cause" are: death or incapacitating illness of the accused or a family member; 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 and intentional delay.

PART V.

Administrative Review

Section 5.01. Appeal to the Board. The hearing officer's decision in any of the following matters may be appealed by a party in writing to the Board of Directors for administrative review:

- a. an alleged failure to obtain a permit, license, or other approval from the Board of Directors as required by an ordinance;

- b. an alleged violation of a permit, license, other approval, or the conditions attached to the permit, license, or approval, that was granted by the Board of Directors; and/or
- c. an alleged violation of regulations governing a person or entity who has received a license granted by the Board of Directors.

Section 5.02. Review by the Board. The review will be conducted by the Board of directors after notice served in person or by mail at least 10 days in advance. The Board may request parties to present oral or written arguments regarding the hearing officer's decision.

Section 5.03. Board consideration. The Board of Directors must consider the record, the hearing officer's decision, and any additional arguments before making a determination. The Board is not bound by the hearing officer's decision, but may adopt all or part of the officer's decision. The Board's decision must be in writing.

Section 5.04. Board finding, penalty, and order. If the Board makes a finding of a violation, it may impose a civil penalty not exceeding \$1,000 per day per violation, and may consider any or all of the factors contained in Section 4.05(a) through (j). The Board may also reduce, stay, or waive a civil penalty unconditionally or based on reasonable and appropriate conditions. In addition to the civil penalty, the Board may impose or recover costs, including restitution and abatement of a nuisance or hazardous condition, as may be incurred by the District and other parties in conducting these proceedings and in undertaking cleanup or remedial measures. Further, the Board may order the performance of remedial measures and may order the accused person to cease and desist from conduct in violation.

Section 5.05. License revocation or suspension. In addition to imposing a civil penalty, the Board may suspend or revoke a District-issued license, permit, or other approval associated with the violation. The Board will suspend or revoke a license when, in its judgement, such action will serve to cease, abate, clean up, or remediate a violation.

Part VI.

Judicial Review

Section 6.01. Judicial review. An aggrieved party may obtain judicial review of the decision of the hearing officer or the Board of Directors by proceeding under a writ of certiorari or other means authorized by law. At any time prior to the hearing herein, an aggrieved party may require the issuance of a criminal citation or complaint in lieu of an administrative citation.

Part VII.

Recovery of Civil Penalties

Section 7.01. Failure to pay penalty. If a civil penalty is not paid within the time specified, it will constitute a personal obligation of the violator.

Section 7.02. Property lien. Nothing in this provision precludes the District from seeking and obtaining a lien on the property of the violator to recover the civil penalty or costs incurred by the District or other parties, including restitution and abatement of a nuisance or hazardous condition, in undertaking cleanup or remedial measures.

Section 7.03. Personal obligation. A personal obligation may be collected by appropriate legal means.

Section 7.04. Late fee. A late payment fee of 10 percent of the civil penalty shall be assessed for each 30-day period, or part thereof, that the civil penalty remains unpaid after the due date.

Section 7.05. Revocation of license. Failure to pay a civil penalty is grounds for suspension or revocation of a license related to the violation

Part VIII.

Criminal Prosecution

8.01. Failure to pay penalty. Failure to pay a civil penalty within 30 days after it was imposed, or such other time as may be established by the hearing officer or the Board of Directors, may be deemed by the hearing officer or the Board to constitute withdrawal from these administrative proceedings and the District may prosecute the offense as a criminal matter.

8.02. Limit to prosecution. After final adjudication under the administrative penalty procedure herein, the District may not prosecute a criminal violation in district court based on the same set of facts. This does not preclude the District from pursuing a criminal conviction for a violation of the same provision based on a different set of facts. A different date of violation will constitute a different set of facts.

Part IX.

Adoption of State Laws and Rules

9.01. Enforcement. The Conservation District hereby adopts by reference, except where in conflict with District ordinance or resolution, the following state laws and rules which shall be enforceable under this ordinance:

Minnesota Statutes, Section 84.0895, regarding protection of threatened and endangered species;

Minnesota Statutes, Section 84.091, regarding destruction of aquatic vegetation in public waters;

Minnesota Statutes, Chapter 84D, and Minnesota Rules, Part 6216, regarding harmful exotic species management;

Minnesota Statutes, Chapter 86B, regarding water use policy including buoys and water safety;

Minnesota Statutes, Chapter 97A, regarding game and fish;

Minnesota Statutes, Chapter 97C, regarding discharge of pollutants into waters; permits required for structures in public waters; fishing contests and fishing houses;

Minnesota Statutes, Chapter 103D, regarding watershed law;

Minnesota Statutes, Chapter 103E, regarding drainage authority;

Minnesota Statutes, Chapter 103F, regarding soil loss and wetland preservation;

Minnesota Statutes, Chapter 103G, regarding alteration of public waters, filing and dredging in public waters, drainage of public waters, drainage of wetlands, work in public waters, surface water appropriations, deicing water bodies, harvesting or destruction of aquatic plants, and control of aquatic vegetation and organisms;

Minnesota Statutes, Chapter 115, regarding pollution of waters;

Minnesota Rules, Part 6115, regarding fill, excavation, structures, water level controls, bridges, culverts, intakes and outfalls, permit reviews and coordination with other agencies, enforcement, drainage, and the conservation and use of water;

Minnesota Rules, Part 6120, regarding subdivision, use, and development of shorelands of public waters and local shoreland management controls.

Enforcement of state law and rule under this ordinance is intended to supplement, not supplant, enforcement by state agencies and other local agencies.

Part X.

Severability

The provisions of this ordinance are severable. Should any part, section, subsection, clause or other provision of this ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

Part XI.

Effective Date

This Ordinance shall be effective six months after enactment.