

CHAPTER 4

GENERAL PENALTY

SECTION:

- 1-4-1: General Penalty
- 1-4-2: Application of Provisions
- 1-4-3: Liability of Officers
- 1-4-4: Procedures Governing the Imposition of Civil Fines

1-4-1: **GENERAL PENALTY¹:**

- A. Misdemeanor: Unless specifically provided elsewhere, any person convicted of a violation of any section or provision of this code deemed a misdemeanor may be fined in accordance with the City Fee and Fines Schedule as established by resolution of the Victor City Council which may be updated from time to time, and/or imprisonment not to exceed such federal or state maximum prescribed periods. Either or both such fine and imprisonment may be imposed; and in addition thereto, any person so convicted shall pay such costs as the court may assess. (Ord 1996 Code; amd. Ord 15-0225, 2-25-2015)
- B. Infraction: When the offense is designated as an infraction by any section or provision of this code or by state law, it is punishable by a penalty to be imposed in accordance with the City Fee and Fine Schedule as established by resolution of the Victor City Council which may be updated from time to time.
- C. Civil Fine; The city may enforce the requirements of this Code through the imposition of civil monetary penalties to be imposed in accordance with the City Fee and Fine Schedule as established by resolution of the Victor City Council which may be updated from time to time. (1996 Code; amd. Ord 15-0225, 2-25-2015)

1-4-2: **APPLICATION OF PROVISIONS:**

1. IC § 50-302.

- A. The general penalty as provided in this chapter shall be applicable to every section of this code the same as though it were a part of each and every separate section. Any person convicted of a violation of any section of this code where any duty is prescribed or obligation forbidden or is declared to be unlawful shall be deemed guilty of a misdemeanor unless otherwise provided. A separate offense shall be deemed committed upon each day such duty or obligation remains unperformed or such act continues unless otherwise specifically provided in this code.
- B. In all cases where the same offense is made punishable or is created by different clauses or sections of this code, the prosecuting officer may elect under which to proceed, but not more than one recovery shall be had against the same person for the same offense; provided, that the revocation of a license or permit shall not be considered a recovery or penalty so as to bar any other penalty being enforced.
- C. Whenever the doing of any act or the omission to do any act constitutes a breach of any section or provision of this code and there shall be no fine or penalty specifically declared for such breach, the provisions of this chapter shall apply. (1996 Code)

1-4-3: **LIABILITY OF OFFICERS:** No provision of this code designating the duties of any officer or employee shall be so construed as to make such officer or employee liable for any fine or penalty provided for a failure to perform such duty, unless the intention of the city council to impose such fine or penalty on such officer or employee is specifically and clearly expressed in the section creating the duty. (1996 Code)

1-4-4: **PROCEDURES GOVERNING THE IMPOSITION OF CIVIL FINES**

A. FINDINGS AND SCOPE OF SECTION

(1) The City of Victor ("City") has a significant interest in encouraging compliance with its laws. To that end, City Codes often include a variety of remedies, including the right of the City to issue citations to violators and to require such persons to pay an administrative fine.

(2) Moreover, the imposition of administrative fines is not intended to be punitive in nature, but is instead intended to compensate the public for the injury and damage caused by the prohibited conduct. The fines are intended to be reasonable and not disproportionate to the damage or injury to the City and the public caused by the prohibited conduct.

(3) The City Council ("Council") adopts this Section to provide standard procedures for the imposition, enforcement, collection, and administrative review of administrative citations and fines.

(4) The procedures set forth in this Section are adopted pursuant to Idaho Code §50-302 which gives the Council the authority to enforce ordinances with such fines as the Council may deem proper.

(5) The determination by the City to impose, enforce, collect and provide administrative review of administrative fines pursuant to this Section is solely at the City's discretion and is only one option available to the City to seek redress for the violation of its ordinances. By adopting this Section, and subsequent legislation incorporating the procedures in this Section, the Council does not intend to limit the ability of the City to use any other remedy, civil or criminal, which may be available in a particular case. The City may use the procedures set forth in this Section as an alternative to, or in conjunction with, any other available remedy.

B. DEFINITIONS. The following definitions shall apply to this Section:

"Charging official" means a City officer or employee with authority to enforce the ordinance for which citations may be issued or a person designated by the charging official to act on his or her behalf.

