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# Chapter 1

## Code Introduction and Enforcement

### Section 100 - General Provisions

**100.01. Code Citation.** This code of ordinances shall be known as the Silver Bay City Code and may be cited in the Silver Bay City Code as "this Code," "the Code," "City Code" or "Code." Reference or citation to the Code includes amendments and additions to the Code.

**100.02. Existing Rights and Liabilities.** The repeal of prior ordinances and the adoption of this Code shall not affect, in any manner, the rights and liabilities existing at the time of repeal and the enactment of this Code. Since provisions in this Code are substantially the same as preexisting ordinances, they shall be considered as continuations and not as new enactments. Any act done, offense committed, or right accruing or liability, penalty, forfeiture, or punishment incurred or assessed before the effective date of this Code is not affected by the enactment of the Code.

**100.03. Numbering.** Each section number of this Code consists of two component parts separated by a decimal. The first digit of the number refers to the chapter number and the digits after the decimal refers to the position of the section within the chapter. When the chapter is divided into parts, the figure immediately to the left of the decimal corresponds to the part number.

**100.04. Title Headings: Cross References.** Chapter, part, section, subdivision, and other titles shall not be considered part of the subject matter of this Code, but are for convenience only and not as comprehensive titles.

**100.05. Additions and Amendments.** New ordinances proposing amendments or additions to the Code shall be assigned appropriate code numbers and shall be incorporated into the Code as of their effective date. Reference or citation to the Code includes such amendments and additions. When an ordinance is integrated into the Code, the title, enacting clause, section numbers, definitions of terms identical to those contained in this Code, the clause indicating date of adoption and validating signatures and dates may be omitted. In integrating ordinances into the Code the Administrator, in cooperation with the City Attorney, may: correct obvious grammatical, punctuation and spelling errors; change reference numbers to conform with sections, articles, and chapters; substitute figures for written words and vice versa; substitute dates for the words "the

effective date of this ordinance" and do like actions to insure a uniform Code without, however, altering the meaning of the ordinances enacted.

**100.06. Copies.** Copies of this Code shall be kept in the office of the Administrator for public inspection or sale for a reasonable charge.

**100.07. Severability.** If any portion of this Code, or any part of it hereafter enacted, is held invalid or suspended, such invalidity or suspension shall not apply to any other part of the Code unless specifically provided otherwise.

### **Section 110 - Definitions and Interpretations**

**110.01. Definitions.** Unless the context clearly suggests otherwise, the following words and phrases have the meaning given them in this Section.

**Subd. 1. City.** "City" shall mean the City of Silver Bay.

**Subd. 2. Administrator.** "Administrator" shall mean the City of Silver Bay Administrator. References to "Clerk" or "Treasurer" shall mean "Administrator."

**Subd. 3. Council.** "Council" shall mean the Silver Bay City Council.

**Subd. 4. Person.** "Person" shall mean any natural individual, firm, partnership, association or corporation. As applied to partnerships or associations, the term includes the partners or members. As applied to corporations, the term includes the officers, agents or employees.

**Subd. 5. State.** "State" shall mean the State of Minnesota.

**110.02. Interpretations.** The definitions and rules of construction, presumptions, and miscellaneous provisions contained in Minnesota Statute Chapter 645 are adopted by reference and made a part of this Code. References in that chapter to "laws and statutes" mean provisions of this Code and references to the "legislature" mean the Council.

### **Section 120 - Violations and Penalties.**

**120.01. Petty Misdemeanor.** Whenever an act or omission is declared by this Code to be a petty misdemeanor, any person violating the provision shall, upon conviction, be subjected to a fine not to exceed the maximum allowed under state law.

**120.02. Misdemeanors.** Unless another penalty is expressly provided in this Code, any person violating any provision of this Code, including any provision declaring an act or omission to be a

misdemeanor shall, upon conviction, be subjected to a fine and/or imprisonment in an amount or for a term not to exceed the maximums allowed by state law plus, in either case, the costs of prosecution as permitted by Minnesota Statutes, Rules of Court for the District Courts of Minnesota, and Minnesota Rules of Criminal Procedure.

**120.03. Separate Violations.** Unless otherwise provided, each act of violation and every day on which a violation occurs or continues is a separate offense.

**120.04. City Personnel Liability.** The failure of any officer or employee of the City to perform any official duty imposed by this Code shall not subject the officer or employee to the penalty imposed for violation unless a penalty is specifically provided for such failure.

