

**ORDINANCE NO. 2018-01, FIRST SERIES**  
**AN ORDINANCE AMENDING THE CITY CODE**  
**TO PROVIDE FOR AN ADMINISTRATIVE CITATION PROCESS**  
**FOR THE CITY OF EAST GULL LAKE**  
**COUNTY OF CASS, STATE OF MINNESOTA**

The City of East Gull Lake ordains:

Section 1. **Purpose and Intent.** The purpose and intent of this Ordinance is to amend the City of East Gull Lake City Code as it relates to enforcement of the City Code. The City Council finds that there is a need for alternative methods of enforcing the City Code. While criminal fines and penalties have been the most frequent enforcement mechanism, there are certain negative consequences for both the City and the accused. The delay in the criminal or civil systems does not ensure proper resolution. Citizens resent being labelled as criminals for violation of administrative regulations. The higher burden of proof and the potential of incarceration do not appear appropriate for most administrative violations. The criminal process does not always regard City Code violations as being important. Accordingly, the City Council finds that the use of administrative citations in the imposition of civil penalties is a legitimate and necessary alternative method of enforcement. This method of enforcement is in addition to any other legal remedy that may be pursued for violations of the City Code.

The administrative enforcement procedures seek to gain compliance with the City Code prior to formal criminal or civil court actions. The administrative citation process shall be in addition to any other legal or equitable remedy available to the City for city code violations.

Section 2. **Amendments.** This ordinance will amend Title 8 by adding Sections 8.11-4 – 8.11-12 of the East Gull Lake City Code as follows:

**SECTION 8.11-4. ADMINISTRATIVE CITATIONS**

**1. DEFINITIONS.**

- A. **“Administrative Offense”.** A violation of any provision of the City Code is an administrative offense that may be subject to administrative citation and/or civil penalties. Each day a violation occurs constitutes a separate offense.
- B. **“Civil Penalty”.** An administrative offense may be subject to a simple penalty not to exceed the maximum penalty for a misdemeanor violation under state law.
- C. **“Property Violation”.** Upon the reasonable belief that a property related administrative offense has occurred, designated City officials shall serve on the violator an Order to Correct the Violation. If compliance is not achieved by virtue of an Order to Correct, the designated City official is authorized to issue an Administrative Citation. An Administrative Citation shall be presented in person or by mail to the person responsible for the violation. The citation shall state the date, time, and nature of the

offense, the name of the official issuing the citation, the amount of the scheduled fine, and the manner for paying the fine or appealing the citation by requesting a hearing. The City Planning & Zoning Administrator, any building officials hired by the City, or any licenses peace officer are authorized to issue a citation for ordinance violations.

- D. **“Non-Property Offenses”**. All other City Code violations not specifically designated as property violations.

**SECTION 8.11-5 ADMINISTRATIVE CITATIONS.** Upon reasonable belief that a property violation or non-property violation has occurred, an administrative citation may be issued and served upon the person responsible for the violation. The administrative citation may be issued by a Police Officer, by the Planning & Zoning Administrator, or by a building inspector designated by the City. Service shall be in person or by mail. The citation shall state the date, time and nature of the offense, the name of the official issuing the citation, the amount of the scheduled civil fine, and the manner for paying the fine or appealing the citation by requesting an administrative hearing.

**SECTION 8.11-6 SCHEDULE OF CIVIL FINES.** The City shall adopt by resolution a Schedule of Civil Fines for administrative offenses for which a citation has been issued. City officials shall adhere to the Schedule of Fines in issuing administrative citations pursuant to the City Code.

**SECTION 8.11-7 PAYMENT OF CIVIL FINE – REQUEST FOR ADMINISTRATIVE HEARING.** The person responsible for the violation shall either pay the scheduled fine or request a hearing within twenty (20) days after issuance after the administrative citation. During that period, only the City Attorney has authority to dismiss the citation and/or waive the scheduled civil fine. Upon payment of a fine, the right to appeal is waived.

**SECTION 8.11-8 MEDIATION.** After a violator has made a request for an administrative hearing, the City Administrator may agree to mediate with the violator. The mediation will be conducted by a person agreed upon by the City and the violator. Notice of the date, time and location of the mediation will be mailed to the violator. If the dispute is not resolved through mediation, then the matter will be scheduled for an administrative hearing.

