

EXPLANATORY COVER SHEET

COUNCILMAN'S BILL NO. CB-1553

SPONSOR: MAYOR NOVAK, COUNCIL MEMBERS CLYNE, GARNER, LINDSEY, MARTIN, MILLER, MONROE, PARSONS

TITLE: A BILL FOR AN ORDINANCE AUTHORIZING ADMINISTRATIVE PENALTIES AND ESTABLISHING AN ADMINISTRATIVE CITATION PROCEDURE FOR VIOLATIONS OF CERTAIN SECTIONS OF THE NORTHGLENN MUNICIPAL CODE

PURPOSE: THIS ORDINANCE ESTABLISHES AN ADMINISTRATIVE CITATION PROCESS THAT MAY BE USED AS AN ALTERNATIVE TO CITING VIOLATORS INTO MUNICIPAL COURT FOR A CRIMINAL VIOLATION. THE ADMINISTRATIVE CITATION PROCEDURE CAN BE MADE APPLICABLE TO ANY MUNICIPAL ORDINANCE VIOLATION THE CITY DEEMS APPROPRIATE. IT IS CURRENTLY DRAFTED TO APPLY TO VIOLATIONS OF THE CITY NUISANCE ORDINANCE (ARTICLE 11, CHAPTER 9), THE CITY ZONING ORDINANCE (CHAPTER 11), AND THE REGISTRATION OF NON-RESIDENT RESIDENTIAL PROPERTY OWNERS ORDINANCE (ARTICLE 2, CHAPTER 20). THE ADMINISTRATIVE CITATION PROCEDURE IS INTENDED TO PROVIDE THE CITY WITH A MORE STREAMLINED ALTERNATIVE TO THE CURRENT PROCEDURE FOR ENFORCING CODE VIOLATIONS. IT MAY BE UTILIZED IN ADDITION TO THE ENFORCEMENT PROCEDURES CURRENTLY AVAILABLE.

ADDITIONAL EXPLANATORY REMARKS:

SPONSORED BY: MAYOR NOVAK, COUNCIL MEMBERS CLYNE, GARNER, LINDSEY, MARTIN, MILLER, MONROE, PARSONS

COUNCILMAN'S BILL

ORDINANCE NO.

No. CB-1553
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A BILL FOR AN ORDINANCE AUTHORIZING ADMINISTRATIVE PENALTIES AND ESTABLISHING AN ADMINISTRATIVE CITATION PROCEDURE FOR VIOLATIONS OF CERTAIN SECTIONS OF THE NORTHGLENN MUNICIPAL CODE

WHEREAS, the City Council finds that there is a need for better enforcement of neighborhood problems affecting the livability of neighborhoods;

WHEREAS, the City Council finds that there is a need to encourage compliance with ordinances that affect the livability of neighborhoods by requiring those who violate said ordinances to pay for their lack of compliance and the cost of enforcement;

WHEREAS, the City Council finds that there is a need for an alternative method of enforcement for violations of the Municipal Code other than the Municipal Court;

WHEREAS, the City Council further finds that an appropriate method of enforcement for violations is an administrative citation program which shall impose administrative penalties for certain violations of the Municipal Code; and

WHEREAS, the purpose of this Ordinance is to encourage and facilitate prompt compliance with the Municipal Code.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. A new Article 19-1 is hereby added to the Municipal Code, which shall read as follows:

Section 19-1-1. In general.

(a) This Article provides for administrative penalties that may be imposed for violation of certain sections of the Northglenn Municipal Code.

(b) The sections of the Municipal Code specifically affected are:

- (1) Article 11 of Chapter 9 (the Northglenn Nuisance Ordinance);
- (2) Chapter 11; and
- (3) Article 2 of Chapter 20.

Section 19-1-2. Definitions.

For the purposes of this Article the following terms shall have the meanings assigned to them below:

- (1) *City* shall mean the City of Northglenn.
- (2) *Code* shall mean those provisions of the Northglenn Municipal Code enumerated in Section 19-1-1(b).
- (3) *Manager* shall mean the City Manager or the Manager's designee.
- (4) *Enforcement official* shall mean a person charged with enforcing the ordinances of the City.
- (5) *Responsible party* shall mean a person or entity who has violated the Code or, in the case of property violations, the responsible party may also be the property owner, the occupant, or an individual or an entity who, acting as an agent for or in any other legal capacity on behalf of the owner, has authority over property subject to an administrative citation under this Article.

