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**GOVERNING ADMINISTRATIVE
CITATIONS**



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Approved and Adopted:

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Date

**RULES AND REGULATIONS
GOVERNING ADMINISTRATIVE CITATIONS**

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1.0 INTRODUCTION

The City Council has determined that there is a need to better encourage prompt compliance with ordinances and prompt payment of penalties assessed. This has led to the addition of an alternative method of enforcement, Administrative Citations, for violations of the Revised Municipal Code of the City and County of Denver (the Code) which has been codified in Chapter 2 Administration, Article XII of the Code.

These rules and regulations are adopted and issued by the Director of the Department of Excise and Licenses of the City and County of Denver in accordance with the authority contained in Article II of the Charter of the City and County of Denver and in Section 2-283 of the Code to implement the Administrative Citation and penalty assessment provisions of the Code. The provisions of Chapter 2 Administration, Article XII of the Code are specifically adopted by reference and incorporated herein.

A copy of these rules shall be made available without charge to persons seeking to file an appeal of an Administrative Citation. The Director shall use her best efforts to maintain a current copy of these Rules on the Department's website.

2.0 CODE CHAPTERS AND SECTIONS AUTHORIZED FOR ENFORCEMENT THROUGH ADMINISTRATIVE CITATIONS

To the extent established by the Charter and Ordinances of the City and County of Denver including but not limited to the generally applicable enforcement provisions of Title II Chapter 1, an enforcement official may issue an Administrative Citation for violation of the provisions of the Code designated below, and for violation of rules, regulations or license conditions established in accordance with the following:

1. Chapter 5 Airport and Aircraft
2. Chapter 6 Alcohol Beverages except that the procedures and standards for imposing a fine in lieu of suspension under the Liquor or Beer Codes of the State of Colorado shall continue to be governed by State law, C.R.S. § 12-47-601(3)-(6);
3. Chapter 7 Amusements;
4. Chapter 8 Animals;
5. Chapter 9 Auctions and Auctioneers;
6. Chapter 11 Child Care Establishment;
7. Chapter 17 Emergency Vehicles;
8. Chapter 19 Excavations;
9. Chapter 22 Fire Prevention and Protection;
10. Chapter 23 Food and Food Handlers;
11. Chapter 24 Health and Sanitation;
12. Chapter 26 Boarding Homes, Personal Care Boarding Homes, and Non-governmental Residential Facilities for the Treatment or Supervision of Offenders;
13. Chapter 31 Laundering;
14. Chapter 33 Lodging;
15. Chapter 33.5 Massage;
16. Chapter 35 Mobile Homes and Trailers;
17. Chapter 38 Offenses, Miscellaneous Provisions;
18. Chapter 42 Police;
19. Chapter 44 Sales;
20. Chapter 45 Secondhand Goods;
21. Chapter 47 Solicitors, Peddlers and Canvassers;
22. Chapter 55 Transportation and Motor Vehicles; Sales and Service;
23. Chapter 56 Utilities; and
24. Chapter 57 Vegetation.

3.0 DEFINITIONS.

Except as noted below, words and phrases shall have the meaning assigned by the Charter and Ordinances of the City and County of Denver. As used in these rules and regulations, the following terms shall have the following meanings:

- 3.1 "Administrative Hearing Officer" shall mean a person appointed by the Director to hear appeals of Administrative Citations
- 3.2 "Code" shall mean those portions of the Denver Revised Municipal Code enumerated in Section 2.0 above.
- 3.3 "Director" shall mean the Director of the Department of Excise and Licenses or the Director's designee.

- 3.4 “Enforcement Official” shall mean a person employed by the City and charged by the Director with enforcing the Code.
- 3.5 “Responsible Party” shall mean a person or entity who is suspected of having violated the Code or, in the case of property violations, the property owner, 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.
- 3.6 “Rules and Regulations” shall mean the procedures and requirements contained herein, duly adopted through a rulemaking process as set forth in Chapter 2 Administration, Article VI Rules and Regulations, of the Code.

4.0 REQUIREMENTS FOR ISSUANCE

- 4.1 An Administrative Citation may be issued by an Enforcement Official to any Responsible Party who has violated the Code, but only after the Responsible Party has received notice of violation and time to comply as provided in the underlying Code, unless the Director makes a written determination that immediate compliance is required because of immediate peril to life or property or because of the nature of the offense.
- 4.2 Any appeal process provided by the underlying Code or the Charter of the City shall be completed prior to issuance of an Administrative Citation.
 - 4.2.1. No additional Administrative Citations for another or continuing violation of the same requirement shall be issued for ten (10) days, unless the Director makes a written determination that continued violation would cause immediate peril to life or property or the offense requires immediate compliance because of the nature of the offense.
 - 4.2.2. If the Responsible Party appeals, no additional Administrative Citation shall be issued for the same or continuing violation until the Administrative Hearing Officer has made a determination (Administrative Enforcement Order) and the Responsible Party has failed to comply with an order of the Administrative Hearing Officer within ten days of its issuance, or within such other time specified by the Order.
- 4.3 If the Responsible Party fails to correct the violation cited, commits the same violation again, or fails to correct a violation in accordance with an administrative enforcement order, subsequent citations may be issued for violations of the same code section.

