



**Olmsted County Code of Ordinances
Chapter 4000 – Administrative Enforcement and Appeals
Procedure**

Olmsted County MN

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ORDINANCE No. 17-05

CHAPTER 4000 -ADMINISTRATIVE ENFORCEMENT AND APPEALS PROCEDURE

Section 4001. Purpose and Scope.

Subd. 1. This ordinance shall be known and referenced as the Olmsted County Administrative Enforcement and Appeals Procedure Ordinance. This ordinance is intended to provide a uniform administrative process for appeals of determinations by the County that a license or permit should not be issued or an exception as defined herein should not be granted, and for violations of County ordinances. The Olmsted County Board finds that there is a need in particular for alternative methods of enforcing the Code when violations occur. While criminal fines and penalties have been the most frequent enforcement mechanism, there are certain negative consequences for both the County and the accused. The delay inherent in that system does not ensure prompt resolution. Citizens resent being labeled as criminals for violations of County ordinance regulations. The higher burden of proof and the potential for incarceration are not appropriate for most ordinance regulations. The criminal justice system does not always regard Code violations as being important. Accordingly, the County Board finds that the use of civil notice of violations and the imposition of civil penalties is a legitimate and necessary alternative method of enforcement.

Subd. 2. This administrative enforcement procedure seeks to gain compliance with certain provisions of the Code prior to any formal criminal or civil court action. The administrative hearing process provided for in this chapter shall be in addition to any other legal or equitable remedy available to the County for Code violations. However, if a determination is made by the hearing officer or by a subordinate board or commission in the process set forth below and it is affirmed following any appeal to the County Board that a violation did not occur, the County shall not proceed with criminal prosecution for the same act or conduct, though the County is not precluded from pursuing prosecution for the same or similar conduct on a different date where each day is a separate violation.

Subd. 3. This ordinance shall not apply to any appeals involving the State Building Code, or any other state law or administrative rule which mandates use of an appeals process defined by state or federal law.

Subd. 4. Code Provisions That Are Administrative Offenses and the Subordinate Boards or Commissions Responsible for Administration Related to These Offenses if Applicable

- CHAPTER 1100 RECORDING OF LOT SPLITS ORDINANCE
- CHAPTER 1300 RIGHT OF WAY ACCESS MANAGEMENT ORDINANCES
- CHAPTER 2100 OLMSTED COUNTY SMOKE-FREE WORKPLACES ORDINANCE – Public Health Services Advisory Board
- CHAPTER 2200 TOBACCO SALES AND YOUTH ACCESS ORDINANCE - Hearing Officer Only Per Minnesota Statutes Section 461.12
- CHAPTER 2300 OLMSTED COUNTY LIQUOR CONTROL ORDINANCE
- CHAPTER 2500 RABIES CONTROL ORDINANCE - Public Health Services Advisory Board
- CHAPTER 3000 CLEANUP OF CLANDESTINE DRUG LAB SITES ORDINANCE – Public Health Services Advisory Board
- CHAPTER 3100 ENVIRONMENTAL PUBLIC HEALTH SERVICES ORDINANCE – Public Health Services Advisory Board
- CHAPTER 3200 WATER WELL AND WATER SUPPLY ORDINANCE – Environmental Commission
- CHAPTER 3300 CHESTER HEIGHTS SEWER ORDINANCE - Environmental Commission
- CHAPTER 3400 SEPTIC SYSTEM ORDINANCE - Environmental Commission
- CHAPTER 3500 SOLID WASTE ORDINANCE - Environmental Commission
- CHAPTER 3800 ILLICIT STORMWATER DISCHARGE ORDINANCE – Environmental Commission
- CHAPTER 3900 OLMSTED COUNTY PARKS RULES AND REGULATIONS ORDINANCE - Parks Commission

Section 4002. Definitions and Interpretations.

All terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice-versa. The term “shall” means mandatory and the term “may” means permissive.

4002.1. Administrative Fee. “Administrative fee” shall mean the license and service fees that are assessed to individuals, as authorized by a county ordinance. Administrative fees are not penalties assigned in a criminal court.

4002.2. Administrative Penalty. "Administrative penalty" shall mean the fees that are assessed to individuals or legal entities for violation of a county ordinance as authorized by the ordinance.

4002.21 Appeal. "Appeal" shall mean the contesting of a decision related to a license, permit or other application of a county ordinance to a pertinent set of facts. The decision is intended to apply to all similar fact situations encountered by the County in the future, not just to the facts of an individual case.

4002.22. Applicant. "Applicant" shall mean a person who makes a formal application or request for something issued by the County, such as a license or permit.

4002.23. Calendar Days. "Calendar Days" shall mean every day on an annual calendar including Saturdays, Sundays, and legal holidays when County departments are not ordinarily open to the public for business

4002.3. County. "County" means the entire area within the perimeter boundaries of Olmsted County, Minnesota and/or the staff or other officials serving under the authority of the County Board. To the extent the word "County" is used in referring to an ordinance, this shall also refer to any township ordinance or state administrative rules or regulations which the County is legally or contractually obligated to enforce as well.

