

CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER REINHART
COUNCIL BILL NO. 13-2010
ORDINANCE NO. 1467
Series 2010

TITLE: AN ORDINANCE CONCERNING ADMINISTRATIVE ENFORCEMENT AND MAKING CONFORMING AMENDMENTS TO ARTICLE V OF CHAPTER 2 OF THE WHEAT RIDGE CODE OF LAWS

WHEREAS, the City Council exercises all legislative authority on behalf of the City; and

WHEREAS, the Council has previously adopted Article V of Chapter 2 of the Wheat Ridge Code of Laws (the "Code") providing for administrative enforcement of certain portions of the Code; and

WHEREAS, the Council finds that certain amendments to the administrative enforcement process are needed to increase effectiveness and guarantee due process.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:

Section 1. Section 2-80 of the Code is hereby amended to read:

Sec. 2-80. Purpose; scope.

The purpose of this article is to encourage prompt compliance with this Code and prompt payment of penalties for violations thereof. This article provides for administrative penalties that may be imposed for violation of the following portions of this Code: Chapter 5, Buildings and Building Regulations; Chapter 9, Health; Chapter 13, Motor Vehicles and Traffic; Chapter 15, Nuisances; Article X of Chapter 16, Concerning Massage Parlors, but not to include the balance of Chapter 16, Miscellaneous Offenses; Chapter 21, Streets and Sidewalks; Chapter 22, Taxation; CHAPTER 24, VEGETATION, Chapter 26 Zoning

Section 2. Section 2-81 of the Code is hereby amended to read:

Sec. 2-81. Definitions.

For the purposes of this article the following terms shall have the meanings assigned to them below.

Administrative hearing officer or AHO means the person with exclusive authority to hear appeals from administrative citations issued under this article.

Applicable sections means those sections in the Code of Laws contained within the chapters listed in section 2-80.

Code officer shall mean the city manager or the city manager's designee, including but not limited to a community service officer, the building official, the property inspector or any other city official or employee charged with enforcing the provisions of this article.

Manager shall mean the city manager or the city manager's designee.

Municipal court means the municipal court for the City of Wheat Ridge, Colorado.

Responsible party shall mean a person or entity who has violated this Code or, in the case of property subject to an administrative citation under this article, who has possession or control of any real property or premises, whether as owner, CO-OWNER, occupant or tenant, or in the case of a motor vehicle, as owner or operator of the same.

Section 3. Section 2-85 of the Code is hereby amended to read:

Sec. 2-85. Contents of administrative citation.

(a) The administrative citation shall state the location of the violations and the date and 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 applicable 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 correct the violations immediately and shall explain the consequences of failure to correct said violations.

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

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

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

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

Section 4. Section 2-86 of the Code is hereby amended to read:

Sec. 2-86. Appeal of administrative citation.

(a) A person served with an administrative citation may file a notice of appeal within five (5) calendar days from the service of the administrative citation. Compliance with this time limit shall be a jurisdictional prerequisite to any appeal brought under this article, and failure to comply shall bar any such appeal.

(b) The notice of appeal shall be made in writing and shall be filed with the municipal court in person, by facsimile transmission or by mail. Regardless of the manner of filing such appeal, the notice of appeal must be filed with the municipal court within five (5) calendar days from the date the administrative citation was served.

(c) As soon as practicable after receiving the written notice of appeal, the municipal court shall assign an AHO 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 five (5) calendar days prior to the date of the hearing. The hearing shall be held no more than fourteen (14) days after A TIMELY FILED NOTICE OF APPEAL ~~the date upon which the administrative citation was issued.~~

(e) In computing the day a notice of appeal must be filed or the day by which a hearing must be held, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to the first day thereafter which is not a Saturday, Sunday, or legal holiday.

Section 5. Section 2-88 of the Code is hereby amended to read:

Sec. 2-88. Administrative appeals.

(a) Administrative appeals are intended to be informal in nature. Formal rules of evidence and discovery do not apply. The procedure and format of the administrative hearing shall follow the procedures provided in this Section.

(b) The parties to an administrative appeal shall be the responsible party and the Wheat Ridge Police Department. Parties may be represented by legal counsel. Each party may call and question witnesses, cross-examine witnesses and present evidence in support of its case.

(c) The AHO, 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 and mileage fees, shall be borne by the party requesting the subpoena. The form of, and the process for issuing, subpoenas shall be the same as in the municipal court.

(d) The AHO shall have the power to call and question witnesses, review and consider the relevancy of documentary or other tangible evidence, and rule on evidentiary questions.

(e) The only issue to be decided by the AHO is whether the code officer exceeded his/her authority in issuing the administrative citation. TO DO SO, the city bears the burden of proof to establish the existence of a violation of the Code. In the case of a nuisance abatement hearing, the city bears the burden of proof to establish the existence of a public nuisance. The city's meeting of this burden of proof shall constitute prima facie evidence that the code officer did not exceed his/her authority. The appellant shall have the burden of rebutting such evidence.

(f) The standard of proof required in an administrative appeal is a preponderance of the evidence.

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

(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 AN APPEAL ~~petition~~ is not filed within the time permitted by THIS ARTICLE, the particular law or ordinance involved, or that the AHO for some other reason lacks jurisdiction, the APPEAL may be dismissed on the motion of any party or on the AHO's own motion.

(j) The decision of the AHO shall be known as an administrative enforcement order.

(k) The AHO 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. The AHO may also impose conditions and deadlines to correct the violations or require payment of any outstanding penalties.

(l) In the event that the AHO does not dismiss the administrative citation, the AHO shall assess reasonable administrative costs of not less than one hundred dollars (\$100.00), but not to exceed two hundred dollars (\$200.00).

(m) The administrative enforcement order shall become final on the date of mailing the order to the responsible party. A copy of the order shall be provided to the city.

Section 6. Section 2-90 of the Code is hereby amended to read:

Sec. 2-90. Failure to attend administrative appeal.

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. THE AHO MAY TAKE TESTIMONY, EVIDENCE AND ARGUMENT FROM THE CITY AND ISSUE AN ADMINISTRATIVE ENFORCEMENT ORDER.

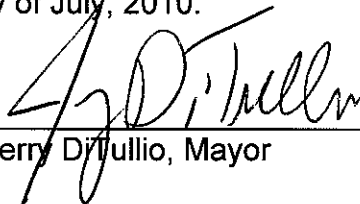
Section 7. Severability, Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 8. Effective Date. This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of 7 to 0 on this 28th day of June, 2010, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge, and Public Hearing and consideration on final passage set for **Monday, July 26th, 2010 at 7:00 p.m.**, in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

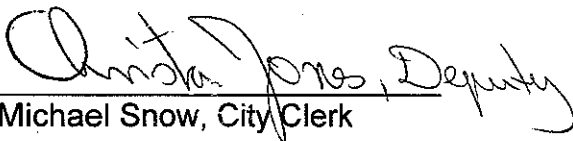
READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of 7 to 0, this 26th day of July, 2010.

SIGNED by the Mayor on this 26th day of July, 2010.

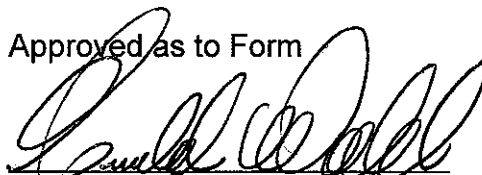


Jerry DiTullio, Mayor

ATTEST:



Michael Snow, City Clerk

Approved as to Form


Gerald E. Dahl, City Attorney

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