5.0 PROCEDURES

- 5.1 The Administrative Citation will be issued in the form attached as Exhibit 1
- 5.2 The Administrative Citation will be served upon the Responsible Party in accordance with Section 2-284 of the Code.

6.0 FILING AN APPEAL

- 6.1 Any Responsible Party served with an Administrative Citation may appeal the issuance of an Administrative Citation in the following manner:
 - 6.1.1. A written notice of appeal must be received by the Director of the Department within **ten (10) calendar days** from the date of service of the Administrative Citation on the person or entity appealing (the “Appellant”).
 - 6.1.2. The Notice of Appeal shall be filed with the Director of Excise and Licenses, Office of the Director, 201 W. Colfax, Room 206 (2d Floor), Denver, CO 80202.
 - 6.1.3. Payment of a non-refundable appeal fee of One Hundred Dollars (\$100.00) shall be made by cash, cashier’s check, certified check, money orders, or checks drawn on attorney accounts, payable to the Manager of Finance,

- 6.1.4. No particular form of notice is required, provided that the following information is set forth in writing:
 - 6.1.4.1. The reason(s) the Appellant believes the Administrative Citation is objectionable, incorrect or illegal.
 - 6.1.4.2. The amount and type of claim or dispute involved and the time during which it accrued or occurred.
 - 6.1.4.3. The name, address and telephone number of the Appellant and the name, address and telephone number of the legal representative of the Appellant who is authorized to present the case.
 - 6.1.4.4. The signature of the Appellant or legal representative.
- 6.2 If the appeal meets all requirements of Paragraph 6.1 above, the Director shall assign a case number and assign the appeal to an Administrative Hearing Officer. If the appeal does not meet any requirement of Paragraph 6.1, the Director shall reject the appeal
- 6.3 The Director shall provide written notification to Appellant of the assignment of appeal to an Administrative Hearing Officer; or, if the appeal was rejected, the Director shall provide written notification to Appellant of the rejection and the reason(s) for rejection.
- 6.4 Where there is an appeal process provided in the underlying Municipal Code, and the appeal process has been completed, the appeal of the Administrative Citation in accordance with this Section shall only relate to whether the processes for issuance of the citation were properly followed and shall not consider the merits of the underlying violation.
- 6.5 The parties to the hearing shall be the Responsible Party as the Appellant and the City as the Respondent.

7.0 QUALIFICATIONS, DUTIES AND REQUIREMENTS OF ADMINISTRATIVE HEARING OFFICER

- 7.1 The Administrative Hearing Officer (“Administrative Hearing Officer”) must be an attorney licensed to practice law in the State of Colorado with a minimum of five years of experience. Administrative Hearing Officers will be hired through Career Service Authority or engaged by a professional service contract.
- 7.2 The Administrative Hearing Officer (Administrative Hearing Officer) shall issue a final decision on behalf of the Director entitled “Administrative Enforcement Order” in accordance with these Rules and Regulations. In doing so the Administrative Hearing Officer shall determine whether the Administrative Citation appealed from was issued in compliance with the requirements of the Charter and Ordinances of the City. For appeals of citations for violations that the Director has determined would cause immediate peril to life or property, or are of a nature that require immediate compliance, the Administrative Hearing Officer shall determine the validity of all outstanding citations for said violations as of the date of the hearing.
- 7.3 The Administrative Hearing Officer shall be charged with performing all functions relating to the Administrative Enforcement Order, and entertaining petitions or protests made either orally or in writing as set forth in the Charter, Ordinances, or Rules and Regulations of the Department. The Administrative 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 as a hearing tribunal and quasi-judicial proceeding in conformance with the procedures and time limitations set forth in the Charter, Ordinances, or these Rules and Regulations, having and exercising all powers given to the Director therein.
- 7.4 The form of, and process for issuing subpoenas, shall be as follows:

