

SUBSTANDARD LIVING CONDITIONS SPECIAL COMMITTEE

MAY 26, 2016

7:00 PM

Aldermanic Chamber

ROLL CALL

PUBLIC COMMENT

COMMUNICATIONS

From: Celia K. Leonard, Associate Corporation Counsel

Re: O-16-003, Administrative Enforcement – Proposed 2nd Amendment

UNFINISHED BUSINESS– None

NEW BUSINESS – None

TABLED IN COMMITTEE

O-16-003, Amended

Endorsers: Mayor Jim Donchess
Alderman Ken Siegel
Alderman Don LeBrun

ADMINISTRATIVE ENFORCEMENT OF ORDINANCES

- Personnel/Administrative Affairs Committee Recommends: Final Passage as Amended
- Amended & Referred to Substandard Living Conditions Special Committee – 3/22/16
- Tabled 4/14/16

DISCUSSION

PUBLIC COMMENT

REMARKS BY THE ALDERMEN

POSSIBLE NON-PUBLIC SESSION

ADJOURNMENT

MEMORANDUM

TO: Susan K. Lovering, Aid. Legislative Manager
FROM: Celia K. Leonard, Associate Corporation Counsel
DATE: May 18, 2016
SUBJ: O-16-003, Administrative Enforcement – Proposed 2nd Amendment

Attach is “Proposed Amendment 4/26/2016” to the Administrative Enforcement Ordinance for submission to the Committee.

Generally, it removes the original ordinance’s deletion of the “Warnings” provisions from the Housing Standards, Chapter 182-23 and 24 (so in effect leaves them in the NROs). This change was requested to allow Code Enforcement to follow current protocol and practice. The new ticketing ordinance remains an alternative to the provisions of NRO section 182-23 and 24 for housing code violations.

Under the current NROs and with this proposed amendment, if the situation warrants, an informal (non written) warning is given. If that is not heeded, a written warning/letter is sent. If that does not work, a citation issues. Alternatively, the ticketing process can be utilized (either with or without an informal oral warning).

Section 182-24(D) regarding reinspection fees remains struck because it is not utilized.

Specifically the amendments are in the “*It is further ordained*” section of the ordinance which amends the current NRO, and are as follows:

- 1) Removes section 1 which had amended NRO 182-23 by deleting section 182-23(C), so 182-23(C) will remain as-is in the NROs.
- 2) Renumbers the second section to be the first.
- 3) In the new section 1, removes the deletion of NRO 182-24 (A) – (C), so 182-24 (A) – (C) will remain as-is in the NROs. (182-24 (D) remains deleted)
- 4) Renumbers the third section to be the second.

Please let me know if you have any questions.

-Celia



ORDINANCE

ADMINISTRATIVE ENFORCEMENT OF ORDINANCES

CITY OF NASHUA

In the Year Two Thousand and Sixteen

The City of Nashua ordains that Part II “General Legislation” of the Nashua Revised Ordinances as amended, is hereby further amended by adding the following new Chapter as follows:

“Chapter 74

ADMINISTRATIVE ENFORCEMENT OF ORDINANCES

§ 74-1. Citation authority.

City departments or officials charged with the responsibility for enforcing the ordinances and codes of the city are hereby authorized to issue citations for any violation of the ordinances or codes that they are responsible for enforcing. The enforcement authority provided hereby is provided for in RSA 31:39-c and is in addition to the authority for ordinance and code enforcement that currently exists.

§ 74-2. Citation defined.

A citation is a written and/or printed notice describing a specific violation of a city ordinance or code which is served on the person responsible for the violation. Each day on which a violation exists or occurs is a separate offense, and a citation may be issued for each offense. A citation shall be served in the manner described in this chapter, and shall contain the following information:

- A. A clear and concise description of the violation.
- B. The location of the violation and the date and time on which it was observed.
- C. The name and address of the person responsible for the violation.
- D. The penalty for the violation as provided for in this chapter.
- E. A statement or table describing the penalties for future occurrences of the same violation.

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 (Proposed Amendment 3/7/2016 incorporated)
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- F. A statement as to whether the citation is being issued for a first, second, or subsequent offense.
- G. The name and address of the office to which the payment of the penalty may be made.
- H. The time period during which a reduced penalty may be paid in full satisfaction of the citation.
- I. Notification that failure to pay the penalty may result in court action.
- J. The signature and printed name and department of the individual issuing the citation.

§ 74-3. Service of citation.

- A. Any citation shall be served by the official issuing it in any one of the following ways:
 - (1) In hand to the person responsible for the violation; or
 - (2) By certified, registered or U.S. Postal Service first class mail, to the last known address of the person responsible for the violation, or as listed with the NH Division of Motor Vehicles.
- B. The official serving the citation shall maintain a record of the date, time, and manner of service of the citation including the post office receipt if service was accomplished by registered or certified mail.

§ 74-4. Citation penalties.

