

# **Proposed Chapter 20 Ordinance Change**

## **Implementation of Civil Citations for ACS**

### **Sec. 20-100. - Purpose.**

It is the intent of this article to promote, protect and improve the health, safety and welfare of the citizens of the city, by providing for administrative hearing officers with the authority to impose administrative penalties in order to provide an equitable, expeditious, effective and inexpensive method to enforce ordinances described by V.T.C.A., Local Government Code § 54.032, Ordinances Subject to Quasi-Judicial Enforcement, and to provide continued authority to adjudicate parking violations under section 19-225 of the City Code.

*(Ord. No. 2012-10-04-0780, § 2, 10-4-12)*

### **Sec. 20-101. - Authority and supplementary provisions.**

The City of San Antonio (the "city"), as a home-rule city, adopts in this article a procedure for administrative adjudication hearings pursuant to V.T.C.A., Local Government Code § 54.044 and the powers of self-rule granted by the voters under the City Charter as authorized by the Constitution of the State.

Nothing in this article shall preclude the city's pursuit of any and all other remedies allowed under the civil and criminal statutes and, in equity, to address conditions which are treated in this article. Neither shall the city be required to issue, nor be prohibited from issuing, criminal citations before, during, or after any proceeding prescribed in this article.

*(Ord. No. 2012-10-04-0780, § 2, 10-4-12)*

### **Sec. 20-102. - Jurisdiction.**

(a) The jurisdiction of the administrative hearing officers shall be limited to city ordinances:

(1) For the preservation of public safety, relating to the materials or methods used to construct a building or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing and fixtures, entrances or exits;

- (2) Relating to the fire safety of a building or improvement, including provisions relating to materials, types of construction or design, warning devices, sprinklers or other fire suppression devices, availability of water supply for extinguishing fires, or location, design, or width of entrances or exits;
- (3) Relating to dangerously damaged or deteriorated buildings or improvements;
- (4) Relating to conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents; or
- (5) Relating to a building code or to the condition, use or appearance of property in the city.
- (6) Relating to animal care and control.

(b) Pursuant to the home rule powers of the city, the jurisdiction of the administrative hearing officers shall include the administrative adjudication of parking violations under section 19-225 of the City Code.

*(Ord. No. 2012-10-04-0780, § 2, 10-4-12)*

### **Sec. 20-103. - Definitions.**

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

*City* means the City of San Antonio, Texas.

*Person* means any natural person, corporation, partnership, joint venture, association (including homeowners or neighborhood associations), trust or any other entity recognized by law.

*Violator* means the person charged with violating a city ordinance described in section 20-102 of this article.

*(Ord. No. 2012-10-04-0780, § 2, 10-4-12)*

### **Sec. 20-104. - Establishment of an administrative hearing officer; duties.**

(a) An administrative hearing officer shall be hired by the city manager and shall serve under the direction of the presiding judge of the municipal court to preside over the administrative adjudication hearings established under this article. The city manager may also provide for associate administrative hearing officers to preside over the administrative adjudication hearings established under this article and shall have the same powers, duties and functions, and must meet the same qualifications, as the administrative hearing officer.

(b) The administrative hearing officer shall:

- (1) Be a licensed attorney in good standing with the State Bar of Texas;
- (2) Be authorized to administer oaths and issue orders compelling the attendance of witnesses and production of documents;
- (3) Act pursuant to the authority granted by V.T.C.A., Local Government Code § 54.044, this article and in section 19-225 of the City Code; and
- (4) Enforce and adjudicate parking violations pursuant to the provisions, duties and procedures in section 19-225 of the City Code.
- (5) Be responsible for additional administrative adjudicative duties as assigned by passage of ordinance.

*(Ord. No. 2012-10-04-0780, § 2, 10-4-12)*

## **Sec. 20-105. - Notice and hearing.**

(a) A violator is entitled to notice by citation or summons.

(b) A citation or summons issued pursuant to the procedures adopted under this article must:

- (1) Notify the violator that the person has the right to a hearing;
- (2) Provide information as to the time and place of the hearing;
- (3) State the type, date and location of violation;
- (4) State the penalty range for which the violator may be liable; and
- (5) Provide instructions and the due date for paying penalties, costs and fees, as prescribed by the municipal court clerk in conformance with section 20-106, in lieu of a hearing and payment of which shall be an admission of liability for the violation charged.

