

Hastings Charter Commission

August 26, 2021 - Regular Meeting Agenda
Hastings City Hall - Community Room
6:00 p.m.

1. Call Meeting to Order
2. Roll Call
3. Determination of Quorum
4. Minutes of Previous Meeting - None
5. Reports of Committees - None
6. Unfinished Business - None
7. New Business
 - a. Introduction of Charter Commission and Duties
 - b. Election of Commission Chair and Vice Chair
 - c. Consider Charter Amendment: Administrative Penalties
8. Introduction of Business for Future Meetings
9. Announcements
10. Adjournment

ORDINANCE _____
AN ORDINANCE AMENDING THE CHARTER
OF THE CITY OF HASTINGS
FOR ADMINISTRATIVE PENALTIES

The City Council of the City of Hastings does ordain:

1. ENACTMENT. That the Hastings City Charter is hereby amended by adding the following:

7.14 Administrative Civil Penalties.

The City Council may establish by ordinance a procedure for imposing an administrative civil penalty which shall not exceed twice the maximum fine amount authorized for misdemeanor offenses for violations of the City Code or violations authorized by state law for an administrative process. The procedure must provide for notice to the accused and for an opportunity to be heard by a neutral party, who may be a non-City employee.

2. ENACTMENT. That the Hastings City Charter is hereby amended by adding the following:

7.15 Assessment of Unpaid Penalties.

The City Council may provide by ordinance that unpaid administrative civil penalties the City imposes as a result of certain violations be assessed against the property that was the subject of or related to the subject matter of the penalties. The ordinance must provide that the City first attempted to obtain voluntary payment of the penalties. The ordinance must also require the City to give notice and an opportunity to be heard to the property owner listed on the official tax records before the assessments are imposed. The assessments must be collected like special assessments.

3. SAVING. In all other ways, the Hastings City Charter shall remain in full force and effect.
4. EFFECTIVE DATE. This Ordinance shall be effective 90 days after its passage and publication according to law.

Approved this _____ day of _____, 2021.

Mary Fasbender, Mayor

ATTEST:

Kelly Murtaugh, City Clerk

Publish: _____ - _____

**LEVANDER,
GILLEN &
MILLER, P.A.**

ATTORNEYS AT LAW

TIMOTHY J. KUNTZ
ANGELA M. LUTZ AMANN
KORINE L. LAND
DONALD L. HOEFT
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CASSANDRA C. WOLFGAM
CASSANDRA J. BAUTISTA
AMANDA J. JOHNSON
SEAN E. FROELICH
CHRISTOPHER J. KRADLE

MEMO

TO: Members of the Hastings Charter Commission
FROM: Kori Land, City Attorney
DATE: August 26, 2021
RE: Charter Amendment for Administrative Citations

Background

The City recently engaged our office to undergo a complete revision of its nuisance ordinances, which will include a process for enforcement. Under state law, violations of City Code result in criminal citations, and many cities only have the option of pursuing enforcement through the criminal court system. Due to the cost and length of time it takes to get through the criminal court process, as well as the limitation on the types of penalties available (a fine or jail), other alternatives for enforcement of code violations are preferred. While statutory cities are limited to the authority granted them in state law, Charter cities, on the other hand, have the ability to create the authority in their Charters for an administrative citation (non-criminal) process. The creation of an administrative process does not preclude criminal prosecution in extreme cases, or the use of other remedies, such as revoking a license, or civil actions such as injunctions. But for Charter cities, the administrative citation process is an additional tool available to them to address certain nuisance violations.

The types of “nuisance” violations that are conducive for administrative citations typically relate to property violations. The City has identified certain enforcement officers (code enforcement, police department, building department, fire department) who work with property owners to attempt to correct property code violations before they reach the citation stage. They would address code violations in much the same way, but for the enforcement, which would result in a monetary penalty instead of a criminal conviction.

Proposed Administrative Citation Process

1. Notices and Correction Orders

An administrative citation procedure would begin the same as it does today, with an initial

compliance letter from the City. If this letter is disregarded, typically, an additional letter would be sent with notice that failure to correct may result in an administrative citation and the amount of the fine. However, instead of being issued a criminal citation, failure to correct the violation would result in the issuance of an administrative citation.

