

PUBLIC WORKS

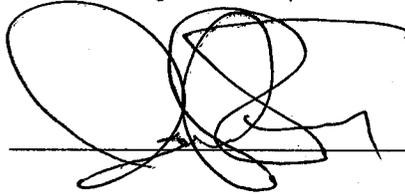
RULES & REGULATIONS

OF THE MANAGER OF THE DEPARTMENT OF PUBLIC WORKS, CITY & COUNTY OF DENVER

PERTAINING TO ADMINISTRATIVE CITATIONS

Date Advertised March 13, 2009
In (Publication) Daily Journal
Public Hearing Date April 15, 2009

Approved as to form:



David R. Fine
Attorney for the City & County of Denver

Approved & Adopted



Guillermo V. Vidal
Manager of Public Works

Effective Date: July 24, 2009

Adopted Pursuant to Article II
of the Charter of the City &
County of Denver and Section
2-91 et seq. of the Revised
Municipal Code

SECTION I – INTRODUCTION

1. 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 (DRMC) which has been codified in Chapter 2 Administration, Article XII of the DRMC.

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

3. A copy of these rules shall be made available without charge to persons seeking to file an appeal of an Administrative Citation. The Manager shall maintain a copy of these Rules on the Department's website.

SECTION II – CODE CHAPTERS AND SECTIONS AUTHORIZED FOR ENFORCEMENT THROUGH ADMINISTRATIVE CITATIONS

In addition to and 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. Article I, Chapter 3 (Advertising)
2. Article IX, Chapter 10 (Buildings and Building Regulations)
3. Chapter 48 (Solid Waste)
4. Chapter 49 (Streets, Sidewalks and Public Ways)
5. Section 652, Article XI, Chapter 54 (Traffic Regulations)
6. Articles XIV and XV, Chapter 55 (Transportation and Motor Vehicles; Sales and Service)

SECTION III – 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:

1. "Administrative Hearing Officer" (AHO) shall mean a person appointed by the Manager to hear appeals of Administrative Citations.
2. "City" shall mean the City and County of Denver.
3. "Code" shall mean those provisions of the DRMC enumerated in Section II above.
4. "Enforcement Official" shall mean a person employed by the City and assigned to PW charged with enforcing the ordinances of the City.
5. "Manager" shall mean the Manager of Public Works (PW) or the Manager's designee.

6. "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.

7. "Rules and Regulations" (Rules) 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 Denver Revised Municipal Code.

SECTION IV – REQUIREMENTS FOR ISSUANCE

1. An Administrative Citation may be issued to any Responsible Party, only after the Responsible Party has received notice of violation and time to comply as provided in the underlying Code unless the Manager 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.

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.

3. After the issuance of an Administrative Citation, no additional Administrative Citations for another or continuing violation of the same requirement shall be issued for ten (10) days unless the Manager 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. No additional Administrative Citation shall be issued for the same or continuing violation if the Responsible Party appeals, until the AHO 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.

5. 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.

SECTION V –PENALTY ASSESSMENTS

The following penalties may be assessed for each Administrative Citation issued for violations of the same code section or sections, but shall not exceed the following amounts regardless of the number of violations per citation:

1. 1st Administrative Citation for the first violation of a Code section or sections: one hundred and fifty dollars (\$150)

2. 2nd Administrative Citation for a second violation of the same Code section or sections: five hundred dollars (\$500)

3. 3rd and each subsequent Administrative Citation for third and subsequent violations of the same Code section or sections: nine hundred and ninety-nine dollars (\$999)

SECTION VI – PROCEDURES

1. The Administrative Citation shall be issued in the form attached as Exhibit 1.
2. The Administrative Citation shall be served upon the Responsible Party in accordance with Section 2-284, DRMC.