4002.4. County Board. "County Board" means the Olmsted County Board of Commissioners duly elected by and currently serving the citizens of Olmsted County, Minnesota.

4002.5. Director. "Director" shall mean the director or head of the department assigned by the County Board to implement an ordinance or his or her designee.

4002.51. Exception. "Exception" shall mean the equivalent of a variance in this ordinance, intended to apply only to an individual case, and not to all similar fact situations encountered by the County in the future.

4002.52. Hearing Officer. "Hearing Officer" shall be the individual(s) appointed by the County Board to conduct administrative hearings as required by this ordinance and shall provide legal counsel for subordinate boards and commissions where authorized by ordinance to conduct hearings.

4002.53. Imminent Hazard. "Imminent Hazard" shall mean an actual or potential immediate threat to the health, safety, or wellbeing of humans or livestock, or environmental degradation.

4002.54 License. "License" shall mean an authorization to conduct business services that may be limited to a specific period of time, specific person, and/or a specific site in Olmsted County.

4002.55. Mail. "Mail" includes notification by e-mail in the event any party to the proceeding consents to receive notification by e-mail and provides the County with an e-mail address. However, any requirement to provide notification by certified mail may not be accomplished by e-mail.

4002.56. Owner. "Owner" shall mean any person or person having a legal interest in real or personal property or any person in possession or control of real or personal property including, but not limited to, mortgagees, contract for deed vendees, and contract for deed vendors.

4002.57. Permit. "Permit" shall mean a certificate, approval, registration, or similar form of permission that may be limited to a specific site and/or a specific period of time to establish a use, construct a structure or operate a specific business, structure, or vehicle.

4002.6. Person. "Person" shall mean any individual, business, owner, public or private corporation, partnership, joint venture, association, trust, unincorporated association, or government or any agency or political subdivision thereof; and any receiver, trustee, assignee, agent or other legal representative of any of the foregoing.

4002.7. Revocation. "Revocation" shall mean the termination of any county issued license or permit and the privileges associated with it.

4002.8. Subordinate Board or Commission. "Subordinate Board or Commission" shall mean a public body comprised of members appointed by the Olmsted County Board to provide input on issues of public concern.

4002.9. Suspension. "Suspension" shall mean the temporary loss of a license or permit and the privileges associated with it, with reinstatement of the privileges allowed according to action of the County Director.

4002.10. Variance. "Variance" shall mean the equivalent of an exception in this ordinance, intended to apply only to an individual case, and not to all similar fact situations encountered by the County in the future.

4002.11. Youth. "Youth" shall mean any person who has not yet reached the age of eighteen (18) years.

4002.12. Rules, Word Usage.

Masculine and Feminine Gender. The masculine gender includes the feminine and neuter genders.

Normal Work Days. The days that County departments are open to the public for business.

Shall and May. "Shall" is mandatory and not discretionary; "may" is permissive.

Singular and Plural. Words used in the singular include the plural, and the plural includes the singular.

Tenses. Words used in the present tense include the future.

Section 4003. General Requirements for Administrative Hearing Process

4003.1. Policy. It is the intent of this ordinance to provide procedures to accommodate alternative approaches to meeting the intent of the county's ordinances, wherever it is possible to do so consistent with the protection of the environment and the public health, safety, and welfare, and consistent with the general intent of the ordinances. This section sets forth procedures for the County's Hearing Officer and subordinate boards or commissions where authorized by ordinance to conduct hearings and to consider the circumstances of a particular situation and decide (1) whether or not to grant an exception, with or without conditions, modifying the application of ordinance provisions to a particular property, or (2) whether or not the applicable ordinance has been applied in a manner consistent with its intent, or (3) whether or not a violation of a County ordinance has occurred.

4003.2. Hearing Officer.

Subd. 1. Creation of Hearing Officer List and Responsibilities. The County Board shall periodically approve a list of lawyers to serve as the County's Hearing Officers and establish a set of responsibilities for the Hearing Officer. The Hearing Officer's duties shall be overseen by the County's Director of Data Practices, Staff Development and Intergovernmental Relations or his/her designee. The process for review by a hearing officer or a subordinate board or commission where authorized by ordinance will commence once the Director of Data Practices, Staff Development and Intergovernmental Relations receives a copy of the Request for Appeal and Hearing concerning the Department decision which the applicant intends to appeal along with payment of the required administrative filing fee outlined in Subd. 2 below.