- A. (1) The penalties for any offense relating to the following ordinances for which a citation has been issued shall be as follows:

Table 4-1

NRO	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	DESCRIPTION
§ 182-28	\$ 50.00	\$ 100.00	\$ 250.00	Exterior standards.
§ 182-29	\$ 50.00	\$ 100.00	\$ 250.00	Interior standards.
§ 182-30	\$ 50.00	\$ 100.00	\$ 250.00	Premises and accessory structure standards.
§ 182-31	\$ 50.00	\$ 100.00	\$ 250.00	Emergency and Code Enforcement Dept Information
§ 182-32	\$ 50.00	\$ 100.00	\$ 250.00	Standards.
§ 182-33	\$ 50.00	\$ 100.00	\$ 250.00	Sanitary facilities
§ 182-34	\$ 50.00	\$ 100.00	\$ 250.00	Mechanical requirements
§ 182-35	\$ 50.00	\$ 100.00	\$ 250.00	Electrical requirements
§ 182-36	\$ 50.00	\$ 100.00	\$ 250.00	Means of Egress Standards
§ 182-37	\$ 50.00	\$ 100.00	\$ 250.00	Lodging Units
§ 182-38	\$ 50.00	\$ 100.00	\$ 250.00	Number of exitways
§ 182-39	\$ 50.00	\$ 100.00	\$ 250.00	Egress Doors
§ 182-40	\$ 50.00	\$ 100.00	\$ 250.00	Fire Escapes and Ladders
§ 182-41	\$ 50.00	\$ 100.00	\$ 250.00	Smoke detectors/alarm devices
§ 182-42	\$ 50.00	\$ 100.00	\$ 250.00	Fire Suppression systems
§ 170-2	\$ 100.00	\$ 250.00	Court Appearance	FS License required

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§ 170-5 He-P 2303.01 + .02 (a)-(o)	\$ 100.00	\$ 250.00	\$ 500.00	CV 01-Food source, condition, spoilage
§ 170-5 He-P 2304.04-22	\$ 100.00	\$ 250.00	\$ 500.00	CV 03-Food protection-PHF meets temp requirements
§ 170-5 He-P 2304.23+24	\$ 100.00	\$ 250.00	\$ 500.00	CV 04-Food protection-facilities maintain product temps
§ 170-5 He-P 2304.29-35	\$ 100.00	\$ 250.00	\$ 500.00	CV 07-Food protection-unwrapped + PHF not re-served
§ 170-5 He-P 2305.01-05	\$ 100.00	\$ 250.00	\$ 500.00	CV 11-Personnel with infections restricted
§ 170-5 He-P 2305.06-08	\$ 100.00	\$ 250.00	\$ 500.00	CV 12-Personnel-hands washed and good hygienic practices
§ 170-5 He-P 2310 03	\$ 100.00	\$ 250.00	\$ 500.00	CV 20-Food Equip. + Utensils-sanitized, etc.
§ 170-5 He-P 2311	\$ 100.00	\$ 250.00	\$ 500.00	CV 27-Water source-hot and cold
§ 170-5 He-P 2312	\$ 100.00	\$ 250.00	\$ 500.00	CV 28-Sewage and waste water disposal
§ 170-5 He-P2313.02	\$ 100.00	\$ 250.00	\$ 500.00	CV 30-Plumbing-cross connection, backflow, etc.
§ 170-5 Plu 700 + He-P 2314.01-03	\$ 100.00	\$ 250.00	\$ 500.00	CV 31-Totlet + Hand washing Facilities
§ 170-5 He-P2316	\$ 100.00	\$ 250.00	\$ 500.00	CV 35-Insect, Rodent Animal Control
§ 170-5 He-P 2321	\$ 100.00	\$ 250.00	\$ 500.00	CV 41-Other Operations-Toxic items
Chap. 105 Art. II	\$ 50.00	\$ 100.00	\$ 200.00	Building Violation
Chap. 105 Art. III	\$ 50.00	\$ 100.00	\$ 200.00	Mechanical Violation
Chap. 105 Art. IV	\$ 50.00	\$ 100.00	\$ 200.00	Plumbing Violation
Chap. 105 Art. V	\$ 50.00	\$ 100.00	\$ 200.00	Electrical Violation
§ 190 -146	\$ 200.00	\$ 400.00	Court Appearance	Site Plan Violation
§ 190-135	\$ 200.00	\$ 400.00	Court Appearance	Subdivision Plan Violation
§ 190-15	\$ 100.00	\$ 200.00	Court Appearance	Zoning Use Violation
§ 190-16	\$ 100.00	\$ 200.00	Court Appearance	Zoning Dimensional Violation
Chap. 190, Art. X	\$ 100.00	\$ 200.00	Court Appearance	Sign Violation
Chap. 190, Art. XI	\$ 100.00	\$ 200.00	Court Appearance	Wetlands Violation
Chap. 190, Art VII	\$ 100.00	\$ 200.00	Court Appearance	Flood Plain Violation
Chap. 156 Art. IV NFPA 1	\$ 200.00	\$ 400.00	Court Appearance	Exceeding occupancy capacity of the posted Place of Assembly Permit
Chap. 156 Art. IV NFPA 17A	\$ 100.00	\$ 200.00	Court Appearance	Failure to maintain kitchen hood suppression system
Chap. 156 Art. IV NFPA 96	\$ 100.00	\$ 200.00	Court Appearance	Failure to maintain cooking hood and ventilation system
Chap. 156 Art. IV NFPA 25	\$ 150.00	\$ 300.00	Court Appearance	Failure to maintain the buildings water based fire protection system
Chap. 156 Art. IV NFPA 72	\$ 150.00	\$ 300.00	Court Appearance	Failure to maintain the buildings fire alarm system