SECTION VII – FILING AN APPEAL

A Responsible Party served with an Administrative Citation may appeal the issuance of the Administrative Citation in the following manner:

1. A written Notice of Appeal must be received by the Office of the Manager within **ten (10) calendar days** from the date of service of the Administrative Citation on the person or entity appealing (the "Appellant").
2. The notice of appeal shall be filed with the **Manager of Public Works, Office of the Manager, 201 W. Colfax, 6th Floor, Denver, CO 80202**.
3. The notice of appeal must be in writing and shall be mechanically produced or reproduced or legibly hand printed.
4. No particular form of appeal is required; provided, that the following information is set forth in writing:
 - a. The reason(s) the appellant believes the administrative citation is objectionable, incorrect or illegal.
 - b. The amount and type of claim or dispute involved and the time during which it accrued or occurred.
 - c. The name, address and telephone number of the appellant and the name, address and telephone number of the legal representative of the Appellant (if any), who is authorized to present the case.
 - d. The signature of the appellant, legal representative and/or corporate agent.
5. If the appeal meets all requirements of this Section, the Manager shall assign a case number and assign the appeal to an AHO.
6. If the appeal does not meet any requirement of this Section the Manager shall reject the appeal.
7. The Manager shall provide written notification to Appellant of the assignment of appeal to an AHO; or, if the appeal was rejected, the Manager shall provide written notification to Appellant of the rejection and the reason(s) for rejection.
8. Upon receipt of an appeal from the Manager, the AHO shall set a time and place for the hearing, and notify the appellant.
9. Where there is an appeal process provided in the underlying 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.
10. The parties to the hearing shall be the Responsible Party as the Appellant and the City as the Respondent.

SECTION VIII – QUALIFICATIONS, DUTIES AND REQUIREMENTS OF ADMINISTRATIVE HEARING OFFICER

1. The AHO must be an attorney licensed to practice law in the state with a minimum of five years of experience.

2. The AHO 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.

3. The AHO shall issue a final decision on behalf of the Manager entitled "Administrative Enforcement Order" in accordance with these Rules and Regulations. In doing so the AHO 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 is of a nature that requires immediate compliance, the AHO shall determine the validity of all outstanding citations for said violation as of the date of the hearing. The AHO shall be charged with performing all functions relating to the Administrative Enforcement Order, 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 Manager therein.

4. The form of, and process for issuing subpoenas, shall be as follows:

a. The AHO shall issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses with or without tangible items to Administrative Citation appeal hearings. The AHO 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.

b. The AHO 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.

c. 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.

d. 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 AHO.

Section IX – THE ADMINISTRATIVE HEARING ON APPEAL

Upon receipt of an appeal from the manager, the AHO shall set a date time and place for hearing the case, unless, if requested by the appellant and in the sole discretion of the AHO, it is submitted on written brief and supporting material. The AHO shall notify the parties of the time and place of the hearing. In the discretion of the AHO, 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 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 AHO.

1. 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 AHO assigned to conduct the hearing or to examine the written material submitted.

2. Cases shall be set for hearing in the order in which the petition is filed, provided, however, the AHO may accelerate cases of particular significance which he determines should be advanced on the docket.

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.

4. All testimony in proceedings before the AHO shall be given under oath administered by the AHO 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."

5. 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 AHO shall consider all evidence of probative value and prudent persons in the conduct of their affairs. The AHO may utilize his or her experience, technical competence, and specialized knowledge in the evaluation of evidence presented.

6. The AHO 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 identify of the witness.

7. If the appellant challenges procedural matters in the issuance of the Administrative Citation, the appellant shall have the burden of proof to show that the Administrative Citation was issued in error. 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. The City bears the burden of proof to establish the existence of a violation of the 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.

9. 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.

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

11. 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 AHO 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 AHO grants the request, no party shall be allowed an oral presentation, and Respondent must also submit its position in writing.

12. An Appellant who is a natural person may appear in person to represent himself or herself or be represented by an attorney or any other person specifically chosen by the Appellant to represent him or her at the hearing. An Appellant who is not a natural person may be represented by an attorney, corporate officer, partner or any other person who the AHO believes may adequately represent the appellant's interests. The City shall be represented by a City employee.

13. Witnesses offered to give opinion testimony as experts must be qualified as such, and their qualifications should be submitted in advance to the AHO.

14. 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.

15. 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 the jurisdiction is not proper for some other reason, the case may be dismissed on the motion of any party or the AHO.

16. Mailings, notices, computations of time, time limitations, service and filings shall conform to the requirements of particular Law, Ordinance or the Rule involved.

SECTION X – ADMINISTRATIVE HEARINGS

The order of proceedings for Administrative Hearings shall be as follows:

1. Docket call by AHO.
2. Opening statement by Appellant and by the Respondent, unless waived by either party or reserved by Respondent until the opening of the Respondent's case.
3. Presentation of evidence by Appellant, allowing cross-examination by Respondent. The AHO shall assign a letter to Appellants exhibits.

