

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 2 OF THE CITY CODE TO CREATE AN ADMINISTRATIVE HEARING PROCESS FOR CERTAIN CITY CODE VIOLATIONS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Title 2 (*Administration*) is amended to add a new Chapter 2-13 (*Administrative Adjudication of Violations*) to read as follows:

CHAPTER 2-13. ADMINISTRATIVE ADJUDICATION OF VIOLATIONS.

ARTICLE 1. GENERAL PROVISIONS

§ 2-13-1 DEFINITIONS.

In this chapter:

- (1) CODE OFFICIAL means the city employee designated by the City Manager as the Director of the Austin Code Department.
- (2) HEARING COORDINATOR means the Code Official's designee that manages the administrative hearing process created by this chapter.
- (3) ISSUING OFFICER means a city employee with the authority to issue administrative citations for violations described in Section 2-13-3 (*Violations Subject to Administrative Adjudication*).
- (4) VIOLATOR means the person charged with violating an ordinance described in Section 2-13-3 (*Violations Subject to Administrative Adjudication*).

§ 2-13-2 PURPOSE; ESTABLISH ADMINISTRATIVE HEARING PROCESS.

- (A) The purpose of this chapter is to protect the health, safety, and welfare of the citizens of the City, by providing for an administrative hearing process for violations of ordinances described in Local Government Code Section 54.032 (*Ordinances Subject to Quasi-Judicial Enforcement*).
- (B) This chapter establishes a procedure for administrative hearings pursuant to and consistent with Local Government Code Section 54.044 (*Alternative Procedure for Administrative Hearing*).

1 **§2-13-3 VIOLATIONS SUBJECT TO ADMINISTRATIVE ADJUDICATION.**

2 (A) The administrative hearing process established in this chapter may be used
3 to enforce ordinances:

- 4 (1) for the preservation of public safety, relating to the materials or
5 methods used to construct a building or improvement, including the
6 foundation, structural elements, electrical wiring or apparatus,
7 plumbing and fixtures, entrances, or exits;
- 8 (2) relating to the fire safety of a building or improvement, including
9 provisions relating to materials, types of construction or design,
10 warning devices, sprinklers or other fire suppression devices,
11 availability of water supply for extinguishing fires, or location, design,
12 or width of entrances or exits;
- 13 (3) relating to dangerously damaged or deteriorated buildings or
14 improvements;
- 15 (4) relating to conditions caused by accumulations of refuse, vegetation,
16 or other matter that creates breeding and living places for insects and
17 rodents; or
- 18 (5) relating to a building code or to the condition, use, or appearance of
19 property in a municipality.

20 (B) Nothing in this chapter shall preclude the City's pursuit of any and all other
21 remedies allowed under the civil and criminal statutes, and in equity, to
22 address violations of ordinances described in this section.

23 **§2-13-4 HEARING OFFICER.**

24 (A) One or more hearing officers must be appointed to administratively
25 adjudicate violations of ordinances described in Section 2-13-3 (*Violations*
26 *Subject to Administrative Adjudication*).

27 (B) A hearing officer may:

- 28 (1) administer oaths;
- 29 (2) issue orders that compel the attendance of witnesses and the
30 production of documents;
- 31 (3) issue an order that includes the disposition of the hearing and the
32 amount of penalties and costs; and

(4) act pursuant to the authority granted in Texas Local Government Code Section 54.044 (*Alternative Procedure for Administrative Hearing*).

(C) A hearing officer must be a licensed attorney in good standing with the State Bar of Texas.

(D) An order to compel the attendance of witnesses and the production of documents is enforceable by the Municipal Court.

§2-13-5 ADMINISTRATIVE CITATIONS.

(A) An administrative citation must be on a form prescribed by the Code Official and must include:

- (1) the nature, date, and location of the violation;
- (2) a notification that the violator has the right to a hearing;
- (3) the time and place of the hearing;
- (4) a notification that failure to appear for a hearing is considered an admission of liability for the violation charge and will result in the assessment of penalties and costs; and
- (5) the name of the individual issuing the citation.

(B) The original or copy of an administrative citation is kept in the ordinary course of City business and is rebuttable proof of the facts it states.

ARTICLE 2. HEARINGS.

§2-13-21 HEARING FOR AN ADMINISTRATIVE CITATION.

(A) A hearing to adjudicate an administrative citation described in this chapter shall be conducted by a hearing officer appointed pursuant to Section 2-13-4 (*Hearing Officer*).

(B) The Texas Rules of Evidence do not apply to a hearing under this chapter.

(C) The hearing officer shall hear and consider:

- (1) evidence presented by the person charged;
- (2) presumptions and prima facie evidence established by this chapter or other applicable law; and

(3) evidence presented by the issuing officer, if required to attend the hearing;

(D) The hearing officer shall make a decision based on a preponderance of the evidence.