"Citation" means an administrative citation issued pursuant to this Section stating that the charging official has determined that there has been a violation of one or more provisions of a City ordinance, which ordinance incorporates this Section in whole or in part.

"Fine" and/or "Penalty" means the dollar amount of an administrative or civil fine that the person cited is required to pay for violation of an ordinance as set forth by the charging official in the citation.

"Person" means a natural person, firm, association, organization, partnership, business trust, company, corporation, limited liability company, joint venture, or club, or its manager, lessee, agent, servant, officer or employee.

"Serve" or "service" means either personal delivery or deposit in the United States Mail, first class, in a sealed envelope postage prepaid. Service shall include a declaration under penalty of perjury setting forth the date of personal delivery or, for service by mail, the date of deposit in the mail. Service by personal delivery shall be deemed complete on the date of the delivery. Service by mail shall be deemed complete on the date of deposit in the mail.

"Violation" means a violation of an ordinance for which the charging official has authority to issue a citation.

C. ISSUANCE AND SERVICE OF CITATIONS

(1) When a charging official determines that a violation of an ordinance has occurred, the charging official may issue and serve a citation on any person responsible for the violation.

(2) The citation shall contain the following information:

- (a) The name of the person to whom the citation is issued;
- (b) Identification of the provision or provisions of the ordinance violated;
- (c) A description of the condition or circumstances constituting the violation(s), including the address or location and date of the violation;
- (d) The amount of the fine imposed for each violation;
- (e) The date by which the fine must be paid, the procedure for making payment (including to whom payment must be made and acceptable forms of payment), and the consequences of the failure to pay;
- (f) The date the citation is issued and the name and signature of the charging official.

D. DETERMINATION OF THE AMOUNT OF THE ADMINISTRATIVE FINE WHEN THE CITATION IS ISSUED

The amount of any fine to be imposed will be in accordance with the City Fee and Fine Schedule as established by resolution of the Victor City Council which may be updated from time to time. In the event the City Fee and Fine Schedule does not address a violation under the Victor City Code, the following fines may be assessed:

- (1) \$100.00 for a first violation of the ordinance (and each additional day that is part of the same incident);
- (2) \$200.00 for a second violation of the same ordinance within one year of the date of the first violation; and
- (3) \$300.00 for each additional violation of the same ordinance within one year of the date of a second or subsequent violation.

E. WHEN FINES DUE; PAYMENT OF FINE; LATE PAYMENT FEE

- (1) The citation shall set forth the date by which the fine is required to be paid, which date shall allow 30 days for payment from the date that the citation is served. The fine shall be due and payable on or before the date set forth in the citation, unless the person cited has filed a timely appeal in compliance with this Section.
- (2) Fines which remain unpaid 15 days after the due date shall be subject to a late payment penalty of 10 percent plus interest at the rate of 1 percent per month on the outstanding balance, which shall be added to the fine or penalty amount from the date that payment is due.
- (3) All fines and late payment fees shall be payable to the City and deposited in the City's general fund, unless the payment is made pursuant to an ordinance that provides otherwise.

F. REMEDIES AVAILABLE TO CITY FOR NON-PAYMENT OF FINES; CRIMINAL SANCTIONS FOR MULTIPLE OFFENSES

(1) The amount of any fine not paid within the time required under this Section, including the amount of any applicable late payment charges, constitutes a debt to the City. The City may file a civil action or pursue any other legal remedy to collect such money. In any civil action to obtain payment of the fine, and any late payment penalties, the City shall be entitled to obtain a judgment for the amount of the unpaid fines and penalty payments and, in addition, for the costs and attorneys' fees incurred by the City in bringing any civil action to enforce the provisions of this Section. Nothing hereunder shall preclude the City from levying against real property in order to satisfy a judgment for such fines and costs.

(2) If the fine is unpaid at the time a person cited for a violation applies for a license or permit, or any other registration issued by the City, the City may deny the approval of such license, permit, or registration until the fine is paid in full, unless State law provides otherwise.

(3) In the event that a Person is cited three (3) or more times in any five year period with a civil fine for the violation of the same or a substantially similar violation of this Code, the third and all subsequent offenses may be treated as misdemeanors.

G. RIGHT TO APPEAL

(1) Any person who has been served with a citation may seek administrative review of the citation by filing an appeal with the City Clerk as provided herein. The grounds for any such appeal shall be that there was no violation of the ordinance for which the citation was issued or that the person cited did not commit the violation.

