

**CHAPTER 99
ADMINISTRATIVE CODE ENFORCEMENT**

CHAPTER: 99 ADMINISTRATIVE CODE ENFORCEMENT

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99.1.1 : SCOPE AND PURPOSE

The enforcement of the City's Code is an important public service and is vital to the protection of the public's health, safety and welfare. The City has determined that there is a need for alternative methods of comprehensive code enforcement using both administrative and judicial remedies. That being said, life-safety issues may be regulated through an administrative enforcement process, and penalties for any violation should be enhanced. The purpose of this Title and Chapter is to establish administrative regulations for the enforcement of the Box Elder City Code of Ordinances in order to properly protect the public's health, safety and welfare.

99.1.2 : DEFINITIONS

The following words, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning.

ADMINISTRATIVE CODE ENFORCEMENT REMEDIES: Administrative citations, civil and criminal penalties as contained in this chapter.

CIVIL PENALTY: The administrative civil penalty assessed, and all costs incurred by the City from the first discovery of the violations until compliance is achieved. It includes, but is not limited to, administrative citation, staff time and expense in inspecting the property, sending notices, preparing reports and files, and/or other legal remedy permitted by law.

CODE: The City of Box Elder Code of Ordinances

CODE ENFORCEMENT OFFICER: Any City employee or agent of the City designated with the authority to enforce any provision of this Title/Chapter and issue notice of violations or administrative citations.

RESPONSIBLE PARTY: any person or persons in charge of the premises or location, or the person or persons responsible for the event or incident, and includes any of the following:

- A. The person or persons who own the property where the violation exists.
- B. The person or persons in charge of the premises where the violation exists.
- C. The person or persons using or renting the premises when the violation exists.
- D. If any of the above is a minor, a parent or guardian of such minor shall be the responsible party.
- E. If any of the above is a business entity, the manager or onsite supervisor where the violation exists.

ROLLING 12-MONTH PERIOD: Any 12 consecutive months following a violation.

99.1.3 : CRIMINAL PENALTY

For the purpose of this Title, the authorized Civil Penalty is a Class II Misdemeanor, as set forth in Title 34.99, or otherwise set by resolution by the City Council.

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99.2.1 : GENERAL ENFORCEMENT AUTHORITY

For the purpose of this Title and Chapter, any code enforcement staff member may issue notices of violation and administrative citations, inspect public and private property, and enforce any available administrative and judicial remedies.

99.2.2 : AUTHORITY TO INSPECT

Any code enforcement officer may enter upon any property and make any examination and surveys necessary to perform their enforcement duties. Inspections may include the taking of photographs, samples or other physical evidence. If an owner, occupant or agent refuses permission to enter to inspect, the code enforcement officer may seek an administrative inspection warrant pursuant to the procedures provided for in South Dakota Codified Laws.

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99.3.1 : ADMINISTRATIVE CITATIONS

Any person violating any provision of the Municipal Code, for which a civil penalty may be assessed, may be issued an administrative citation by code enforcement staff as provided for in this Title and Chapter.

A continuing violation of the Code, constitutes a separate and distinct violation for each day the violation exists.

A civil penalty shall be assessed by means of an administrative citation issued by code enforcement staff, and shall be payable directly to the City.

Penalties assessed by an administrative citation, shall be collected in accordance with the schedule of civil penalties listed herein, and/or passed by resolution by the City Council.

99.3.2 : ADMINISTRATIVE CITATION PROCEDURES

A code enforcement staff member may issue an administrative citation to a responsible party as described in this Title and Chapter. The citation shall be on forms approved by the City.

If the responsible party is not an individual, the code enforcement officer shall attempt to issue the owner an administrative citation. If the owner cannot be located, the administrative citation may be issued in the name of the entity, and given to a manager, onsite supervisor or agent of record. A copy of the administrative citation may also be mailed to the owner and/or agent of record.

The responsible party, if present during issuance of a citation, shall be requested to sign the administrative citation. If the responsible party refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity or issuance of the citation.

If the code enforcement officer cannot locate a responsible party, the administrative citation shall be mailed to the responsible party.

If no one can be located at the property, the administrative citation may be posted in a conspicuous place near the property, and a copy subsequently mailed to the responsible party.

In the case of mailing, the City shall mail the citation by certified mail to the address of the owner and/or agent of record for the property, at the address listed in the office of the Meade County or Pennington County Director of Equalization, and such action by the City shall meet any notice requirement of this Title and Chapter.

The failure of any responsible party to receive notice shall not affect the validity of any proceedings taken under this Title and Chapter.

99.3.3 : ADMINISTRATIVE CITATION PENALTIES ASSESSED

Any civil/administrative penalties assessed, shall be payable to the City within twenty (20) days from the date of the administrative citation.

Payment of the civil penalty shall not excuse the failure to correct the violation, nor shall it bar further enforcement action by the City.

If the responsible party fails to correct the violation, subsequent administrative citations and penalties may be issued for the same violations. The amount of the civil penalty shall increase at a rate specified in ordinance.