(E) The testimony at the hearing shall be recorded. If an audio recording is made, each voice shall be identified.

(F) The recorded testimony, documents, and other evidence shall constitute the record for appeal. The acceptance of documents or other evidence shall be noted on the record.

(G) The issuing officer is not required to attend a hearing.

(H) The issuing officer shall attend a hearing:

(1) if requested in writing by the violator; and

(2) the request is filed with the hearing coordinator at least seven business days before the scheduled hearing date.

(I) A scheduled hearing may be reset for cause if the violator submits a written request for a reset to the hearing coordinator at least five days before the scheduled hearing date. If the hearing coordinator does not respond to a request for a reset, the request is denied, and the violator must appear as scheduled.

(J) At the conclusion of the hearing, the hearing officer shall issue an order that

(1) finds the violator liable and assesses penalties and costs; or

(2) finds the violator not liable for the violation.

(K) The hearing officer's order may be filed with the City Clerk in a separate index and file. The order may be recorded using microfilm, microfiche, or other data processing techniques.

§2-13-22 FAILURE TO APPEAR AT A HEARING.

If a violator fails to attend a scheduled hearing, including an appeal hearing, the violator is considered to admit liability for the violation charged.

§2-13-23 ESTABLISHING A PENALTY.

(A) The penalty range that may be assessed against a violator found liable under this chapter shall be no more than \$1,000 per day and:

- (1) not less than \$20.00 for a first violation;
- (2) not less than \$250.00 for a second violation; and
- (3) not less than \$500.00 for a third or subsequent violation.

(B) In addition to the penalty assessed, the hearing officer may require the violator to pay costs.

(C) In determining the amount of penalty to be assessed, the hearing officer shall consider the following factors:

- (1) the gravity of the violation;
- (2) any actions taken by the violator to correct the violation;
- (3) any previous violations committed by the violator;
- (4) indigence of the violator; and
- (5) any other relevant evidence.

ARTICLE 3. APPEALS AND ENFORCEMENT

§2-13-31 APPEAL FROM A HEARING.

(A) A violator found liable by a hearing officer may appeal the determination by:

- (1) filing a petition with the Clerk of the Municipal Court before the 31st day after the hearing officer's determination is filed with the City Clerk; and
- (2) paying a non-refundable filing fee.

(B) A violator that fails to appear at a hearing described in Section 2-13-21 (*Hearing for an Administrative Citation*) is not entitled to an appeal hearing.

(C) An appeal hearing is conducted by a municipal court judge.

(D) The judge shall review the record and hear oral arguments of the parties at the appeal hearing.

(E) The judge may receive evidence of procedural irregularities alleged to have occurred at the hearing that are not reflected in the record.

(F) The judge may not substitute his or her judgment for that of the hearing officer as to the weight of the evidence given by the hearing officer for questions that fall within the hearing officer's discretion.

1 (G) The court may reverse the hearing officer's order or remand the case
2 for a rehearing if the appellant's substantial rights have been violated
3 because the administrative findings or orders:

- 4 (1) violate constitutional or statutory provisions;
5 (2) exceed statutory authority;
6 (3) are made upon unlawful procedure;
7 (4) are affected by other error of law;
8 (5) are not supported by substantial evidence, as that term is used
9 in Local Government Code Section 54.039 (*Judicial Review*),
10 in light of the reliable and probative evidence in the record as a
11 whole; or
12 (6) are arbitrary, capricious, characterized by abuse of discretion,
13 or clearly unwarranted exercise of discretion.

14 (H) If the findings of the hearing officer are affirmed, the penalties and
15 costs may not be modified except that additional costs may be added.

16 **§2-13-32 ENFORCEMENT OF ORDER.**

17 (A) An order issued under this chapter may be enforced by:

- 18 (1) filing a civil suit for the collection of a penalty assessed against
19 the violator; and
20 (2) obtaining an injunction that:
21 (a) prohibits specific conduct that violates the ordinance; or
22 (b) requires specific conduct necessary for compliance with
23 the ordinance.

24 (B) Unless the violator posts a bond with the Austin Code Department
25 before filing an appeal, an appeal of an order issued under this chapter
26 does not stay enforcement and collection of the penalties and costs.

27 (C) The amount of the bond shall equal to all penalties and costs assessed
28 against the violator.
29

PART 2. This ordinance takes effect on _____, 2014.

PASSED AND APPROVED

_____, 2014 § _____
 § _____
 § _____

Lee Leffingwell
Mayor

APPROVED: _____
Karen M. Kennard
City Attorney

ATTEST: _____
Jannette S. Goodall
City Clerk