

CHAPTER 2

SECTION 4

Administrative Enforcement of the Ridgway Municipal Code

Subsections:

- 2-4-1 In General.
- 2-4-2 Definitions.
- 2-4-3 Authority.
- 2-4-4 Procedures.
- 2-4-5 Contents of Notice.
- 2-4-6 Appeal of Administrative Citation.
- 2-4-7 Administrative Hearing of Officers.
- 2-4-8 Procedures at Administrative Hearings.
- 2-4-9 Failure to Obey Subpoena.
- 2-4-10 Failure to Attend Administrative Hearing.
- 2-4-11 Administrative Enforcement Order.
- 2-4-12 Failure to Comply with Administrative Enforcement Order.
- 2-4-13 Penalties Assessed.
- 2-4-14 Failure to Pay Penalties.

2-4-1 IN GENERAL.

(Section created by Ord 5-2011)

(A) This Section provides for administrative penalties that may be imposed for violation of the Ridgway Municipal Code including codes adopted by reference therein, (Code).

(B) The purpose of this Section is to encourage prompt compliance with the Code and prompt payment of penalties assessed.

2-4-2 DEFINITIONS.

For the purposes of this Section the following terms shall have the meanings assigned to them below.

(A) Administrative hearing officer (AHO): A person appointed by the Town Manager to hear appeals of administrative citations, which person may also be the Municipal Judge.

(B) Enforcement official: A person employed by the Town and charged by the Town Manager with enforcing provisions of the Code.

(C) Code: The Ridgway Municipal Code, including codes adopted by reference therein, as amended.

(D) Responsible party: A person or entity who is suspected of having violated the Code or, in the case of property violations, the property owner, or an individual or an entity who, acting as an agent for or other legal capacity on behalf of the owner, has authority over property subject to an administrative citation under this Section, or in the case of animal violations, the person who owns, possesses, keeps, exercises control over, maintains, harbors, transports or sells the animal or animals which are the subject of an animal code violation.

(E) Rules and regulations: Such procedures and requirements as are adopted through a rulemaking process as set forth in Subsection 2-4-4 of this Section or as provided by ordinance for any specific department.

(F) Manager of Town Manager: The Ridgway Town Manager.

2-4-3 AUTHORITY.

(A) Any responsible party in violation of provisions of the Code may be issued an administrative citation by an enforcement official as provided in this Section.

(B) Administrative citations for all violations of the Code shall be issued only after the responsible party has been issued a notice of violation and given time to comply consistent with provisions of the underlying ordinance unless, because of the nature of the offense, immediate compliance is required.

(C) Each day a violation exists or continues shall constitute a separate and distinct violation for which a separate citation may be issued. However, unless the Manager determines that continued violations could cause immediate injury to persons or property of the offense is one that, because of the nature of the offense, requires immediate compliance, once a citation has been issued for a violation of the Code, no additional citation shall be issued for the same violation for 10 days unless the responsible party has not complied with an order of the administrative hearing officer (AHO) within 10 days of its issuance or such other time as the AHO has specified. If the Manager determines that continued violations could cause immediate injury to persons or property or is a nature that requires immediate compliance, an additional citation may be issued each day the violations continues.

(D) A civil penalty assessed by means of an administrative citation issued by the enforcement officer shall be payable directly to the Town, and if not timely paid may be collected in accordance with the procedures specified in this Section.

(E) Enforcement actions are intended to be cumulative in nature. The Town may pursue one or more civil and/or administrative actions, fees, fines, sentence, penalties, judgments, and remedies, and may do so simultaneously or in succession. (Ord 1-2017)

(F) The Manager is authorized to promulgate rules, regulations and forms as appropriate to implement the provisions of the Section.

2-4-4 PROCEDURES.

(A) Upon discovering a violation of the Code and after having complied with Subsection 2-4-3(B), and enforcement official may issue an administrative citation to a responsible party.

(B) The enforcement official or police officer may require that the responsible party provide evidence of identity and current residence or employment address. It shall be unlawful for any person to refuse or fail to provide such evidence of identity and residence or employment address.

(C) The enforcement official shall attempt to have the notice of violation or administrative citation given directly to the responsible party. If the responsible party is not promptly located, a copy of the administrative citation may be left with any adult person residing or working at the site of the violation or at the responsible party's business or personal address, or posted conspicuously on such premises if no adult person is found at the site of the violation or at the responsible party's business or personal address.

(D) The enforcement official shall attempt to obtain the signature of the person receiving the notice of violation or administrative citation. If that person refuses or fails to sign the copy of notice of violation or administrative citation, the failure or refusal to sign shall not affect the validity of the notice, citation or subsequent proceedings.