4. Presentation of evidence by Respondent with cross-examination by Appellant. The AHO shall assign a letter to Appellants exhibits.

5. Rebuttal and surrebuttal evidence, if any.

6. Closing argument by Appellant, followed by closing argument by Respondent. The AHO may allow rebuttal argument by Appellant. The AHO may require argument to be oral or in writing or both. If the Appellant chooses not to present a closing argument, none shall be allowed Respondent.

SECTION XI – ADMINISTRATIVE ENFORCEMENT ORDER

1. At the conclusion of the hearing, the Administrative Hearing Officer will issue the Administrative Enforcement Order. 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.

2. In the event that the Administrative Hearing Officer does not dismiss the Administrative Citation in its entirety, the Administrative Hearing Officer shall assess against Appellant administrative costs of One Hundred Dollars (\$100.00) or if the hearing extends for longer than one hour costs of Two Hundred Dollars (\$200.00). Costs shall not be assessed against the City.

3. The Administrative Enforcement Order shall become final upon the date of mailing to Appellant; a copy shall be provided to the Director.

4. Failure to comply with the administrative enforcement order shall be subject to all fines, penalties and assessments authorized by the Code.

SECTION XII – ADMINISTRATIVE PROCESS /PERMITS and LICENSES/COLLECTIONS

1. If the City corrects the violation, then civil penalties determined in accordance with Section V of this Rule or the cost of correcting the violation plus 5% of the inspection/incidental costs shall be assessed, whichever is greater, and such assessment shall become a prior and perfected lien on the property.

2. All penalties and administrative costs assessed shall be payable to the Manager of Revenue.

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.

4. If the Responsible Party fails to pay all penalties and charges within thirty (30) days, the Manager may refer the matter for collection by any and all means available to the City.

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 2-294 DRMC.

6. The Manager 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 therefore.

7. Until civil penalties not pending appeal that are owed to the City have been paid in full, the City shall not issue or renew any license or permit of any kind to the responsible party.

CITY AND COUNTY OF DENVER
DEPARTMENT OF PUBLIC WORKS
201 West Colfax Ave., 6th Floor
Denver, Colorado 80202

Read Carefully

If you need further clarification about the violation(s) and/or how to bring your property into compliance please call the enforcement agent designated on the front of this form.

**ADMINISTRATIVE CITATIONS AND ASSOCIATED FINES
FOR NONCOMPLIANCE INSPECTIONS**

Administrative Citations and Associated Fines

City and County of Denver Revised Municipal Code provides for the issuance of Administrative Citations for Revised Municipal Code Violations. There are progressive fines assessed for each Administrative Citation issued for a particular type of violation. The fines assessed, as indicated on the front of the form, are \$150.00 for the first Citation issued, \$500.00 for the second Citation issued, and \$999.00 for the third and any subsequent Citations issued. These fines are cumulative.

How to Pay Fine

Payment can be in person or mailed to the payment address listed below. Make checks payable to the "Manager of Finance." Payment of the fine shall not excuse the failure to correct the violation nor shall it bar further enforcement by the City.

Consequences of Failure To Pay The Fine

The failure of any person to pay the fine assessed by the Administration Citation within the time specified on the citation may result in the charging of a late fee and action to collect all costs associated with the filing of such actions. In addition a lien may be filed on the property.

Payment Address: Make check payable to: Manager of Finance

Mail Payments To:

Public Works Finance and Administration
CPDA Cashiers - Administrative Citations
201 W Colfax Ave., 2nd Floor
Denver, CO 80202

Pay In Person At: M - F 7:30 am – 4:30 pm

Wellington Webb Municipal Bldg.
201 W Colfax Ave., 2nd Floor
OR

Wastewater Management Bldg.
2000 W 3rd Ave

Rights of Appeal

You have the right to appeal this Administration Citation within ten (10) calendar days from the date of issue. An appeal must be made in writing to the Manager of Public Works. No appeal request shall be processed unless the appellant first pays non-refundable \$100 appeal fee.

Appeals Address:

Manager of Public Works
Office of the Manager (AHO)
201 W. Colfax Ave., Dept. 609
Denver, CO 80202