Subd. 2. Payment for Cost of Hearing. The cost to utilize the administrative hearing process shall be set by resolution of the County Board. The cost of the hearing shall be apportioned equally between the person requesting the hearing and the County; collection of a fee for this service is authorized by Minn. Stat Section 373.41. At the time the request for hearing is made, the County shall provide the requester with an estimate of the requesting party's share of that cost. The requester must provide payment of that estimated cost to the County before the County will schedule a hearing. The Director of Data Practices, Staff Development and Intergovernmental Relations has the authority to reduce the requesting person's share of the costs where that person can demonstrate indigence by clear and convincing evidence. Proof of indigence can be demonstrated by the person's receipt of means tested government benefits or a demonstrated lack of assets or current income. Such proof shall be presented to the Director of Data Practices, Staff Development and Intergovernmental Relations for determination of the amount of the prepayment in advance of the hearing. In all cases, where the person requesting the

hearing does not attend and fails to request a continuance of the hearing at least 48 hours in advance of the scheduled hearing, all costs incurred by the County attributable to the requested hearing shall be charged to the requesting party and deducted from any prepayment made.

Subd. 3. Selection of Hearing Officer. From this list of hearing officers, the County's Director of Data Practices, Staff Development and Intergovernmental Relations shall randomly select a hearing officer to hear a matter for which a hearing is requested or in the case of a subordinate board or commission where authorized by ordinance, legal counsel to assist the board or commission in conducting the hearing. The person requesting a hearing shall have the right to request, no later than ten (10) calendar days after the Director mails the applicant the notice of the date of the hearing, that the assigned hearing officer be removed from the case. One such request for each case will be granted automatically by the Director of Data Practices, Staff Development and Intergovernmental Relations. A subsequent request shall be directed 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 Director of Data Practices, Staff Development and Intergovernmental Relations shall assign another hearing officer. The hearing officer is not a judicial officer, but is a "public officer" as defined by Minnesota Statutes, section 609.415. The hearing officer shall not be a current or former County employee.

Subd. 4. Notice of Hearing. Notice of the hearing must be served in person or by mail on the person requesting the hearing at least fifteen (15) calendar days after the Director receives the Request for Appeal and Hearing form from the applicant, unless a shorter time is accepted by all parties.

Sections 4004-4006. County Licenses and Permits and Requests for Exceptions.

Section 4004. Administrative Service Fees

4004.1. Administrative service fees authorized under any county ordinance shall be set by Resolution or Ordinance of the County Board as part of each licensing ordinance. Any of the fees for the categories in this section may be modified, from time to time, by Resolution or Ordinance of the County Board.

4004.2. Administrative fees applied during the license term that have not been paid in full shall be added to and become part of the license renewal fee.

4004.3. A license fee refund for business termination may be authorized. Any refund amount will be according to the schedule set by Resolution of the County Board.

Section 4005. Basis for Eligibility, and for Denial of License or Permit.

4005.1. Basis for License or Permit. The basis to be eligible for a county license or

permit or for renewal of any license or permit shall be set forth in each County ordinance or state law or regulation which the County enforces on behalf of the State of Minnesota.

4005.2. Mistaken Issuance. If it is discovered that a license was mistakenly issued or renewed to an ineligible person, the license shall be revoked by the County Director.

4005.3. Requests for Exceptions. The process to request an exception to the literal requirements of a county license or permit shall be governed by the process set forth in Section 4006 of the County Ordinances.

4005.4. Circumstances for Exceptions. An applicant may apply for an exception if an exception is permitted under the applicable County ordinance where the applicant contends that individual circumstances make strict adherence to the requirements of an ordinance difficult, unreasonably expensive, or impractical.

4005.5. Circumstances for Challenges. An applicant may raise a challenge in circumstances in which an applicant alleges that the staff administering the ordinances has misinterpreted or misapplied ordinance provisions as it applies to the applicant's situation.

4005.6. Administrative Latitude. Administrative latitude in applying the requirements of an applicable county ordinance should be permitted by county staff, where possible. The procedures for exceptions or challenges are intended to apply to those situations in which the latitude of the county staff to approve alternative means of meeting ordinance requirements is limited. Limits on administrative latitude may be related to requirements of State of Minnesota rules, the magnitude of the exception needed, or other policy issues.

4006 - Procedure for Appeals from County Denials of Exceptions and Challenges

4006.1. Commencement of Appeals.

a. When a County Director has determined that it is not possible to issue a license or permit for a particular activity or structure under the administrative procedures of the applicable ordinance, or when a person, agency, or officer of an affected jurisdiction is aggrieved by a decision of a Director, the applicant may appeal the decision of the Director.

b. When the Director is notified in writing that the applicant wishes to appeal, the Director shall provide the applicant with 1) information that summarizes the hearing process and 2) a "hearing request form". The hearing request form is intended to guide the appellant in clearly establishing the issues that are the basis for the hearing and information needed to help the Hearing Officer reach an informed decision. The applicant shall set forth any exceptional circumstances applying to the applicant's circumstances, or if applicable, the nature of any alleged error in administration or interpretation of the ordinance.