**SECTION 8.11-9 ADMINISTRATIVE HEARING PROCEDURES.**

1. **Hearing Officers.** The City Council shall periodically approve a list of persons from whom the City Administrator shall randomly select a hearing officer to hear a matter for which a hearing is requested. The person requesting a hearing shall have the right to request, no later than five (5) days before the date of the hearing, that the assigned hearing officer be removed from the case. One request for each case shall be granted automatically by the City Administrator. A subsequent request shall be direct to the assigned hearing officer who will decide whether he or she cannot fairly and objectively review the case. If such a finding is made, the hearing officer shall remove himself or herself from the case, and the City Administrator shall assign another hearing officer. The hearing officer is

not considered a judicial officer, but is a public officer as defined by Minnesota Statute § 609.415. The hearing officer shall not be a current or former City employee.

2. **Notice of Hearing.** Notice of Hearing must be served in person or by mail on the person responsible for the violation at least ten (10) days in advance of the scheduled hearing, unless a shorter time is agreed upon by all parties.
3. **Pre-payment for Cost of Hearing.** An administrative hearing fee of One Hundred and 00/100<sup>th</sup> Dollars (\$100.00) shall be payable up front to the City at the time of the request for hearing is made. However, in no event will the amount of the administrative hearing fee exceed the total amount of the civil fine. A request for hearing is not valid until the administrative hearing fee is paid. The City has the authority to reduce the requesting person share the costs when that person cannot demonstrate indigency by clear and convincing evidence. Proof of indigency can be demonstrated by the person's receipt of means tested governmental benefits or a demonstrated lack of assets or current income. Such proof shall be presented to the City Administrator's office for determination of the amount of the prepayment in advance of the hearing. In all cases, when the person requesting an administrative hearing is unable to attend and fails to request a continuance of the hearing at least forty-eight (48) hours in advance of the scheduled hearing, all costs incurred by the City attributable to the requested hearing shall be charged to the requesting party and deducted from any prepayment made. The administrative hearing fee may be refunded if the administrative hearing officer determines that no violation occurred. In the event that the administrative hearing officer determines that violation occurred, then the administrative hearing fee will be applied toward any civil fine imposed.
4. **Hearing Procedures.** At the hearing, the parties shall have the opportunity to present testimony and question any witnesses, but strict rules of evidence shall not apply. The hearing officer shall tape record the hearing and receive testimony and exhibits and the full record of the hearing shall be kept. The hearing officer shall receive and give weight to evidence, including hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs.
5. **Authority of Hearing Officer.** The hearing officer shall have the authority to:
  - (1) determine whether a violation occurred;
  - (2) dismiss the administrative citation;
  - (3) impose the scheduled fine; or
  - (4) reduce, stay or waive a scheduled fine either unconditionally or upon compliance with appropriate conditions;
  - (5) waive all or part of the administrative hearing application fee.

6. **Imposition of Civil Fine by Hearing Officer.** When imposing a fine for a violation, the hearing officer may consider any or all of the following factors but, in no case shall the fine exceed \$1,000.00.
  - (1) the duration of the violation;
  - (2) the frequency or reoccurrence of the violation;
  - (3) the seriousness of the violation;
  - (4) the history of the violation;
  - (5) the violator's conduct after issuance of the notice of hearing;
  - (6) the good faith effort by the violator to comply;
  - (7) the economic impact of the fine on the violator;
  - (8) the impact of the violation upon the community;
  - (9) prior record of city code violations; or
  - (10) any other factors appropriate to a just result.
7. **Fines for Continuing Violations.** The hearing officer may exercise discretion to impose a fine for more than one day of continuing violation but only upon a finding that:
  - (1) the violation caused a serious threat of harm to the public health, safety, or welfare; or
  - (2) the accused intentionally and unreasonably refused to comply with the code requirement. The hearing officer's decision and supporting reasons for continuing violations must be in writing.
8. **Written Report of Hearing Officer.** The decision of the hearing officer shall be in writing and contain findings of fact and conclusions of law. The written report shall be served on the parties by mail within twenty (20) days of the last date of the hearing.
9. **Finality of Decision.** The decision of the hearing officer shall be final without any further right of administrative appeal, except as provided herein.