Section 19-1-3. Authority.

- (a) Any responsible party violating provisions of the Code may be issued an administrative citation by an enforcement official as provided in this Article.
- (b) Notwithstanding any other provision of the Code, responsible parties cited under the provisions of this Article shall have only the protest rights granted herein.
- (c) Each day a violation exists or continues shall constitute a separate and distinct violation for which a separate citation may be issued. However, once a citation has been issued for a violation of the Code, no additional citation shall be issued for the same violation for ten days or, if the responsible party appeals, until after the appeal has been heard and the responsible party has not complied with an order of the administrative hearing officer ("Hearing Officer") within ten (10) days of its issuance or such other time as the Hearing Officer has specified.
- (d) A civil penalty assessed by means of an administrative citation may be collected by any means allowed by law.
- (e) Enforcement actions are intended to be cumulative in nature. The City may pursue one (1) or more civil, criminal, and administrative actions, fees, fines sentences, penalties, judgments, and remedies and may do so simultaneously or in succession.

Section 19-1-4. Procedures.

(a) Upon discovering a violation of the Code and after having complied with applicable Code provisions, an enforcement official may issue an administrative citation to a responsible party; provided that if a citation is issued to the owner of property for a property violation caused by a tenant in lawful possession of the property, the enforcement official must notify both the property owner and the tenant of the citation, pursuant to the requirements of C.R.S. § 31-15-401(1)(c), as amended from time to time.

(b) The enforcement official may require that the responsible party provide evidence of identity and residential or working address.

(c) The enforcement official shall attempt to issue the administrative citation to the responsible party at the site of any violation. If the responsible party is not located, a copy of the administrative citation shall be left with any adult person residing or working at the site, or if no adult person is found at the site and the violation occurred on private property or on property for which the responsible party has responsibility, then a copy of the administrative citation shall be posted in a conspicuous place on the property of the responsible party.

(d) The enforcement official shall attempt to obtain the signature of the person receiving the administrative citation on the citation. If that person refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity of the citation and subsequent proceedings.

(e) If the enforcement official is unable to issue the administrative citation to the responsible party, then the administrative citation shall be sent via first class mail to the responsible party. In the case of violations occurring on private property or on property for which the responsible party has responsibility, the administrative citation shall be sent to the most recent mailing address available to the City for the property in violation or the property of the responsible party.

(f) Notice shall be deemed served on the date of receipt by the responsible party, if personally served, or upon the fifth day after mailing of the administrative citation.

Section 19-1-5. Contents of notice.

(a) The administrative citation shall state the date and location of the violations and the approximate time the violations were observed. Where applicable, the administrative citation shall identify the property in violation by address or legal description.

(b) The administrative citation shall refer to the Code sections violated and describe the violations.

(c) The administrative citation shall describe the action required to correct the

violations.

(d) The administrative citation shall require the responsible party to immediately correct the violations and shall explain the consequences of failure to correct said violations.

(e) The administrative citation shall state the amount of penalty imposed for the violations.

(f) The administrative citation shall explain how the penalty shall be paid, the time period by which it shall be paid, and the consequences of failure to pay the penalty.

(g) The administrative citation shall briefly state the process for protesting the administrative citation.

(h) The administrative citation shall contain the signature of the enforcement official and the signature of the responsible party if it can be obtained.

Section 19-1-6. Protest of administrative citation.

(a) A person served with an administrative citation may file a notice of protest within ten (10) calendar days from the service of the notice. Compliance with this time limit shall be a jurisdictional prerequisite to any protest brought under this Article, and failure to comply shall bar any such protest.

(b) The notice of protest shall be made in writing and filed with the City Clerk, and contain the following information:

- (1) The reasons the protestant believes the administrative citation is objectionable, incorrect or illegal.
- (2) The amount and type of claim or dispute involved and the time during which it accrued or occurred.
- (3) The name, address and telephone number of the protestant.
- (4) If the protestant is to be represented by another person, the name, address and telephone number of the said representative.
- (5) The signature of the protestant, legal representative and/or corporate agent.

(c) As soon as practicable after receiving the written notice of protest, the Manager shall appoint a Hearing Officer who shall schedule a date, time and location for the hearing.