c. An applicant may request either 1) a hearing conducted by a hearing officer, or 2) a hearing conducted by a subordinate board or commission if a board or commission has been given authority to conduct hearings pursuant to a county ordinance enforced by a County Department. If the second option is chosen, the subordinate board or commission shall utilize the services of a hearing officer to help conduct the hearing and provide legal advice for the board or commission as needed and to help prepare findings of fact, conclusions of law and order in support of the decision reached by the board or commission on the application for appeal.

d. If the applicant alleges an error in an administrative decision, such application shall not be valid until the form is completed together with any relevant information and returned to the Director within thirty (30) calendar days of the administrative decision. Failure to initiate the appeal and prepare and return the appropriately completed hearing request form within thirty (30) calendar days will be deemed the appellant's acceptance of a valid legal basis for the denial of the application for an exception or challenge, a waiver of the request for a hearing to pursue an appeal, and declaration of the appellant's intent to comply with the original determination of the Director on the exception or challenge.

e. The Director shall not be obligated to permit an exception or challenge to remain pending a hearing if the Director determines that there would be an imminent health or safety risk in doing so.

4006.2. Administrative Processing. Upon receipt of an application and required fees for an appeal to the administration of an ordinance, the Director shall carry out the following activities:

a. The Director shall request the County's Director of Data Practices, Staff Development and Intergovernmental Relations to set a hearing on the appeal to be held within sixty (60) calendar days of receipt of the Request for Appeal and Hearing form consistent with the process set forth in Section 4003.2, Subd. 2 above. A notice of hearing shall be posted for public information at the Olmsted County Government Center and near the room at the building where the hearing will be held. Such notices shall be posted for at least 24 hours prior to the hearing.

b. The Director shall draft a report on the application, setting forth (1) the date, time, and place of the hearing; (2) the nature of the applicant's request; (3) the characteristics of the applicant's property and environs if applicable; (4) the relationship of the request to the intent of the applicable ordinance; and (5) recommended findings and actions. If the Director recommends approval of an exception or challenge with conditions, the report shall set forth those conditions. The Director shall forward the report and the application to the Director of Data Practices, Staff Development and Intergovernmental Relations who shall provide copies to the applicant, and to the clerk of the city or township in which the affected property is located at least five (5) calendar days prior to the hearing date and shall post the report on the County website, along with notice of the hearing. The

Department shall redact any private, confidential or non-public information as defined by applicable state or federal law from the report materials before making the report available to the public.

c. The Director may seek to reach an agreement with the appellant on the conditions under which the appeal might be granted prior to the hearing. Any agreement reached shall be a written contract confirmed by the appellant's signature and binding upon the appellant, his/her successors and assigns, when and if the agreement is approved by the Director. Such conditions may include report or records requirements, schedules and time limits and other limitations on operations, and requirements for a renewable permit. The hearing shall be cancelled and the appeal shall be dismissed once an agreement has been approved by the Director.

4006.3. Tabling. The applicant or the Director may prior to the hearing for good cause request the Hearing Officer, or subordinate board or commission where authorized by ordinance, table or delay the hearing for up to forty-five (45) calendar days. Tabling for longer periods may be authorized with agreement of both the applicant and the Director. The County and the person requesting the hearing shall be each entitled to only one continuance of a scheduled hearing.

4006.4. Hearing Procedures.

Subd. 1(a). The hearing shall be open to the public. At the hearing, the parties shall have the opportunity to present written or oral testimony from applicable State of Minnesota or Department staff, the Director, the appellant, other interested parties, and other witnesses for the County or the appellant, question any witnesses and to receive the Director's report and any other documentation provided by the parties bearing on the issues in dispute, but strict rules of evidence shall not apply. The hearing officer shall tape record the hearing, receive testimony and exhibits, and maintain a full record of the hearing. 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.

Subd. 1(b). On appeals where an applicant has requested that an appeal be considered by a subordinate board or commission which is authorized to do so by a County ordinance enforced by a County Department, in addition to the duties set forth above, the hearing officer shall permit the members of the subordinate board or commission to question any witnesses and to receive and consider any evidence which possesses probative value.

Subd. 2. The Hearing Officer or subordinate board or commission where authorized by ordinance shall not consider any application for an exception or challenge that involves a variance from applicable federal or state administrative rules until review and action required by any applicable federal or state agency has been conducted, unless authority to vary the rules has been delegated by the agency. If the applicable agency denies the requested variance, then the Hearing Officer or subordinate board or commission where

authorized by ordinance shall not consider the application for exception or challenge and the applicant's appeal with the County shall be dismissed unless a reconsideration by the federal or state agency occurs.