- (c) The original or a copy of the summons or citation shall be kept by the municipal court clerk as a record in the ordinary course of business of the city and is rebuttable proof of the facts it states.
- (d) The person who issued the citation or summons is not required to attend a hearing under this article.
- (e) A violator who fails to appear at a hearing authorized under this article is considered to admit liability for the violation charged. The administrative hearing officer shall issue an order of liability and assess appropriate penalties, costs and fees against the violator in conformance with section 20-106 of this article.
- (f) At a hearing under this article, the administrative hearing officer shall issue an order stating whether the violator is liable for the violation. Upon a finding of liability, the administrative hearing officer shall issue an order:
  - (1) Assessing the penalty, costs and fees; and
  - (2) Requiring abatement of the violation by a specific date.
- (g) Upon a finding of liability, the administrative hearing officer may set the date and time for a compliance hearing. A copy of the order shall be provided to the violator as notice of the compliance hearing.
- (h) If, at a compliance hearing, the administrative hearing officer finds that the violator has remedied or abated the violation, the administrative hearing officer may reduce the applicable penalty, fees and costs.
  - (i) If, at a hearing under this article, the administrative hearing officer finds the violator is not liable for the violation, the violator shall not be responsible for any penalty, cost or fee.
- (j) An order issued pursuant to this article may be filed with the municipal court clerk, who shall keep the order in a separate index and file. The order may be recorded using microfilm, microfiche, or data processing techniques.

*(Ord. No. 2012-10-04-0780, § 2, 10-4-12)*

## **Sec. 20-106. - Establishing penalty.**

- (a) The establishment of a penalty shall be consistent with and pursuant to the provisions of V.T.C.A., Local Government Code § 54.044, and as amended.
- (b) The penalty range to be assessed against a violator found liable under this article shall be:
  - (1) Not less than twenty dollars (\$20.00), nor more than one thousand dollars (\$1,000.00) a day for a first violation;
  - (2) Not less than two hundred fifty dollars (\$250.00), nor more than one thousand dollars (\$1,000.00) a day for a second violation; and
  - (3) Not less than five hundred dollars (\$500.00), nor more than one thousand dollars (\$1,000.00) a day for a third or subsequent violation.
- (c) In addition to the penalty assessed, the administrative hearing officer may require the violator to pay fees and costs.
- (d) In determining the amount of penalty to be assessed, the administrative 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) The actual costs of repairs to the city due to the violation as supported by receipts or testimony or other evidence;
  - (5) Indigence of the violator; and
  - (6) Any other relevant evidence.

*(Ord. No. 2012-10-04-0780, § 2, 10-4-12)*

## **Sec. 20-107. - Enforcement of order.**

An order issued against a person found liable for a city ordinance violation under this article may be enforced by:

- (1) Filing a civil suit for the collection of a penalty assessed against the person;
- (2) Obtaining an injunction that:
  - a. Prohibits specific conduct that violates the ordinance; or
  - b. Requires specific conduct necessary for compliance with the ordinance; and

- (3) Referral to a collection agency for non-payment of assessed penalties, costs and fees, with the cost to the city for collection services assessed as costs and added to the judgment.

*(Ord. No. 2012-10-04-0780, § 2, 10-4-12)*

### **Sec. 20-108. - Appeal.**

- (a) A person who is found by an administrative hearing officer to have violated an ordinance under this article may appeal the determination by filing a petition in the municipal court before the 31st day after the date the administrative hearing officer's order is filed. An appeal does not stay enforcement and collection of the judgment unless the person, before filing the appeal petition, posts a bond with the municipal court for twice the amount of the penalties, costs and fees ordered by the administrative hearing officer.
- (b) If a person found liable for a violation does not timely appeal the administrative hearing officer's order, the order shall become a final judgment.
- (c) The municipal court's review shall be limited to a hearing under the substantial evidence rule.