### **Section 130. Administrative Citations and Civil Penalties.**

Sections 130.01 through 130.08 shall govern administrative citations and civil penalties for violations of the City Code.

**130.01. Purpose.** The Council finds that there is a need for alternative methods of enforcing the City Code. 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 judicial system does not ensure prompt resolution. Citizens resent being labeled as criminals for violations of administrative regulations. The higher burden of proof and the potential of incarceration do not appear appropriate for most administrative violations. The criminal process does not always regard Code violations as being important. Accordingly, the 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 shall be in addition to any other legal remedy which may be pursued for Code violations.

#### **130.02. General Provisions.**

**Subd. 1. Administrative Penalties.** A violation of any provision of the Code or the acts prohibited in Section 130.00 may be an administrative offense, which may be subject to an administrative citation and civil penalties pursuant to Sections 130.02 through 130.08. Each day a violation exists constitutes a separate offense.

**Subd. 2. Civil Penalty.** An administrative offense may be subject to a civil penalty as prescribed by Subd. 3.

**Subd. 3. Fee Schedule.** The Council must adopt by resolution a Schedule of Fines for offenses initiated by administration citation. The Council is not bound by that schedule when a matter is appealed to it for administrative review.

**130.03. Administrative Citation.**

**Subd. 1. Issuance of Citation.** Any person authorized to enforce provisions of the Code may issue an administrative citation upon belief that a Code violation has occurred. The citation must be issued to the alleged offending party in person or by mail or attached to the motor vehicle in the case of a vehicular offense. The citation must state the date, time, and nature of the offense, the name of the issuing officer, the amount of the scheduled fine, and the manner for paying the fine or appealing the citation.

**Subd. 2. Payment of Fine - Hearing Request.** The alleged offending party must either 1) pay the scheduled fine or 2) request a hearing from the Administrator within seven (7) days of the date of issuance of the citation. Payment of the fine constitutes admission of the violation. A late payment fee of 10% of the scheduled fine amount shall be imposed in accordance with Section 130.07, Subd. 4.

**130.04. Administrative Hearing.**

**Subd. 1. Hearing Officer.** The Council shall periodically approve a list of persons to be designated as Hearing Officers, from which the Administrator will randomly select a Hearing Officer to hear and determine a matter for which a hearing is requested. The accused shall have the right to request, no later than five (5) days before the date of the hearing, that the assigned Hearing Officer be removed from the case. One such request for each case will be granted automatically by the Administrator. The Hearing Officer is not a judicial officer but is a public officer as defined by Minn. Stat. § 609.415.

**Subd. 2. Issuance of Subpoenas.** Upon the Hearing Officer's own initiative or upon written request of an interested party demonstrating the need, the Hearing Officer may issue a subpoena 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 subpoena shall be responsible for serving the subpoena in the manner provided for in civil actions and for paying the fees and expenses of any witness. A person served with a subpoena may file an objection with the Hearing Officer promptly but no later than the time specified in the subpoena for compliance. The Hearing Officer may cancel or modify

the subpoena if it is unreasonable or oppressive. Any person who, without just cause, fails or refuses to attend and testify or to produce the required documents in obedience to a subpoena shall be guilty of a misdemeanor. Alternatively, the party requesting the subpoena may seek an order from the Lake County District Court directing compliance.

**Subd. 3. Notice.** The Administrator shall serve notice of the hearing on the alleged offending party in person or by mail at least ten (10) days in advance of the hearing date, unless a shorter time is accepted by all parties. Service by U.S. Mail is effective upon the date of mailing.

**Subd. 4. Hearing Procedure.** At the hearing, the parties will have the opportunity to present testimony and question witnesses. Strict rules of evidence shall not apply. The Hearing Officer shall tape record the hearing, receive testimony and retain all entered exhibits. The Hearing Officer shall receive and give weight to evidence, including hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs.

**Subd. 5. Authority of Hearing Officer.** The Hearing Officer has the authority to determine that a violation occurred, to dismiss a citation, to impose the scheduled fine, and to reduce, stay, or waive a scheduled fine either unconditionally or upon compliance with appropriate conditions. When imposing a penalty for a violation, the Hearing Officer may consider any 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 notice of hearing;
- 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; or
- I. Any other factors appropriate to a just result.