4006.5. Findings. After consideration of the record and within sixty (60) calendar days from the last date of the hearing, the Hearing Officer, or subordinate board or commission where authorized by ordinance, with the assistance of the Hearing Officer shall make written findings of fact as to the evidence found to be credible and not credible, and conclusions of law addressing the following matters to the extent they apply prior to taking action on the requested exception or challenge:

- a. The effect of the requested exception on the health, safety, and general welfare of the current and future occupants of the property and of adjacent properties, if applicable, and the general public;
- b. The effect of the requested exception on the natural and human influenced environment of the vicinity;
- c. The presence of any exceptional circumstances applying particularly to the property and that do not generally apply to all areas in the county where the relevant ordinance applies, that make strict adherence to the requirements of the ordinance difficult, unreasonably expensive, or impractical;
- d. The role of the applicant, if any, in creating the situation bringing about the need for the requested exception; and
- e. The relationship of the requested exception to the general intent of the applicable ordinance.
- f. Impact on public agency resources affected by the applicant's actions.

4006.6. Actions Hearing Officer or Subordinate board or Commission Where Authorized by Ordinance May Take Concerning Appeals of Denials of Exceptions and Challenges. With respect to appeals of denials of exceptions or challenges by the County, the Hearing Officer or subordinate board or commission where authorized by ordinance may:

- a. Approve the requested exception or challenge as submitted;
- b. Approve the requested exception or challenge with conditions;
- c. Deny the requested exception or challenge; or,
- d. Table action for up to forty-five (45) calendar days after the commencement of the hearing pending further information. The Hearing Officer may table action for a longer period with the agreement of applicant.

e. In the case of an appeal before a subordinate board or commission, the decision on the appeal must receive the support of a majority of the members present of the subordinate board or commission. In the event a vote by the members of the subordinate board or commission on the outcome of the appeal results in a tie, the application appealing the decision of the Department shall be deemed denied.

f. The decision by the Hearing Officer or by a subordinate board or commission where authorized by ordinance with supporting findings of fact and conclusions of law shall be served on the parties by mail within (ten) 10 calendar days of receipt of the findings of fact and conclusions of law by the Director of Data Practices, Staff Development and Intergovernmental Relations from the Hearing Officer.

4007 Appeal of Hearing Officer Decisions.

4007.1. Appeal to County Board. In the event the applicant or the Director of the Department wishes to appeal the decision following the ruling by the Hearing Officer, or a subordinate board or commission where authorized by ordinance, an appeal shall be taken to the Olmsted County Board by serving the opposing party by certified mail or in person with a written notice of appeal setting forth the specific reasons why the appellant believes the decision rendered by the Hearing Officer or subordinate board or commission was in error. Appeals must be taken within thirty (30) calendar days after the Director of Data Practices, Staff Development and Intergovernmental Relations has mailed a notice of the decision to the person affected by the decision. If a party to the appeal introduces newly discovered information not part of the record available to the Hearing Officer or subordinate board or commission, the Board shall remand the matter to the Hearing Officer or subordinate board or commission to reconsider. The County Board shall decide the appeal based solely on the evidence which was produced at the hearing. The burden of proof shall be on the appellant to demonstrate to the County Board that it is more likely than not that the decision rendered by the Hearing Officer or the subordinate board or commission was in error. The County Board shall issue a decision on the appeal with supporting findings of fact and conclusions of law, a copy of which shall be served on the parties by mail within thirty (30) calendar days of the last date of the hearing before the County Board by the Director of Data Practices, Staff Development and Intergovernmental Relations.

4007.2. Subsequent Appeal to Court of Appeals for Quasi-Judicial Decisions. Appeals of quasi-judicial decisions made by the Olmsted County Board shall be taken by writ of certiorari to the Minnesota Court of Appeals consistent with the applicable requirements set forth in Chapter 606 of the Minnesota Statutes and the Minnesota Rules of Civil Appellate Procedure. The standard of review shall be whether or not the evidence provides a substantial basis for the decision. However, this procedure shall not supersede any contrary appellate procedure that may be mandated by state law or administrative rule.

4007.21. Subsequent Appeal to District Court Appeals for Quasi-Legislative

Decisions. Appeals of quasi-legislative decisions made by the Olmsted County Board shall be taken by the filing of an action for declaratory judgment, mandamus or injunctive relief in the Olmsted County District Court pursuant to Chapter 555 of the Minnesota Statutes. The standard of review shall be that the decision of the County Board shall be upheld unless the appellant proves that the determination is unsupported by any rational basis related to promoting the public health, safety, morals or general welfare. However, this procedure shall not supersede any contrary appellate procedure that may be mandated by state law or administrative rule.

