



ADMINISTRATIVE ENFORCEMENT  
AND APPEALS  
PROCEDURE GUIDE



**Olmsted County  
Government Center  
151 4<sup>th</sup> St. S.E.  
Tel: 507-328-6004**

## **INTRODUCTION**

On August 22, 2017, the Olmsted County Board approved the Administrative Enforcement and Appeals Procedure Ordinance as an alternate method of enforcement for certain County Ordinances. The process is intended to be informal and less intimidating to alleged violators. Appeals of notices of violations, denials of requests for exceptions/challenges and of suspensions or revocations of county licenses or permits issued pursuant to the following County Ordinances will now be handled by a hearing officer or county volunteer board or commission serving as a hearing officer and civil administrative penalties. This pamphlet is intended to explain the process.

## **COUNTY ORDINANCES**

- 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

You may obtain copies of the Administrative Enforcement and Appeals Procedure Ordinance or any specific County ordinance on the County's website at [www.co.olmsted.mn.us](http://www.co.olmsted.mn.us) or by calling the Deputy Clerk to the Olmsted County Board of Commissioners, Lisa Morris-Helmstetler.

## **AFTER RECEIVING A CIVIL NOTICE OF VIOLATION**

When you receive a Notice of Violation, you must respond within thirty (30) calendar days of the date of issuance of the Notice of Violation by either (1) paying the administrative penalty and any applicable administrative service fees, or (2) requesting a hearing.

The administrative penalty and any applicable administrative service fees must be paid in full. No partial payments of the administrative penalty and any applicable administrative service fees, will be accepted. A late payment fee of 10 percent of the administrative penalty may be assessed for a 30-day period and for a 60-day period, or part thereof, that the penalty remains unpaid after the due date.

If authorized by ordinance or other applicable law, an unpaid administrative penalty and any applicable administrative service fees imposed for property-related violations may be assessed against the property which was the location of an activity, proposed use, delivery of county services or other circumstance which resulted in the administrative penalty. In some cases, the County may also refer collection of the amount owed to a collection agency or pursue collection as authorized under the Minnesota Revenue Recapture Act from money which you may be owed by the State of Minnesota.

### **PAYING THE FINE**

The County has established various administrative penalty amounts for each applicable County Ordinance violation.

If you wish to pay the administrative penalty, you must pay with cash, check or a money order. A check or money order must be payable to Olmsted County for the correct amount. You may pay in person at the Department which issued the notice being appealed or mail a copy of the notice of violation and the administrative penalty payment to:

Olmsted County Finance Department  
Administrative Penalty Program  
151 Fourth Street Southeast  
Rochester, Minnesota 55904

The fine is due to the County within thirty (30) days of the date of issuance of the Notice of Violation.

### **PAYMENT OF THE ADMINISTRATIVE PENALTY CONSTITUTES ADMISSION OF ANY VIOLATION.**

If you request a hearing, the Deputy Clerk to the Olmsted County Board of Commissioners will send you a confirmation, in person or by mail, of the date, time and location and the name of the hearing officer for your hearing at least fifteen (15) days in advance of the scheduled hearing unless a shorter time is accepted by all parties. Other cases may be scheduled at the same time and you may have to wait. The County must be notified in advance if you will be represented by legal counsel.

## **BEFORE THE HEARING IS HELD**

### **1. Costs of Hearing and Appeals Process**

The costs of the hearing and appeals process are shared equally by the County and person appealing (appellant) for all applicable county ordinance related appeals. At the time the hearing is requested, you will be expected to pay the appellant share of the hearing cost which is \$150.00. The appellant must provide payment of that expense to the County before the County will schedule a hearing.

If you can demonstrate indigence, such as your receipt of means tested governmental benefits or a demonstrated lack of assets or current income, the Deputy Clerk to the Olmsted County Board of Commissioners, who was previously designated by the Director of Data Practices, Staff Development and Intergovernmental Relations has the authority to reduce the appellant's share of the costs. Proof shall be presented to the Deputy Clerk for determination of the amount of prepayment in advance of the hearing.