*(Ord. No. 2012-10-04-0780, § 2, 10-4-12)*

### **Sec. 20-109. - Disposition of administrative penalties, costs and fees.**

- (a) Except as provided in subsections (b) and (c), penalties, costs and fees assessed under this article shall be paid into the city's general fund for the use and benefit of the city.
- (b) Twenty dollars (\$20.00) of each penalty assessed and paid for Development Services Department violations set out in section 20-102(a)(1)-(5) shall be deposited into the Development Services Department compliance assistance account established in section 20-110 of this article.
- (c) Twenty dollars (\$20.00) of each penalty assessed and paid for Animal Care Services Department violations set out in section 20-102 (a)(6) shall be deposited into the Animal Care Services Department compliance assistance account established in section 20-110 of this article.

(Ord. No. 2012-10-04-0780, § 2, 10-4-12)

## **Sec. 20-110. - Compliance assistance accounts.**

- (a) Compliance assistance accounts are composed of:
- (1) Penalties collected under subsection 20-109(b) and (c) of this article; and
  - (2) Any funds donated by a person, as accepted by city council ordinance.
- (b) The Development Services Department compliance assistance account shall be used for the sole purpose of rehabilitating, repairing or abating nuisances of properties and premises in the city for persons who:
- (1) Have been found liable for an administrative violation under this article;
  - (2) Are found by the administrative hearing officer to be indigent and financially unable to comply with an administrative order under section 20-105;
  - (3) File a request for funds with the development services department for the purpose of rehabilitating and/or repairing the person's property or premises until it complies with the administrative order;
  - (4) Have not have received funds from the compliance assistance account within the preceding sixty (60) months;
  - (5) Do not qualify for other home repair or rehabilitation assistance programs available through the city; and
  - (6) Own and occupy the property.
- (c) The Animal Care Services Department compliance assistance account shall be used for the purpose of abating animal care and control violations set out in Chapter 5 of this Code for persons who:
- (1) Have been found liable for an administrative violation under this article;
  - (2) Are found by the administrative hearing officer to be indigent and financially unable to comply with an administrative order under section 20-105;
  - (3) File a request for funds with the Animal Care Services Department for the purpose of abating animal care and control violations set out in Chapter 5 of this Code until there is compliance with the Administrative order;

- (4) Have not have received funds from the compliance assistance account within the preceding sixty (60) months;
  - (5) Do not qualify for other animal care and control assistance programs available through the city; and
  - (6) Own the animal at issue.
- (d) The director of the development services department and the director of the Animal Care Services Department shall adopt policies and procedures consistent with this article for the administration of each account's funds.

*(Ord. No. 2012-10-04-0780, § 2, 10-4-12)*

### **Sec. 5-21. Unlawful acts; criminal penalties; civil remedies.**

(a) Unless otherwise specifically provided for in this chapter, if it is found that a person intentionally, knowingly or recklessly violated any provision of this chapter, then upon conviction a person shall be fined an amount not less than one hundred dollars (\$100.00) and not more than two thousand dollars (\$2,000.00) except that, in the event a person has once previously been convicted under this chapter, the person shall be fined an amount not less than two hundred dollars (\$200.00) and shall be fined not less than three hundred dollars (\$300.00) for a third conviction and for each conviction thereafter.

(b) If it is found that a person intentionally, knowingly or recklessly violated sections 5-4, 5-5, 5-7, 5-8 and 5-80 then upon conviction a person shall be punished by a minimum fine of five hundred dollars (\$500.00) and a maximum fine of two thousand dollars (\$2,000.00) for a first offense, a minimum fine of one thousand dollars (\$1,000.00) and a maximum fine of two thousand dollars (\$2,000.00) for a second offense, and a fine of two thousand dollars (\$2,000.00) for a third and subsequent offense.

(c) Nothing in this section shall limit any and all other criminal, civil or administrative remedies available to the city in seeking to enforce the provisions of this chapter. Each day's violation thereof shall constitute a separate offense.

(d) Where it is deemed necessary by the city manager and the director, the city attorney's office is hereby empowered to secure injunctive relief to



enforce the provisions of this chapter. This shall be in addition to, and not in lieu of, the criminal penalties provided for in this chapter.