Sections 4008-4010 County Ordinance Violations

Section 4008 - Violations Enforcement

4008.1. Enforcement Policy.

a. **Voluntary Compliance.** Except in cases of imminent threat to the environment or the public health, safety, or welfare, the purpose and intent of the County's ordinances will normally be best served if the applicable Department Director seeks to have violations corrected and brought into compliance voluntarily and without relying on legal proceedings.

b. **Priority Of Civil Action.** If legal proceedings are necessary, it is the policy of the County that mechanisms such as injunctions, contractual remedies, and other civil actions are preferable to criminal actions in most enforcement circumstances related to ordinance violations.

c. **Enforcement Powers.** The Director may request the County Attorney to initiate and pursue any or all lawful remedies in enforcing ordinances and agreements related to protection of the environment or the public health, safety, or welfare. The imposition of a criminal fine or sentence does not exempt the offender from complying with the requirements of the ordinance.

d. **Violation Misdemeanor.** Any person who violates a county ordinance, allows a violation to exist on property under his/her control, or fails to take action to abate the existence of the violation when notified or ordered by the Director, shall be guilty of a petty misdemeanor, misdemeanor, or gross misdemeanor, as established in the applicable ordinance and law. Upon conviction, punishment shall be as provided by law.

Section 4008.2. Enforcement Procedures.

4008.21. Director To Be Notified Of Violations. Whenever a violation of a county ordinance is known or suspected to exist or expected to be committed, any person may so notify the Director. Any officer and agency of Olmsted County may notify the Director of any information which suggests that a violation exists or is expected to be committed.

4008.22. Director To Investigate Violations. Upon receiving any credible information which suggests a violation, the Director shall conduct an investigation to

determine whether a violation exists or is reasonably expected to be committed. Where authorized by court order or other law, the Director is hereby empowered to cause any building, other structure, or tract of land to be inspected and examined. Where necessary, the Director may call upon the Sheriff for assistance which may include, but is not limited to, pursuing issuance of an administrative search warrant.

4008.23. Notice Of Violation. If it is determined that violation exists or is reasonably expected to be committed, the Director shall promptly give notice by regular, certified, mail, or by personal service, to the licensee, permittee, and/or owners of record for tax purposes of the property involved. The notice shall indicate:

- a. the date, time, location and nature of the violation and the name of the person from the County Department issuing the notice,
- b. the provision or provisions of the applicable law or ordinance which have been or are expected to be violated,
- c. the time period during which the owner or other responsible person will be allowed to correct or remove the violation, and
- d. the action proposed to be taken by the director, if the violation or condition of risk to health or safety is not removed or corrected within the stated time period,
- e. the amount of the penalty owed for the violation under the County administrative penalties resolution, and
- f. the manner for paying the penalty or appealing the notice of violation.

A defect in the notice of violation with respect to such matters shall not prevent the enforcement of this ordinance. Within thirty (30) calendar days after issuance of the notice of violation, the person responsible for the violation must either pay the scheduled administrative penalty and correct the violation or request a hearing. Payment of the civil administrative penalty constitutes admission of the violation. In the event the person responsible for the violation is unable to correct the violation within ten (10) calendar days, an extension of the deadline to demonstrate compliance may be requested from the Director of the Department before this period has elapsed. If an extension of the deadline to demonstrate compliance is granted, the violation must then be corrected by that new deadline in order to avoid issuance of a new notice of violation.

4008.24. Discontinuance Of Work. Once the notice of violation has been served, no work shall proceed on any activity covered by such orders, except in a manner consistent with this ordinance or to correct and bring such violation into compliance.

4008.25. Enforcement After Time Period Expires. If the time period provided in the notice of violation has elapsed and the alleged violation has not been corrected or brought into compliance, the Director may request the County Attorney to initiate any

legal or equitable action which is deemed appropriate. The Director shall act as a complaining witness when necessary to initiate a criminal action against a violation. If a civil action is required, the Director shall request the County Board to authorize such action.

4008.26. Continued Violation. Each violation, and every calendar day in which a violation occurs or continues, shall constitute a separate offense.

Section 4008.3 Enforcement Remedies.

4008.31. Equitable Relief. In the event a violation exists or there is a threat of violation of this ordinance, the Director may take appropriate action necessary to prevent, restrain, correct, or abate such violations or threatened violations. Such action may include application for injunctive relief, action to compel performance, or other appropriate action in court.

4008.32. Suspension Or Revocation Of Licenses And Permits. Licenses and permits issued under the authority of any County ordinance which relate to the notice of violation may be suspended or revoked under the following circumstances:

a. **By Order Of Director.** A Director may suspend or revoke a permit or license, without a hearing before a hearing officer, where the Director finds (1) an imminent hazard or danger to public health, safety, or welfare or the environment or (2) a violation or applicable provisions of an ordinance or permit which may result in construction or operations that threaten the public's health, safety, welfare or the environment. The Director shall promptly notify the chairperson of the applicable county board or commission of such action which shall be spelled out in each County ordinance or state law or regulation which the County enforces on behalf of the State of Minnesota. If the Director suspends or revokes a license or permit pursuant to this section, that suspension or revocation shall remain in effect through any appeal and subsequent hearing before the County's hearing officer or subordinate board or commission where authorized by ordinance until the County Board issues a binding decision on the appeal pursuant to Section 4007.1 above.