- 7.4.1. The Administrative Hearing Officer shall issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses with or without tangible items to Administrative Citation appeal hearings. The Administrative Hearing Officer shall issue subpoenas when a hearing has been set and subpoenas have been requested by the city or the Appellant. Such request must be made in compliance with the provisions of these rules and procedures promulgated hereunder.
- 7.4.2. The Administrative Hearing Officer shall mail or deliver the issued subpoenas to the party requesting them. The party requesting the subpoena shall be solely responsible for serving the subpoena on the witness along with witness and mileage fees at least forty-eight (48) hours before the hearing in accordance with the Colorado Rules of Civil Procedure and the Colorado Revised Statutes.
- 7.4.3. It shall be the duty of all persons served with a subpoena under the provisions of this section to appear and testify at the hearing and to bring with them the books, papers and tangible things specified in the subpoena. Failure to appear or failure to produce the books, papers, and tangible things specified in the subpoena shall constitute contempt and may be criminally prosecuted and have penalties imposed under section 1-13(a) of the Code.
- 7.4.4. If a witness properly served with a subpoena under the provisions of this section fails to appear or fails to bring with him or her the books, papers, and tangible things specified in the subpoena, the party requesting the subpoena may request one continuance of the hearing, which may or may not be granted in the sole discretion of the Administrative Hearing Officer.

8.0 THE ADMINISTRATIVE HEARING ON APPEAL

- 8.1 Upon receipt of an appeal from the Director, the Administrative Hearing Officer shall set a date, time and place for the hearing unless, if requested by the Appellant and in the sole discretion of the Administrative Hearing Officer, it is submitted on written brief and supporting material.
- 8.2 Cases shall be set for hearing in the order in which the petition is filed, provided, however, the Administrative Hearing Officer may accelerate cases of particular significance which he or the Director determines should be advanced on the docket.
- 8.3 The Administrative Hearing Officer shall notify the parties promptly of the date, time and place for the hearing, but in no event shall notice be given less than 10 days prior to hearing. Such notification shall be personally served upon Appellant or sent to Appellant by first class mail.
- 8.4 In the discretion of the Administrative 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 address: the issues raised by the appeal; 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 Administrative Hearing Officer.
- 8.5 All hearings or, when an appeal 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 Administrative Hearing Officer assigned to conduct the hearing or to examine the written material submitted.
- 8.6 Any Responsible Party who fails to appear at the hearing is deemed to have waived the right to a hearing and the adjudication of issues related to the hearing, provided that proper notice of the hearing has been provided.
- 8.7 All testimony in proceedings before the Administrative Hearing Officer shall be given under oath administered by the Administrative Hearing Officer in substantially the following form: "I

solemnly swear or affirm that the testimony I am about to give is the truth, the whole truth, and nothing but the truth.”

- 8.8 The Administrative Hearing Officer may allow witnesses, other than the Appellant and the investigating Enforcement Officer, to testify by telephone, provided neither party objects and both parties acknowledge the identity of the witness.
- 8.9 The conduct of hearings and the admission of evidence shall generally be in accordance with these Rules 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 Administrative Hearing Officer shall consider all evidence of probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. The Administrative Hearing Officer may utilize his or her experience, technical competence, and specialized knowledge in the evaluation of evidence presented.
- 8.10 The City bears the burden of proof to establish the existence of a violation of the Municipal Code. In the case of a hearing regarding the abatement of a nuisance, the City bears the burden to prove the existence of a public nuisance. That burden must be met by a preponderance of the evidence presented at the hearing or in the evidence submitted by written brief and supporting material.
- 8.11 Copies, photographs and photocopies may be admitted into evidence or substituted in evidence in place of original documents.
- 8.12 An Appellant may choose to submit the case on written briefs, supporting data, affidavits or stipulated facts, rather than through oral testimony. Such an election shall be made by filing a written notice with the Administrative Hearing Officer with the Notice of Appeal or as soon after the filing of the Notice of Appeal as possible, but not later than ten (10) business days (i.e., excluding weekends and holidays) prior to any scheduled hearing. If the Respondent chooses to submit the case in this manner, the Respondent shall not be allowed an oral presentation, but must also submit its position in writing.
- 8.13 An individual may represent himself or be represented by an attorney admitted to practice in the State of Colorado. A corporate Appellant, however, must be represented by an attorney admitted to practice in the State of Colorado unless the Administrative Hearing Officer allows a corporate officer to represent the Appellant. The City shall be represented by a City employee.
- 8.14 Witnesses intending to give opinion testimony as experts must be qualified as such, and their qualifications should be submitted in advance to the Administrative Hearing Officer.
- 8.15 Hearings shall be recorded by electronic means and transcripts of such recordings shall be made at the expense of the party requesting the transcript. The appellant may employ at its own expense a general or certified shorthand reporter.
- 8.16 Whenever it appears that a Notice of Appeal is not filed within the time permitted by the particular law, Ordinance, Rule or Regulation involved, or that jurisdiction is not proper for other reasons, the case may be dismissed on the motion of any party or the Administrative Hearing Officer.
- 8.17 Mailings, notices, computations of time, time limitations, service and filings shall conform to the requirements of particular Law, Ordinance or the Rule involved.
- 8.18 The order of proceedings for Hearings shall be as follows:
 - 8.18.1. Docket call by Administrative Hearing Officer.
 - 8.18.2. Opening statement by Appellant and by Respondent, unless waived by either party or reserved by Appellant until the opening of the appellant’s case.
 - 8.18.3. Presentation of evidence by Respondent, allowing cross-examination by Appellant. The Administrative Hearing Officer shall assign a letter to Respondent’s exhibits.