- If the financial penalty is paid and the violation corrected, no further action will be taken.
- If the penalty is not paid, the penalty will be assessed against the property as a special assessment and the special assessment process is followed with proper notice and a public hearing.
- If the violation has not been corrected, the property owner will be subjected to additional citations. (and fines will double if within a 12 month period)

2. Contesting the Citation

A property owner has the right to contest the citation. In order to contest the citation, the owner must contact the City within a specific timeframe. A designated City Staff person will then facilitate the scheduling procedure for a hearing regarding the citation. To ensure fairness in this process, an independent Hearing Officer would be selected to conduct the hearing. While some cities rely on a pool of hearing officers, an alternative would be to employ the use of Administrative Law Judges from the Office of Administrative Hearings. The property owner will be sent a notice of the date, time, and location of the hearing, as well as the name of the presiding Hearing Officer and the names of any of the City witnesses who may be called to testify at the hearing.

3. Hearing Procedure

At the hearing, the Hearing Officer will attempt to resolve the matter through a settlement conference. If the settlement conference is unsuccessful, then a hearing will immediately be held. Both sides present their case through witnesses and/or exhibits, including the testimony of the Code Enforcement Officer. The property owner has the right to cross-examine all witnesses and may also present witnesses, testimony, and exhibits. Either party may be represented by counsel, but it is not required.

At the conclusion of the hearing, the Hearing Officer may announce the decision immediately, or take the matter under advisement. If the Hearing Officer finds that a violation of the City Code has occurred, the Hearing Officer has the authority to impose the scheduled penalty or modify the penalty, impose no penalty because of the circumstances; and can also require compliance with the City Code within a specified timeframe.

The property owner has the right to appeal the decision of the Hearing Officer to the Court of Appeals.

Implementation of Administrative Citations

There are several steps to implementing this process.

- First, an amendment to the City Charter is needed, authorizing the City Council to establish a procedure for administrative hearings of certain violations of the City Code, as well as the ability to assess the costs against the property. This Charter amendment simply provides the *authority* for the Council to enact an ordinance. A Charter Amendment has been prepared and is attached to this memo.
- Second, we are in the process of preparing a “nuisance” ordinance for Council consideration. Charter Amendments do not become effective for 90 days after adoption and publication, so we will use this time to develop the appropriate ordinance or ordinance amendments for Council’s consideration.
- Finally, the City will develop a list of nuisance violations that will be included in this process and adopt an appropriate fine schedule for each violation. (see attached *example* of nuisance offenses and fines)

RECOMMENDATION

Make a motion recommending that the City Council adopts the Charter Amendment that provides for the ability to implement Administrative Citations and assess the costs against the properties

EXAMPLE OF NUISANCE VIOLATIONS AND FINE SCHEDULE

Description of Violation	Penalty Amount
All violations of the fire code	\$100
All animal violations, (i.e. running at large, too many animals, improper shelter, including bees) except animal license violations or dangerous dog violations as stated herein	\$50
All animal license violations	\$55
All violations of the Dangerous Dog regulations	\$500
Disposal of waste into sewer system	\$100
All solid waste and recycling violations	\$25
Failure to obtain a Zoning Ordinance permit or violations of approved Zoning Ordinance permit approval conditions, except as otherwise stated	\$250
All Building Demolition violations	\$500
All general Zoning Ordinance violations, except as otherwise stated	\$100
All building code violations, except as otherwise stated	\$200
All violations that involve hazardous conditions	\$500
All violations that involve public waters and stormwater	\$200
All public nuisance violations affecting health, morals and decency	\$500
All violations involving business licenses or permits	\$250
All parking violations; skateboards, RVs violations	\$20
All violations that involve violating public peace, safety and welfare	\$100
All Noise Control violations	\$150
Except as otherwise stated herein, all other violations of the City Code ¹	\$100

¹ For repeat violations within 12 months, the amount of the scheduled fine for a previous violation will be doubled, up to a maximum of \$2,000