(E) If the enforcement official does not have the notice of violation or administrative citation tendered directly to the responsible party, then, in addition to posting or delivery to other parties as described in Subsection (C) above, the notice or administrative citation may be sent via US mail or other delivery service, return receipt requested. If a return receipt is not executed, the notice or citation shall be sent via first class mail to the responsible party. If the responsible party refuses to accept the notice or citation when it is offered, the enforcement official may leave it at the responsible party's feet and no mailing is required. The notice or citation may be sent to the responsible party's address in Town utility records, county real estate records or other current address on file in records of any governmental agency including the Colorado Division of Motor Vehicles.

(F) A notice or citation shall be deemed served on the date it is tendered to the responsible party, if personally served; the date a return receipt is executed; or upon the fifth day after deposit in first class US Mail, whichever is later.

2-4-5 CONTENTS OF CITATION.

(A) The administrative citation shall state the date and location of the violation and the approximate time the violation was observed. When applicable, the administrative citation shall identify the property in violation by address or legal description.

(B) The administrative citation shall refer to the code section violated and describe the violation.

(C) When applicable, the administrative citation shall describe the action required to correct the violation.

(D) When applicable, the administrative citation shall require the responsible party to immediately correct the violation and shall explain the consequences of failure to correct the violation.

(E) The administrative citation shall state the amount of penalty imposed for the violation.

(F) The administrative citation shall explain how the penalty shall be paid, the time period by which it shall be paid, and the consequences of failure to pay the penalty.

(G) The administrative citation shall briefly state the process for appealing the administrative citation.

(H) The administrative citation shall contain the signature of the enforcement official and the signature of the responsible party if it can be obtained.

2-4-6 APPEALS OF ADMINISTRIVE CITATION.

(A) A person served with an administrative citation may file a notice of appeal within 10 calendar days from the service of the notice. Compliance with this time limit shall be a jurisdictional prerequisite to any appeal brought under this Section, and failure to comply shall bar any such appeal.

(B) The notice of appeal shall be made in writing, must include the responsible party's current telephone number, residence address and mailing address and be received by the Town at Ridgway Town Hall within 10 days of service of the citation.

(C) After receiving the written notice of appeal, the manager shall appoint an AHO who shall schedule a date, time and location for the hearing.

(D) Written notice of the date, time and location of the hearing shall be personally served upon or sent by first class mail to the responsible party at the mailing address indicated in the notice of appeal, at least 10 calendar days prior to the date of the hearing.

(E) For appeals of citations for violations that the Manager has determined would cause immediate peril to life or property, or is of a nature that requires immediate compliance, the AHO shall determine the validity of all outstanding citations for said violation as of the date of the hearing.

2-4-7 ADMINISTRATIVE HEARING OFFICERS.

(A) The AHO may be the Municipal Judge or an attorney licensed in Colorado.

(B) Any person designated to serve as an AHO 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.

2-4-8 PROCEDURES AT ADMINISTRATIVE HEARINGS.

(A) Administrative hearings are intended to be informal in nature. Formal rules of evidence and discovery do not apply. The parties shall exchange a list of exhibits, and copies of documents or pictures they intend to offer and a list of witnesses they intend to call, by three days before the hearing at the request of any party made five days before the hearing. The procedure and format of the administrative hearing shall follow procedures acceptable to the AHO. Unless the party appealing the administrative citation objects, hearings shall be open to the public. The hearing shall be recorded and a record of the proceedings maintained by the AHO.

(B) The parties to an administrative hearing shall be the responsible party and the Town. Parties may be represented by legal counsel. Parties may present evidence, call and question witnesses and cross examine witnesses called by other parties, with the Town proceeding first, followed by the Responsible Party, with rebuttal as allowed by the AHO.

(C) The AHO, at the request of any party to the hearing, may subpoena witnesses, documents and other evidence where the attendance of the witness or the admission of evidence is deemed necessary by the AHO to decide the issues at the hearing. All costs related to the subpoena, including witness and mileage fees, shall be borne by the party requesting the subpoena. The AHO may allow witnesses, other than the responsible party and the enforcement officer, to testify by telephone, provided neither party objects, and both parties acknowledge the identity of the witness. The AHO may limit the number of witnesses to eliminate irrelevant or repetitive testimony.

(D) The AHO shall have the power to call and question witnesses, to review and consider the relevancy and probative weight of testimony, documentary or other tangible evidence, to rule on evidentiary questions and witness qualifications, and to generally conduct the hearing in conformance with the procedures and requirements set forth herein. Provided, however it shall not be a defense to any violation that similar violations or other violations of Town ordinances, exist within the Town.

(E) The Town bears the burden of proof at an administrative appeal to establish the existence of a violation of the Code. The responsible party bears the burden to establish any affirmative defense.

(F) The standard of proof to be used by the AHO in deciding the issues at an administrative hearing is by a preponderance of the evidence.