b. **Following Hearing and Action by Hearing Officer.** If the Director has not previously suspended or revoked a license or permit pursuant to Section 4008.2(a), the Director, may after written notice and issuance of a ruling on the case by a hearing officer or subordinate board or commission where authorized by ordinance suspend or revoke any license or permit for cause. Such cause shall include, but is not limited to, any violation of the county ordinance under which the license or permit was issued, or violation of any other state, federal, or local law, ordinance, rule, or regulation relating to the subject matter for which the license or permit was issued. Such action shall specify the date and time that the suspension or revocation shall take effect and, if applicable, any conditions for reinstatement.

c. **As Required by Minnesota Statutes Section 270C.72.** In the event the

County has issued a license for the conduct of a profession, occupation, trade or business, and the license holder owes \$500 or more in delinquent taxes, penalties or interest, or has not filed state tax returns, the County is obligated to not renew or to revoke that license until the delinquency has been satisfied with the State. Within ten (10) calendar days after receipt of the notification from the Commissioner of the Minnesota Department of Revenue, the County as the licensing authority must notify the license holder by certified mail of the potential revocation of the license for the applicable reason. The notice must include a copy of the Commissioner's notice to the licensing agency and information, in the form specified by the Commissioner, on the licensee's option for receiving a tax clearance from the Commissioner. The County as the licensing authority must revoke the license thirty (30) calendar days after receiving the notice from the Commissioner, unless it receives a tax clearance from the commissioner. The process for a license holder who wishes to challenge this type of determination shall be through the State Office of Administrative Hearings as set forth in Minn. Stat. Section 270C.72, Subd. 3, rather than through a hearing before the County's Hearing Officer or subordinate board or commission where authorized by ordinance.

4008.33. Other Remedies. Where other statutes, rules, or ordinances provide other remedies for violations of law, the selection of a remedy under this ordinance shall not preclude the use of those other remedies, nor shall the selection of those other remedies preclude the use of remedies under this ordinance, except as provided in Section 4001, Subd. 2 above.

Section 4009 Correcting Nuisances and Procedure for Recovering Costs.

4009.1. Abatement at County Expense. The Director may make corrections of a public nuisance or public health nuisance at County expense. Where authorized by law, such costs incurred for corrective action may be recovered in civil action in any court of competent jurisdiction, or by direction of the County Board, and the costs may then be certified to the Department of Property Records and Licensing as a special tax against the real property. In addition, the County may also opt to send any unpaid administrative penalties to a collection agency for collection or pursue any options it may have for collection pursuant to the Minnesota Revenue Recapture Act found at Chapter 270A of the Minnesota Statutes.

4009.2. Reporting. All Hearing Officers shall provide an annual report to the Director of Data Practices, Staff Development and Intergovernmental Relations providing a summary of the work done for the County by the Hearing Officer during each calendar year. This report shall be submitted by no later than March 1 of the year following the year which is the subject of the report.

Section 4010. Procedure for Appeals from County Notices of Violation.

4010.1. Issuance of Notice of Violation. Upon discovery of a suspected violation of any provision of any county ordinance and once the Director has made a determination that use of the County's civil administrative enforcement and appeals process will

promote compliance with the law, the Director shall issue an alleged violator either personally or by mail, a notice that sets forth the alleged violation and administrative penalty. The notice shall inform the alleged violator of the right to an administrative hearing.

4010.2. Request for Hearing.

a. A person who wishes to contest the notice of violation may initiate a request for an administrative hearing before the Hearing Officer or subordinate board or commission where authorized by ordinance within thirty (30) calendar days of the date of mailing of the notice of violation. When such request is received by the Director, the Director shall follow the procedures to schedule a hearing using the process set forth in Section 4006 above for appeals of denials of exceptions and challenges, subject however to the special requirements set forth in Section 4010.3 which apply only to appeals of notice of county ordinance violations.

b. Failure to initiate the appeal and prepare and return the appropriately completed hearing request form within thirty (30) calendar days will be deemed the appellant's acceptance of a valid legal basis for the notice of violation, a waiver of the request for a hearing to pursue an appeal, and the appellant's intent to pay the administrative penalty.

4010.3 Determination and Authority of Hearing Officer or Subordinate Board or Commission Where Authorized by Ordinance.

Subd. 1 Time for Decision. After consideration of the record and within sixty (60) calendar days from the last date of the hearing, the hearing officer or subordinate board or commission where authorized by ordinance shall determine whether or not appellant has violated the applicable county ordinance(s). The hearing officer or subordinate board or commission shall issue a written decision supported by findings of fact as to the evidence found to be credible and not credible and conclusions of law and shall provide a copy to the Director of Data Practices, Staff Development, and Intergovernmental Relations for distribution to the parties as set forth in Section 4006.6 above.