- 8.18.4. Presentation of evidence by Appellant with cross-examination by Respondent. The Administrative Hearing Officer shall assign a number to Appellant's exhibits.
- 8.18.5. Rebuttal and surrebuttal evidence, if any.
- 8.18.6. Closing argument by Respondent, followed by closing argument by Appellant. The Administrative Hearing Officer may allow rebuttal argument by Respondent. The Administrative Hearing Officer may require argument to be oral or in writing or both.

9.0 THE ADMINISTRATIVE ENFORCEMENT ORDER

- 9.1 At the conclusion of the hearing, the Administrative Hearing Officer will issue the Administrative Enforcement Order.
- 9.2 The Administrative Enforcement Order shall: uphold the Administrative Citation and penalties as to any violation proven by the Department; dismiss the Administrative Citation and penalties as to any violation not proven by the Department; or require payment of any outstanding assessed penalties and costs by a specified date. The Administrative Enforcement Order may waive or conditionally reduce the penalties assessed by the Administrative Citation.
- 9.3 In the event that the Administrative Hearing Officer does not dismiss the Administrative Citation in its entirety, the Administrative Hearing Officer shall assess reasonable administrative costs of not less than One Hundred Dollars (\$100.00), but not to exceed Two Hundred Dollars (\$200.00).
- 9.4 The Administrative Enforcement Order shall become final upon the date of mailing to Appellant. A copy shall be provided to the Director.
- 9.5 Failure to comply with the Administrative Enforcement Order shall be subject to all fines, penalties and assessments authorized by the Code.

10.0 PENALTY ASSESSMENTS, COSTS AND OTHER CHARGES; PAYMENT

- 10.1 All penalties and costs assessed shall be payable to the Manager of Revenue.
- 10.2 The following penalties may be assessed for each Administrative Citation issued for violations of the same code section(s), but shall not exceed the following amounts, regardless of the number of violations per citation:
 - 10.2.1. 1st Administrative Citation for the first violation of a Code section: one hundred and fifty dollars (\$150);
 - 10.2.2. 2nd Administrative Citation for violation of the same Code section or sections: five hundred dollars (\$500);
 - 10.2.3. 3rd and each subsequent Administrative Citation: nine hundred ninety-nine dollars (\$999)
 - 10.2.4. If the City corrects the violation, then the penalties provided by Paragraph 10.2 or the cost of correcting the violation plus 5% of the inspection/incidental costs shall be assessed, whichever is greater.
- 10.3 A twenty-five dollar (\$25) late charge, plus interest at the rate of ten percent (10%) per annum, will be charged for failure to pay an Administrative Citation within the time specified on the citation or Administrative Enforcement Order.
- 10.4 If the Responsible Party fails to pay all penalties and charges within thirty (30) days, the Director may refer the matter for collection by any and all means available to the City.
- 10.5 If the responsible party fails to pay assessed penalties and all other charges within thirty (30) days of the Administrative Citation if not appealed, or if appealed within thirty (30) days of the Administrative Enforcement Order, the full amount of the assessed penalties and charges shall become a prior and perfected lien on the property in accordance with Section 2-294 of the Code.
- 10.6 The Director shall establish an accounting system to identify and track all Administrative Citations, penalty assessments, late fees, interest and administrative costs, and to record payments received therefor.

10.7 Until civil penalties not pending appeal that are owed to the city have been paid in full, the Department shall not issue or renew any license or permit of any kind to a Responsible Party.

10.8 Failure to pay outstanding civil penalties that are not pending appeal and are owed to the Department as a result of one or more Administrative Citations shall be grounds for suspension or revocation of any license issued by the Department until fully paid.

Approved For Publication:

Director, Department of Excise and Licenses

(date)

Approved and Adopted:

Director, Department of Excise and Licenses

(date)

Approved As To Form:

City Attorney

(date)

Exhibit 1 Administrative Citation form -
[Must include the following information:]

- Date of violation
- Location of violation
- Approximate time violation was observed
- Code section violated
- Description of the violation
- (when applicable) Description of the action required to correct the violation
- (when applicable) Require the responsible Party to immediately correct the violation and explanation of consequences for failure to correct the violation
- Amount of penalty imposed for the violation
- How to pay penalty, due date, consequences for failure to pay
- Appeal process
- Signature of Enforcement Official
- Signature of Responsible Party (if it can be obtained)