(G) The AHO may allow for continuances only for a compelling reason.

2-4-9 FAILURE TO OBEY SUBPOENA.

It shall be unlawful for any person to refuse to obey a subpoena issued by an AHO. Failure to obey a subpoena constitutes contempt. (Ord 1-2017)

2-4-10 FAILURE TO ATTEND ADMINISTRATIVE HEARING.

Any responsible party who fails to appear at the hearing is deemed to waive the right to a hearing and the adjudication of the issues related to the hearing, provided that proper notice of the hearing has been provided.

2-4-11 DECISION AND ADMINISTRATIVE ENFORCEMENT ORDER.

(A) The findings and decision of the AHO holding that a violation was not proven by the Town may be issued orally at the end of the hearing or issued in writing at the option of the AHO.

(B) A decision of the AHO finding a violation of the Code and upholding the citation may be announced orally at the end of the hearing but shall be supported by written findings and decision and issuance of an administrative enforcement order. The administrative enforcement order may:

(1) Uphold the administrative citation and penalties as to any violation proven by the Town;

(2) Require payment of any outstanding assessed penalties and costs by a specified date.

(3) Waive the penalty for a real property violation, but only where the responsible party has provided clear and convincing evidence of complete compliance prior to the date of the service of the administrative citation.

(4) Reduce the penalties for a real property violation, but only where the responsible party has provided clear and convincing evidence of both complete compliance prior to the hearing and also justifiable neglect for a failure to comply earlier, provided however that claims of insufficient financial resources shall not constitute justifiable neglect.

(5) Conditionally reduce the penalties where the order imposes conditions and deadlines to correct violations upheld.

(6) Assess reasonable administrative costs.

(E) The Findings and Decision, and administrative enforcement order shall become final on the date of mailing of the order to the responsible party. A copy shall be provided to the Town.

(F) The Findings and Decision and administrative enforcement order may be appealed to Ouray County District Court under the provisions of Colorado Rule of Civil Procedure 106(a)(4) within thirty days of the date the order becomes final.

(G) At any time during the proceedings the Town and the responsible party may enter into a compliance agreement.

2-4-12 FAILURE TO COMPLY WITH ADMINISTRATIVE ENFORCEMENT ORDER OR COMPLIANCE AGREEMENT.

(A) It shall be unlawful for a responsible party who has been served with a copy of the final administrative enforcement order to fail to comply with the order, or to comply with the terms of a compliance agreement. (Ord 1-2017)

(B) If a responsible party fails to comply with a final administrative enforcement order for an administrative citation issued for a violation of the code or compliance agreement, and the Town subsequently corrects the violation, then the Town shall be entitled to recover its costs.

2-4-13 PENALTIES ASSESSED.

(A) The manager may establish policies to assist in the assessment of civil penalties for administrative citations issued by the Town.

(B) If the responsible party fails to correct the violation cited, commits the same violations again, or fails to correct a violation as specified in accordance with an administrative enforcement order of the AHO, subsequent administrative citations may be issued for violations of the same code section. The penalties assessed for each administrative citation issued for violations of the same code section or sections shall not exceed the following amounts regardless of the number of violations per citation:

- (1) First administrative citation: one hundred and fifty dollar (\$150.00).
- (2) Second administrative citation: five hundred dollars (\$500.00).
- (3) Third and each subsequent administrative citation: nine hundred and ninety-nine dollars (\$999.00).

(C) Payment of the penalty shall not excuse the failure to correct the violations nor shall it bar further enforcement action by the Town.

2-4-14 FAILURE TO PAY PENALTIES.

(A) The failure of any responsible party to pay the civil penalties or other amounts due within the time specified on the citation or administrative enforcement order, if an administrative hearing was held, may result in the imposition of a late fee of up to twenty-five dollars (\$25.00) and interest at a rate of ten percent per annum.

(B) If the responsible party fails to pay all penalties and charges as due, the Town Manager may refer the matter for collection by any and all means available to the Town.

(C) In the case of property violations, the Town may certify the amounts due as a delinquent charge to the County Treasurer for collection similarly as taxes.

(D) Any amounts due under this section shall be a perpetual lien on the subject property until paid, and such lien shall be automatically perfected and shall have priority over all other liens except general taxes and prior special assessments.

(E) Any action or other process provided by law may be maintained by the Town to recover or collect any amounts, including late fees, interest and administrative costs, and reasonable attorneys fees, owing under this Section.

(F) Until amounts due under this section, not pending appeal, have been paid in full, the Town shall not issue or renew any license or permit of any kind to a responsible party.

(G) Failure to pay outstanding amounts due under this section, that are not pending appeal, shall be grounds for suspension or revocation of any license issued by the Town until fully paid.