**SECTION 8.11-10 JUDICIAL REVIEW.** An aggrieved party may obtain judicial review of the decision of the hearing officer as provided in state law. These procedures are intended to be voluntary on the part of those who have been charged with administrative offenses. The individual may withdraw from participation in this administrative process by submitting a written request for withdrawal to the City Clerk within seven (7) days of the issuance of the administrative citation. Upon receiving this written request, the City may bring criminal or other civil charges according to the City Code and State law. Likewise, nothing in this section shall prohibit the City, in its discretion, to initiate criminal charges or any other remedy in lieu of the administrative procedures herein set forth.

**SECTION 8.11-11 ADMINISTRATIVE REVIEW.**

1. **Appeal.** Violator may appeal the hearing officer's decision in any of the following matters to the City Council for administrative review:

- (a) an alleged failure to obtain a license, permit or other approval from the City Council as required by an ordinance;
  - (b) an alleged violation of a permit, license or other approval, or the conditions attached to the permit, license, or approval that was granted by the City; or
  - (c) an alleged violation of regulations governing a person or entity who has received license granted by the City.
2. The appeal under this section would be heard by the City Council. Notice of the hearing must be delivered by the alleged violator or property owner to the City Clerk in person or by first class mail within twenty (20) days after service of the hearing officer's decision. The City Clerk shall schedule the appeal to be heard by the City Council and shall notify the appellant of the date, time and location where the appeal will be heard. The parties to the hearing will have an opportunity to present oral or written arguments regarding the hearing officer's decision.
  3. The City Council must consider the record, the hearing officer's decision, and any additional arguments before making a determination. The Council is not bound by the hearing officer's decision, but may end up all or part of the officer's decision. The Council's decision will be in writing.
  4. In addition to opposing a civil penalty, the Council may suspend or revoke the City issued license, permit, or other approval associated with the violation.

**8.11-12 ASSESSMENT OF CIVIL FINES FOR PROPERTY-RELATED VIOLATIONS.**

1. **Civil Fines Subject to Assessment.** Unpaid civil fines imposed for property-related violations may be assessed against:
  - (a) property which was the subject matter or related to the subject matter of the civil fine; or
  - (b) property which was the location of an activity, proposed use, delivery of city services or other circumstances which resulted in the civil fine.
2. **Prior Voluntary Payment.** Prior to any assessment for unpaid fines, the City Administrator or the City Administrator's designate shall seek voluntary payment of the fines by notifying the owner of the property in writing of the fine imposed.
3. **Assessment Procedure.** On or before the first day of October of each year, the unpaid civil fine and late fees, including the administrative charge due under subdivision (d) of this Section, together with interest thereon at the maximum lawful rate permitted under Minnesota Statutes, Chapter 429, against said lot or parcel of land, together with a description of the premises and the name of the supposed owner, shall be certified to the County Auditor and shall be collected in the same manner as taxes and/or

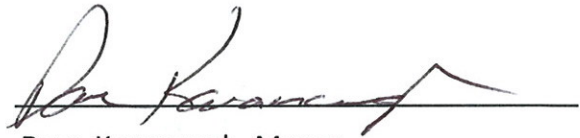
special assessments against the premises. The charge shall be a perpetual lien on the premises until paid. Prior to the certification to the County Auditor, the owner shall be given written notice of the proposed assessment and be provided an opportunity to be heard before the City Council.

4. **Certification Fee.** A Fifty and 00/100 Dollars (\$50.00) charge will be added to all accounts certified to the County Auditor's office for collection. This fee is to be considered separate and distinct from any penalty or interest that may be charged by the County as a result of the certification.


Section 10. **REPEAL.** This ordinance shall supersede and repeal all ordinances or policies inconsistent herewith, including the entire City of East Gull Lake City Code which will be replaced by the current City of East Gull Lake City Code.

Section 11. **EFFECTIVE DATE.** This ordinance shall become effective upon its passage and publication as provided by law.

Passed by the City of East Gull Lake Council this 2<sup>nd</sup> day of January, 2018 by a 3/5ths vote.



Dave Kavanaugh, Mayor

Attest: 

Rob Mason, City Administrator