(d) Written notice of the date, time and location of the hearing shall be

personally served upon or sent by first class mail to the responsible party at least ten (10) calendar days prior to the date of the hearing.

Section 19-1-7. Administrative hearing officers.

A Hearing Officer must be an attorney licensed to practice law in the State of Colorado with a minimum of five years of experience. Any person designated to serve as a Hearing Officer is subject to disqualification for bias, prejudice, interest, or for any other reason for which a judge may be disqualified in a court of law.

Section 19-1-8. Procedures at administrative citation protest hearings.

(a) Administrative citation protest hearings are intended to be informal in nature. Formal rules of evidence and discovery do not apply. The procedure and format of the administrative citation protest hearing shall follow procedures as set forth herein.

(b) The parties to an administrative citation protest hearing shall be the responsible party and the Manager. Parties may be represented by legal counsel. Parties may call and question witnesses.

(c) The Hearing Officer, at the request of any party to the hearing, may subpoena witnesses, documents and other evidence where the attendance of the witness or the admission of evidence is deemed necessary to decide the issues at the hearing. All costs related to the subpoena, including witness fees in the amount of \$5.00 per witness, and mileage fees at the rate provided for witnesses by statute, shall be borne by the party requesting the subpoena.

(d) The Hearing Officer shall have the power to call and question witnesses, to review and consider the relevancy of documentary or other tangible evidence, to rule on evidentiary questions and witness qualifications, and to generally conduct the hearing in conformance with the procedures and requirements set forth herein.

(e) The City bears the burden of proof at an administrative citation protest hearing to establish the existence of a violation of the Code. In the case of an abatement hearing the City bears the burden of proof to establish the existence of a public nuisance.

(f) The standard of proof to be used by the Hearing Officer in deciding the issues at an administrative citation protest hearing is by a preponderance of the evidence.

(g) Each party shall have the opportunity to cross-examine witnesses and present evidence in support of its case.

- (h) The order of proceedings shall be as follows:
- (1) Docket call by Hearing Officer.
 - (2) Opening statement by the City and by the protestant, unless waived by either party.
 - (3) Presentation of evidence by the City, allowing cross-examination by the protestant.
 - (4) Presentation of evidence by protestant with cross-examination by the City.
 - (5) Rebuttal and surrebuttal evidence, if any.
 - (6) Closing argument by the City, followed by closing argument by the protestant. The Hearing Officer may allow rebuttal argument by the City. The Hearing Officer may require argument to be oral or in writing or both.

Section 19-1-9. Duties of Hearing Officer.

(a) The Hearing Officer shall determine whether protests of Administrative Citations are valid. In doing so the Hearing Officer shall determine whether the Administrative Citation under protest was issued in compliance with the requirements of the City ordinances. In each case, the Hearing Officer shall be charged with performing all functions relating to the final determination and order, and entertaining petitions or protests made in writing. The Hearing Officer shall perform those duties and functions necessary and incidental to determining the matter, issuing subpoenas, authorizing depositions, hearing all evidence, examining all documents, ruling on evidentiary questions, and generally conducting the hearing as a quasi-judicial proceeding.

(b) Upon receipt of a protest, the Hearing Officer shall assign the time and place for hearing the case, unless, if requested by the protestant and in the sole discretion of the Hearing Officer, it is submitted on written brief and supporting material. The Hearing Officer shall notify the parties of the time and place of the hearing. In the discretion of the Hearing Officer, parties to the hearing may be required to file a pre-hearing statement before the case is set for hearing. The pre-hearing statement may include: the issues raised by the protest; agreed and disputed facts; copies of exhibits not previously included in the record; names of witnesses with a brief statement summarizing their testimony; an estimate of the time necessary to present a party's evidence and other matters as requested by the Hearing Officer.

(c) All hearings or, when an protest is submitted for determination based on written argument and written facts and figures, all examination of such written petitions and papers shall be conducted by the Hearing Officer assigned to

conduct the hearing or to examine the written material submitted.

(d) All testimony in proceedings before the Hearing Officer shall be given under oath.

(e) The conduct of hearings and the admission of evidence shall generally be in accordance as set forth herein without regard to whether they conform to common law or statutory rules of procedure or evidence or other technical rules. The admissibility of evidence shall be encouraged and the Hearing Officer shall consider all evidence of probative value. The Hearing Officer may utilize his or her experience, technical competence, and specialized knowledge in the evaluation of evidence presented.