(2) If any penalty set forth in Table 4-1 is not paid within ten days of the date the citation was issued, the penalty shall be the amount set forth in Table 4-1 of this subsection plus \$50 up to a maximum of \$1,000.

B. The penalties for any other offense for which a citation has been issued shall be as follows:

- (1) First offense - \$50 if paid within ten days; \$100 thereafter.
- (2) Second offense - \$100 if paid within ten days; \$150 thereafter.

(3) Subsequent offense - \$200 if paid within ten days; \$250 thereafter.

C. Second and subsequent offenses are offenses that occur within twelve months of the first offense.

§ 74-5. Penalty.

Whenever any person fails to pay any penalty imposed pursuant to a citation issued under the authority granted by this chapter, § 1-12, or § 1-13, such person shall be guilty of a violation and shall, upon conviction, be punished by a fine not to exceed the maximum allowed by RSA 47:17 or other applicable law for each offense. Each citation penalty, which is not paid, shall constitute a separate offense. If the administrative enforcement system established in the Code is unsuccessful at resolving alleged violations, a summons may be issued as otherwise provided by law, including use of the procedure for plea by mail set forth in RSA 31:39-d.”

All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

It is further ordained that the Nashua Revised Ordinances as amended, is hereby further amended as follows:

1. In Part II “General Legislation”, Chapter 182 “Housing Standards”, Article IV “Enforcement”, “Section 24 “Warnings and citations,” by deleting the struck-through language as follows:
 - A. Generally. The head of the Code Enforcement Department and his designee may issue warnings or citations to any person, natural or otherwise, including but not limited to any owner, landlord, agent, tenant, lessee or sublessee, who shall violate a provision of this chapter or permit, allow or suffer any violation of this chapter, or who fails to comply with an order or orders issued in accordance with the provisions of this chapter. Such warnings or citations may be employed as either substitution for or preliminary to and without limitation to other remedies available to the City. Such warnings and citations shall be in accordance with the procedures established by the head of the Code Enforcement Department.
 - B. Action on warnings. Warnings shall be written upon standard forms authorized by the head of the Code Enforcement Department. Warnings shall specify the reason for the warning and shall direct abatement of such condition which caused the issuance of such warnings within a reasonable and certain period of time. Where warnings elicit compliance as directed, the Code Official may cause such warnings to be filed without further action.
 - C. Action on citations. Citations shall be written upon standard forms authorized by the head of the Code Enforcement Department. Citations shall specify the reason for the citation and shall direct abatement of such conditions which cause the issuance of such citations within a reasonable and certain period of time. Where citations elicit compliance as directed, the Code Official may cause such citations to be filed without further action after applicable fees, as provided by this chapter, have been paid.

~~D. Fees for citations:~~

~~(1) The following fees for citations are generally intended to defray administrative costs incurred by the City in obtaining abatement of conditions which cause the issuance of such citations:~~

~~(a) For each citation issued and one reinspection to subject property: \$15.~~

~~(b) For each additional reinspection or attempted reinspection: \$25.~~

~~(2) Payment of fees provided herein shall be deemed to be an administrative fee, freely paid without future recovery or other action against the City, its official, employees or agents.~~

2. In Part II "General Legislation", Chapter 182 "Housing Standards", Article IV "Enforcement", "Section 26 "Violations and penalties," by deleting the struck-through language and adding the new underlined language as follows:

Any person who shall violate any provision of this chapter shall, upon conviction thereof, be punished as provided in § 1-12 of the City Code ~~subject to a fine of not less than \$25 nor more than \$100 at the discretion of the court.~~ Every day a violation continues after due notice has been served in accordance with the terms and provisions of this chapter shall be deemed a separate offense.

This legislation shall take effect following its passage.

LEGISLATIVE YEAR 2016

ORDINANCE: Amended O-16-003

PURPOSE: Administrative Enforcement of Ordinances

ENDORSERS: Mayor Jim Donchess
Alderman Ken Siegel

**COMMITTEE
ASSIGNMENT:**

FISCAL NOTE: This legislation will allow for administrative fines for violations of city ordinances.

ANALYSIS

RSA 31:39-c, effective January 1, 2010, enables the city to establish a system for the administrative enforcement of municipal ordinances. This legislation adds a new chapter establishing such a system and removes inconsistent provisions. Section 1-12 contains a general penalty for violation of ordinances.

Approved as to form: Office of Corporation Counsel

By: _____

Date: _____