(2) The City Clerk shall make available an appeal form for use by violators who wish to appeal their citation. The form shall include a description of the procedure for seeking administrative review of the citation, including the deadline for filing the appeal or reference this Section of the Victor City Code. The appeal form shall require the appellant to provide a mailing address, a street address, a telephone number, and any other contact information that the Clerk determines appropriate.

(3) In order to file an appeal, the appellant must pay a deposit in an amount equal to the cited fine. The deposit will be refunded in whole if the hearing officer issues a determination vacating the citation and in part if the hearing officer determines that the citation should be thus modified. No interest or late fees shall accrue during the appeal period.

H. APPEAL PROCEDURE; APPOINTMENT OF HEARING OFFICER

(1) Any person who seeks the administrative review of a citation may file an appeal no later than 20 calendar days from the date of service of the citation. An

appeal shall be deemed filed on the date that the City Clerk receives the appeal along with the required deposit.

(2) The City Clerk shall take the following actions within 14 days of receiving a properly filed appeal: (1) appoint a hearing officer or a panel of officers, (2) set a date for the hearing, which date shall be no less than 10 and no more than 60 days from the date that the appeal was filed, and (3) send written notice of the hearing date to the appellant and the charging official.

(3) The provisions of this Subsection requiring the City Clerk or Charging Official to act by a specific date are directory. The failure of the City Clerk or Charging Official to take action within the time specified shall not deprive that person of jurisdiction over the matter or of the right to take action at a later time, unless to do so would unreasonably prejudice persons issued citations.

I. QUALIFICATIONS OF HEARING OFFICERS.

(1) The officer(s) selected to hear appeals shall be impartial.

(2) Disqualification of Appeals Hearing Officer. Any person designated to serve as an Appeals Hearing Officer is subject to disqualification for bias, prejudice, interest, or for any other reason for which a judge may be disqualified in a court of law. The City Clerk shall determine in writing whether to grant the petition for disqualification and their reason therefore. If a substitute is required for a hearing officer due to disqualification or unavailability, a substitute shall be appointed by the City Clerk in accordance with these rules and regulations.

J. HEARING PROCEDURES.

(1) The hearing officer(s) shall conduct all appeal hearings under this Subsection and shall be responsible for deciding all matters relating to the hearing procedures not otherwise specified in this Subsection or in regulations adopted by the City Council. The charging official shall have the burden of proof in the hearing. The hearing officer(s) may continue the hearing at his, her, or their own initiative or at the request of either party. The hearing officer(s) may request additional information from the charging official or the person cited.

(2) The hearing need not be conducted according to technical rules of evidence and witnesses. Any relevant evidence is admissible if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(3) The following provisions shall also apply to the appeal procedure:

(a) A citation that complies with the requirements of this Subsection and any additional evidence submitted by the charging official shall be prima facie evidence of the facts contained therein;

(b) The appellant shall be given the opportunity to present evidence concerning the citation; and

(c) The hearing officer(s) may accept testimony by declaration under penalty of perjury relating to the citation from any party if he or she determines it appropriate to do so under the circumstances of the case.

K. REQUIREMENT TO EXHAUST ADMINISTRATIVE REMEDIES. The failure of the person cited to file a timely appeal shall constitute a failure to exhaust administrative remedies and shall preclude the person cited from obtaining judicial review of the validity of the citation.

L. DETERMINATION OF THE HEARING OFFICER

(1) After considering all of the testimony and evidence submitted by the parties, the hearing officer(s) shall issue a written decision upholding, modifying or vacating the citation and shall set forth the reasons for the determination. The determination of the hearing officer(s) shall be a final administrative determination.

(2) The hearing officer(s) shall serve the appellant and the charging official with a copy of the determination within 30 days of the appeal hearing.

(3) If the hearing officer(s) determines that the citation is vacated or modified the City shall issue a full or partial refund of the deposit to the appellant along with a copy of the determination.

(4) If a charging official issues a single citation for multiple violations of an ordinance or for violation of multiple provisions of an ordinance, the hearing officer(s) shall hear all appeals of a citation at the same time, unless good cause is shown that they should be heard separately.

(5) If two (2) hearing officers are appointed they must act together to uphold a citation either in full or in part; if more than two (2) hearing officers are appointed a simple majority of them must act to uphold a citation either in full or in part.