(f) Copies, photographs and photocopies may be admitted into evidence or substituted in evidence in place of original documents.

(g) Witnesses intended to give opinion testimony as experts must be qualified as such, and their qualifications should be submitted in advance to the Hearing Officer.

(h) Hearings shall be recorded by electronic means and transcripts of such recordings shall be made at the expense of the party requesting the transcript.

(i) Whenever it appears that a petition is not filed within the time permitted by the particular law or ordinance involved, or that the protestant for some other reason lacks jurisdiction or standing, the case may be dismissed on the motion of any party or the Hearing Officer.

(j) Mailings, notices, computations of time, time limitations, service and filings shall conform to the requirements of particular law or ordinance involved.

(k) A decision of the Hearing Officer shall be known as an Administrative Enforcement Order, and shall become final upon mailing to the responsible party.

(l) The Hearing Officer may uphold the Administrative Citation and all penalties or dismiss the Administrative Citation and all penalties or may waive or conditionally reduce the penalties assessed by the Administrative Citation.

(m) In the event that the Hearing Officer does not dismiss the Administrative Citation, the Hearing Officer shall assess reasonable administrative costs of not less than one hundred dollars (\$100), but not to exceed two hundred dollars (\$200).

Section 19-1-10. Failure to obey subpoena.

It is unlawful for any person to refuse to obey a subpoena issued by a Hearing Officer. Failure to obey a subpoena constitutes contempt and may be criminally prosecuted and have penalties imposed under Section 1-1-10 of the Northglenn

Municipal Code.

Section 19-1-11. Failure to attend administrative citation protest.

Any responsible party who fails to appear at the hearing is deemed to waive the right to a hearing and the adjudication of the issues related to the hearing, provided that proper notice of the hearing has been provided.

Section 19-1-12. Failure to comply with administrative enforcement order.

It is unlawful for a responsible party to an administrative enforcement hearing who has been served with a copy of the final administrative enforcement order to fail to comply with the order. Failure to comply with a final administrative enforcement order may be criminally prosecuted and have penalties imposed under Section 1-1-10 of the Northglenn Municipal Code.

Section 19-1-13. Penalties assessed.

(a) If the responsible party fails to correct the violation, subsequent administrative citations may be issued for violations of the same Code section. The penalties assessed for each administrative citation issued for violations of the same Code section or sections shall be established by the Manager, but shall not exceed the following amounts regardless of the number of violations per citation:

(1) First administrative citation: One hundred and fifty dollars (\$150.00).

(2) Second administrative citation: Five hundred dollars (\$500.00).

(3) Third or subsequent administrative citation: Nine hundred and ninety-nine dollars (\$999.00).

(b) Payment of the penalty shall not excuse the failure to correct the violations nor shall it bar further enforcement action by the City.

(c) All penalties assessed shall be payable to the City.

Section 19-1-14. Failure to pay penalties.


(a) The failure of any responsible party to pay the civil penalties assessed by an administrative citation within the time specified on the citation or administrative enforcement order, if an administrative hearing was held, may result in the imposition of a late fee of twenty-five dollars (\$25.00) and interest at a rate of ten (10) percent per annum.

(b) In the event of failure to pay all penalties assessed, the Manager may refer the matter for collection by whatever means are available to the City.

(c) In the case of property violations, the City may certify a statement thereof and may record a notice with the clerk and recorder of a lien against the property in violation.

(d) Any action or other process provided by law may be maintained by the City to recover or collect any amounts, including late fees, interest, and administrative costs, owing under this Article.

INTRODUCED, READ AND ORDERED POSTED this 23rd day of February
2006.


KATHLEEN M. NOVAK
Mayor

ATTEST:


DIANA L. LENTZ, CMC
City Clerk

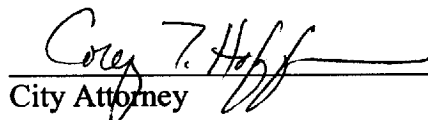
PASSED ON SECOND AND FINAL READING this ____ day of _____,
2006.

KATHLEEN M. NOVAK
Mayor

ATTEST:

DIANA L. LENTZ, CMC
City Clerk

APPROVED AS TO FORM:



City Attorney