99.3.4 : FAILURE TO APPEAL OR PAY ADMINISTRATIVE CITATION PENALTIES

The failure of any person to file a timely appeal or pay the civil penalties within the time specified on the citation, shall constitute an irrebuttable presumption that a violation has occurred. Failure to pay, may result in the city attorney filing legal proceedings in magistrate or circuit court. Alternatively, the City may pursue any other legal remedy available to collect the civil penalty or correct the violation.

99.3.5 : CIVIL/ADMINISTRATIVE PENALTY – LIST

The following schedule lists the Code provisions for which civil penalties may be cited under this Title Chapter; although criminal enforcement is not prohibited.

- A. Public Works (Certain Provisions – See Fine List adopted by Resolution)**
- B. Traffic Code (Certain Provisions – See Fine List adopted by Resolution)**
- C. General Regulations (Certain Provisions-See Fine List adopted by Resolution)**
- D. Business Regulations (Certain Provisions – See Fine List adopted by Resolution)**
- E. General Offenses (Certain Provisions – See Fine List adopted by Resolution)**
- F. Land Uses (Certain Provisions – See Fine List adopted by Resolution)**

99.03.06: CIVIL/ADMINISTRATIVE PENALTY AMOUNT

Unless otherwise established by Resolution of the City Council, or set forth in each title and chapter for specific offenses, the administrative penalties and fees shall be as follows, for each offense:

First violation \$50.00
 Second violation \$100.00
 Third or subsequent violation's \$300.00

99.03.07: REMEDIES NOT EXCLUSIVE

The procedures established in this Title and Chapter, are in addition to other legal remedies established by law, which may be pursued to address violations of the Code. The use of this Title and Chapter, shall be at the sole discretion of the City.

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99.4.1 : APPEAL PERMITTED

Any person aggrieved by a citation issued by any code enforcement staff under this Title and Chapter, may appeal said citation to the City Council. Before filing an appeal, the aggrieved person is strongly encouraged to meet with the issuing staff member, and/or his/her supervisor to discuss why the person believes the citation was issued in error. If unresolved, the Appeal may be commenced.

Appeals shall be commenced by paying the fine if applicable, and then filing a notice of appeal with the City Finance Officer no later than twenty (20) days for the issuance date of the Citation. There shall be a twenty-five dollar (\$25.00) fee assessed for filing an appeal, which shall be paid to the City Finance Officer at the time of filing the notice of appeal. The notice of appeal shall include a statement of the action complained of, why the same should be modified or rescinded; an address where the appellant can be mailed notice of hearings, and a copy of the citation issued. Upon receipt of the appeal documents, the Finance Officer shall deliver a copy of the appeal to the City Attorney and a copy to City Council Members and Mayor.

99.4.2 : TIME OF HEARING AND NOTICE

A public hearing shall be held on all appeals within 45 working days after the filing of the appeal, unless the aggrieved person and the City agree upon a later date. The City shall cause written notice of the date, time and place of such hearing to be served upon the aggrieved person, by personal service or certified mail to the address set forth in the appeal documents, at least ten days prior to the hearing. The appeal shall be scheduled on the agenda of a

regularly scheduled meeting of the City Council, for a time period not to exceed thirty (30) minutes, unless otherwise directed by the City Council.

99.4.3 : HEARING PROCEDURES

The following rules shall govern the procedures for an administrative hearing:

- A. Hearings and administrative appeals need not be conducted according to the technical rules relating to evidence and witnesses.
- B. Any relevant evidence shall be admitted, if it is the type of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule, which might make improper the admission for such evidence after objection in civil actions in courts or competent jurisdiction in this state.
- C. Irrelevant and unduly repetitious evidence, and evidence that lacks trustworthiness shall be excluded.

99.4.4 : RIGHTS OF PARTIES AT HEARING

The aggrieved person and the City shall have these rights among others:

- A. To call and examine witnesses on any matter relevant to the issue of the hearing; and
- B. To introduce documentary, physical and oral evidence; and
- C. To cross examine opposing witnesses on any matter relevant to the issues of the hearing; and
- D. To rebut evidence.

99.4.5 : DECISION

After each appeal hearing, the Council may consider the evidence in executive session, as related to legal matters; and shall state its decision for the record, when it has concluded the executive session. Furthermore, the council shall provide written findings stating the following:

- A. The evidence the City Council relied upon in reaching its decision.
- B. Based upon such written findings, the Council may sustain, alter or dismiss the citation. In sustaining citation, the Council may in its discretion, reduce or waive the payment of any civil penalty, permit, reinstatement or late penalty fee.

99.4.6 : REPORT, COSTS

A written report of the decision, including the findings, shall be furnished to the aggrieved person and the Community Development Director within 20 working days from the date the appeal hearing is closed. The City and the aggrieved person shall bear their own respective cost of the appeal proceeding. The decision of the City Council shall be final.

99.4.7 : SUBJECT TO JUDICIAL REVIEW

The decision of the Council may be subject to judicial review as provided by law.

Attest:

Mystee Lashwood, Finance Officer

Larry Larson, Mayor

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