The Hearing Officer may exercise discretion to impose a fine for more than one day of a continuing violation, but only upon a finding that: (1) the violation caused a serious threat of harm to the public health, safety, or welfare or that (2) the accused intentionally and

unreasonably refused to comply with the Code requirement. The Hearing Officer's decision and supporting reasons must be in writing.

**Subd. 6. Decision Final - Right of Review.** The decision of the Hearing Officer is final subject, however, to the right of administrative review by the Council set forth in Section 130.05.

**Subd. 7. Waiver.** The failure to pay the fine or request an appeal within thirty (30) days of the date of the citation, or the failure to attend a requested hearing, constitutes a waiver of the alleged offending party's rights to an administrative hearing and an admission of the violation. A Hearing Officer may waive this result upon good cause shown. Examples of "good cause" are:

- A. Death or incapacitating illness of the accused;
- B. A court order requiring the accused to appear for another hearing at the same time; or,
- C. Lack of proper service of the citation or notice of the hearing.

"Good cause" shall not include forgetfulness or intentional delay.

### **130.05. Administrative Review.**

**Subd. 1. Right of Review.** The Hearing Officer's decision may be appealed to the Council for administrative review.

**Subd. 2. Notice of Appeal.** Notice of appeal of a Hearing Officer's decision must be served on the Administrator within thirty (30) days of the date of the decision. Service shall be accomplished by personal service or by registered mail upon the Administrator.

**Subd. 3. Hearing Before Council.** Upon receipt of a notice of appeal of a Hearing Officer's decision, the Administrator shall set the matter on for special meeting before the Council, at the earliest available date. Notice of the special meeting shall be served upon the appealing party in person or by registered mail at least ten (10) days prior to the hearing. Service by U.S. Mail is effective upon mailing. The parties to the hearing shall have an opportunity to present oral or written arguments regarding the Hearing Officer's decision. The Hearing Officer shall provide the Administrator with the original exhibits received at the hearing for Council review.

**Subd. 4. Review by Council.** The Council shall consider the record before the Hearing Officer, the Hearing Officer's decision and any additional arguments before making a



determination. The Council is not bound by the Hearing Officer's decision. The Council's decision must be in writing.

**Subd. 5. Imposition of Penalties.** If the Council affirms that a violation occurred, it may impose a civil penalty as prescribed by Section 130.02, subd. 2, per day, per violation. The Council may also reduce, stay, or waive a fine in its discretion. Civil penalties are due within thirty (30) days of the date of the Council's written decision.

**Subd. 6. Imposition of Additional Conditions.** In addition to imposing a civil penalty, the Council may suspend or revoke any City-issued license, permit or other approval associated with the violation.

**130.06. Judicial Review.** An aggrieved party may obtain judicial review of the decision of the Hearing Officer or the Council in accordance with state law.

**130.07. Recovery of Civil Penalties.**

**Subd. 1. Method of Recovery.** If a civil penalty is not paid within the time specified, it shall constitute: (a) a lien upon the real property upon which the violation occurred if the property or improvements on the property was the subject of the violation and the property owner was found responsible for that violation or (b) a personal obligation of the violator in all other situations.

**Subd. 2. Special Assessment.** A lien may be assessed against the property and collected in the same manner as taxes.

**Subd. 3. Debt Collection.** A personal obligation may be collected by any appropriate legal means.

**Subd. 4. Late Payment Penalty.** A late payment fee of 10% of the fine shall be assessed for each thirty-day period, or part thereof, that the fine remains unpaid after the due date.

**Subd. 5. Suspension of License and Permits.** In addition to civil penalties, the City may suspend or revoke any license, permit, or other City approval associated with the violation.

**130.08. Criminal Penalties.** The following are misdemeanors, punishable in accordance with state law:

**Subd. 1. Failure to Pay Fine Imposed by Fee Schedule.** Failure to pay a fine imposed by an administration citation after the thirty (30) day period to file an appeal has expired under Section 130.03, Subd. 2.

**Subd. 2. Failure to Pay Fine Imposed by Hearing Officer.** Failure to pay a fine imposed by a Hearing Officer within thirty (30) days after it was imposed, or such other time as may be established by the Hearing Officer, unless the matter is appealed.

**Subd. 3. Failure to Pay Fine Imposed by Council.** Failure to pay a fine imposed by the Council within thirty (30) days after it was imposed, or such other time as may be established by the Council.