Subd. 2. Authority for Hearing Officer or Subordinate Board or Commission Where Authorized by Ordinance. With respect to County ordinance violations, the hearing officer or subordinate board or commission where authorized by ordinance shall have the authority to:

- a. Determine whether a violation occurred;
- b. Dismiss the notice of violation;
- c. Impose the scheduled civil administrative penalty; or
- d. Reduce or waive a scheduled civil administrative penalty either unconditionally or upon compliance with appropriate conditions.

e. Recommend whether or not the County should pursue any remedies it may have to abate a nuisance which is connected to the notice of violation pursuant to Section 4009.1 above.

Subd. 3. Administrative Penalty Criteria.

a. The hearing officer or subordinate board or commission where authorized by ordinance can recommend imposition of administrative penalties which must be approved by the applicable Department Director and establish a deadline when the fine must be paid in full. Administrative penalties for violations shall be set by and may be modified by resolution of the County Board, a current copy of which can be found at <https://www.co.olmsted.mn.us/yourgovernment/fees/Pages/default.aspx>. A violation may be subject to an administrative penalty not to exceed the amount of the maximum fine allowed if each Code violation had been prosecuted as a misdemeanor. Except as permitted by state law, civil fines may not be imposed for Code violations where state law preempts local regulations on the same topic. A late payment fee of 10 percent of the fine may be assessed for a 30-day period and for a 60-day period, or part thereof, that the fine remains unpaid after the due date. Failure to pay an administrative penalty or fee is grounds for suspending or revoking a license related to the violation. The amount of the civil administrative penalty and the late payment fee must be paid in full. No partial payments of the civil administrative penalty or the late payment fee will be accepted.

b. Administrative penalties may include the cost of correcting nuisances as outlined in Section 4009 above.

c. Administrative actions and associated penalties are no bar to the initiation of court action or court ordered penalties authorized by this or other applicable regulation ordinance, state or federal law.

d. When imposing a civil administrative penalty for a violation, the hearing officer or subordinate board or commission where authorized by ordinance may consider any or all of the following factors:

- 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 county ordinance violations; or
- 10) Any other factors appropriate to a just result.

e. **Civil Administrative Penalty for Continuing Violations.** The hearing officer or subordinate board or commission where authorized by ordinance may exercise discretion to impose a civil administrative penalty for more than one day of a 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.

Subd. 4. Suspensions and Revocations. A license or permit may be suspended or revoked following a hearing consistent with the requirements of Section 4006 above if the notice of violation is associated with the license or permit.

Subd. 5. Notice of Penalties, Suspensions or Revocations. Unless a suspension or revocation is due to an imminent hazard or danger to public health, safety, or welfare or the environment as set forth in Section 4008.32 above, administrative penalties, suspensions or revocations shall take effect immediately after the following steps have been completed:

- 1) the alleged violator, licensee, or other responsible persons has received notice of the alleged violation; and
 - a) knowingly waived the right to pursue a hearing to appeal their case before the Hearing Officer or subordinate board or commission where authorized by ordinance
 - b) failed to take action to pursue an appeal by the deadline established above; or,
- 2) the alleged violator has participated in such a hearing and the hearing officer found a violation had occurred and the Director recommended imposition of administrative penalties and the deadline for payment of the administrative penalties has expired.

Subd. 6. Notice of Hearing Officer's Decision. The decision of the Hearing Officer or of the subordinate board or commission where authorized by ordinance, along with the supporting findings of fact, conclusions of law and administrative penalty fees to be imposed, if any, shall be served on the parties by mail within ten (10) calendar days of receipt of the findings of fact and conclusions of law by the Director of Data Practices, Staff Development and Intergovernmental Relations from the Hearing Officer.

4010.4. Appeals. Appeals of any decision made by the Hearing Officer or subordinate board or commission where authorized by ordinance concerning a notice of violation shall be made pursuant to the procedure set forth in Section 4007.1 above.

Appeals of any decision made by the County Board concerning a notice of violation shall be made pursuant to the procedure set forth in Section 4007.2 or 4007.21 above. However, this procedure shall not supersede any contrary appellate procedure that may be mandated by state law.

Section 4011. Repeal of Related Ordinance.

In light of the authority in this ordinance for each County Department to issue civil notices of violations followed by an internal process for appeal as needed to handle most routine county ordinance violations, Olmsted County Resolution 96-7 and Resolution 98-59, which are collectively known as the Olmsted County Citation Ordinance, are hereby repealed. The County Environmental Services Administrative Ordinance found at Chapter 3100 of the Olmsted County Code of Ordinances is also hereby repealed.

Section 4012. Severability And Savings Clause.

If any section or portion of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation or affect the validity and enforceability of any other section or provision of this ordinance.

Section 4013. Effective Date.

This ordinance shall be effective on January 1, 2018 following its publication pursuant to law.

Passed and approved this 22nd day of August, 2017 by the County of Olmsted.

OLMSTED COUNTY BOARD OF COMMISSIONERS



Kenneth Brown, Chairperson

Attest