The County and the appellant shall be each entitled to only one continuance of a scheduled hearing. 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 pre-payment made.

### **2. Change of the Assigned Hearing Officer**

The hearing officer is chosen from an approved list of private lawyers who are not County employees. You may not contact the hearing officer before the hearing to discuss your case. The appellant shall have the right to request, no later than ten (10) days before 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. A subsequent request shall be directed to the assigned hearing officer who will decide whether he or she can- not fairly and objectively review the case. If such a finding is made, the hearing officer shall remove himself or herself from the case and another hearing officer shall be assigned.

## **THE HEARING**

### **1. Failure To Appear**

If you fail to appear for the hearing and failed 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 appellant and deducted from any prepayment made.

## **2. Hearing Procedure**

The hearing will be informal without strict rules of evidence. At the hearing, parties shall have the opportunity to present testimony and question any witnesses. 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.

## **3. Decision**

The decision of the hearing officer shall be in writing and will contain findings of fact and conclusions of law. The written report shall be served on the parties by mail within sixty (60) calendar days of the last date of the hearing.

If the hearing officer decides that you violated the applicable County Ordinance, the hearing officer has 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 administrative penalty either unconditionally or upon compliance with appropriate conditions.
- e) Recommend whether the County should pursue any remedies it may have to abate a nuisance which is connected to the notice of violation.

In deciding which action to take, the hearing officer may consider any or all the following factors:

- a) The duration of the violation;
- b) The frequency or reoccurrence of the violation;
- c) The seriousness of the violation;
- d) The history of the violation;
- e) A violator's conduct after issuance of the notice of hearing;
- f) The good faith effort by violator to comply;
- g) The economic impact of the administrative penalty on a violator;

- h) The impact of the violation upon the community;
- i) Prior record of county ordinance violations; or
- j) Any other factors appropriate to a just result.

The hearing officer cannot impose a penalty greater than the established penalty, except that the hearing officer can impose a penalty for each day that the violation continued if:

- a) The violation caused a serious threat of harm to the public health, safety or welfare; or
- b) 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.

## **AFTER THE HEARING**

### **1. Appeal**

The decision may be appealed to the County Board. An aggrieved party may pursue the matter further, at their expense, in the Minnesota state courts system. You should consult with a lawyer about how to do that.

### **2. Failure to Pay**

If you do not pay the administrative penalty, the County has the authority to do one or more of the following:

- a) Add late payment fee of 10 percent of the administrative penalty and any applicable administrative service fees may be assessed each month the penalty and fees remain unpaid. In some cases, this amount may be added to your property tax statement as a special assessment if you own property in the County and it was the subject of the violation.
- b) Deny an application for a County issued license or permit that is associated with the violation.
- c) Refer collection of the amount owed to a collection agency.
- d) Pursue collection as authorized under the Minnesota Revenue Recapture Act from money which you may be owed by the State of Minnesota.
- e) Start a criminal prosecution against you in Olmsted County District Court charging you with the underlying violation.

### **3. Assessment of Administrative Penalties For Property-Related Violations**

In addition to any other remedies provided, unpaid administrative penalties and any applicable administrative service fees imposed for certain property-related violations may be assessed against:

- a) Property which was the subject matter or related to the subject matter of the administrative penalty; or
- b) Property which was the location of an activity, proposed use, delivery of county service or other circumstance which resulted in the administrative penalty.

Prior to any assessment for an unpaid administrative penalty and any applicable administrative service fees, the County shall seek voluntary payment of the penalty by notifying the owner of the property in writing of the penalty imposed. The unpaid administrative penalty, any applicable administrative service fees and late fees, together with interest thereon at the maximum lawful rate permitted, against said parcel 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 or special assessments against the premises. The charge shall be a perpetual lien on the premises until paid. Prior to 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 County Board. An administrative charge of \$25.00 shall be due upon the mailing of the notice of proposed assessment.