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CHAPTER 19

MUNICIPAL COURT

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**ARTICLE I.
IN GENERAL**

Sec. 19-1. Definitions.

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section:

Municipal Court shall mean a *qualified municipal court of record* as defined in Section 13-10-102, C.R.S.

Municipal Judge shall mean and include the presiding Municipal Judge, and all Assistant Municipal Judges, unless the context requires otherwise.

(Ord. No. 194, 1999, 1-4-00)

Sec. 19-2. Recording of proceedings.

The Municipal Judge shall require that all proceedings and evidence presented within the Municipal Court be recorded verbatim, by either electronic devices or stenographic means.

(Ord. No. 194, 1999, 1-4-00)

Sec. 19-3. Rules of procedure.

The Colorado Municipal Court Rules, as amended, the rules for traffic infractions contained in Article IV of this Chapter, the provisions of this Chapter, and procedures adopted by the Municipal Judge which are not inconsistent therewith, shall govern the procedure in the Municipal Court in all cases arising under the Charter and Code.

(Code 1972, § 7-8; Ord. No. 105, 1990, § 1, 12-18-90; Ord. No. 93, 1991, § 1, 8-6-91; Ord. No. 194, 1999, 1-4-00)

Sec. 19-4. Failure to pay fine or penalty.

(a) Any person against whom a fine or penalty is assessed by the Municipal Court for a violation of a misdemeanor offense who refuses or neglects to pay the fine or penalty or who violates any condition placed thereon by the Municipal Judge may be imprisoned for such refusal, neglect or violation.

(b) A person imprisoned for refusing or neglecting to pay such fine or penalty shall be credited at a rate of six dollars (\$6.) per twenty-four-hour day served against such fine or penalty.

(Code 1972, § 7-7; Ord. No. 105, 1990, § 2, 12-18-90; Ord. No. 194, 1999, 1-4-00)

Sec. 19-5. Contempt of Court.

(a) *Contempt of Court* shall mean:

- (1) Any act or omission of any person, including any officer of the Municipal Court in his or her official transactions, which is offensive to the authority or dignity of the Municipal Court or which obstructs or interferes with the administration of justice;
- (2) Disobedience or resistance of any person to or interference with any lawful writ, process, order, rule, decree or command of the Municipal Court; or
- (3) Any other act or omission designated as contempt by statute or other rule or law of the State or the City of Fort Collins.

(b) *In presence of Court.* When a contempt is committed in the presence of the Municipal Court, it may be punished summarily. In such case, an order shall be made from the bench reciting the facts constituting the contempt, adjudging the contemner guilty of contempt and prescribing the punishment therefor. Such order shall be final and conclusive but may be appealed as provided by law.

(c) *Out of presence of Court.* When it appears to the Municipal Court by motion supported by affidavit that a contempt has been committed out of the presence of the Municipal Court, the Municipal Court may *ex parte* order a cita-

tion to issue to the person so charged to appear and show cause at a time designated why he or she should not be punished for contempt. The citation and a copy of the motion and affidavit shall be served upon such person within a reasonable time before the time designated. If such person fails to appear at the time so designated, or if the Municipal Court so orders when the citation is issued or thereafter, a warrant for his or her arrest may be issued. Such warrant shall fix the time for the production of such person in Court. The Municipal Court shall direct by endorsement thereon the amount of the bail required. If such person is arrested under the warrant issued by the Municipal Court, makes bond and fails to appear at the time designated in the warrant, or at any time to which the hearing may be continued, the bond may be forfeited, and the amount thereof, to the extent of the damages suffered by the contempt, shall be paid to the person damaged thereby, which person may include the Municipal Court but shall not include the Municipal Judge of the Municipal Court. If the person arrested fails to make bond, he or she shall be kept in custody, subject to the order of the Municipal Court. The Municipal Court shall hear the evidence for and against the person charged, and it may find him or her guilty of contempt and by order prescribe the punishment therefor. A fine may be imposed not exceeding the damages suffered by the contempt, plus costs of the contempt proceeding, plus reasonable attorney's fees in connection with the contempt proceeding, payable to the person damaged thereby, which person may include the Municipal Court but shall not include the Municipal Judge of the Municipal Court. If the contempt consists of the failure to perform an act in the power of the person to perform, he or she may be imprisoned until its performance. In addition thereto, to vindicate the dignity of the Municipal Court, if the citation so states, a fine or imprisonment may be imposed. If any such fine is not paid, the Municipal Court may order the contemner imprisoned until payment thereof, in accordance with § 19-4 of this Code.

(Ord. No. 93, 1991, § 2, 8-6-91; Ord. No. 194, 1999, 1-4-00)

Secs. 19-6—19-20. Reserved.

ARTICLE II. JURY TRIALS

Sec. 19-21. Number of jurors.

In any case before the Municipal Court wherein a defendant has a right under the state or federal Constitution or laws to trial by jury and proper demand has been made, the jury shall consist of three (3) jurors unless, in the case of a trial for a violation other than a violation of a provision of Chapter 28, Vehicles and Traffic or the Fort Collins Traffic Code, a greater number, not to exceed six (6), is requested by the defendant in the jury demand.

(Ord. No. 16, 2003, §10, 2-18-03)

Sec. 19-22. Failure to perform jury service.

(a) Any person summoned for jury service who fails to appear or who fails to complete jury service as directed may be served a summons by registered or certified mail, return receipt requested, requiring appearance for jury service or completion of jury service as directed.

(b) If such person does not appear in response to the summons, the Municipal Judge may order the appearance of such person to show cause for the failure to appear.

(c) If good cause satisfactory to the Municipal Judge is not presented for such noncompliance with the summons, the person shall be guilty of failure to appear for jury duty and shall be punished pursuant to § 1-1.

(Code 1972, § 7-3)

Secs. 19-23—19-35. Reserved.

ARTICLE III. MUNICIPAL COURT REFEREE

Sec. 19-36. Creation; jurisdiction; qualifications.

(a) The Municipal Judge is authorized and empowered to appoint one (1) or more Referees to hear certain municipal ordinance violations relating to parking or Municipal Code violations designated as civil infractions, and to re-

view any costs of abatement or removal assessed pursuant to civil infraction provisions of this Code, as the Municipal Judge may from time to time designate. Such alleged violations may include any offense or infraction which may now or in the future be included in the schedule of payable fines established by the Municipal Judge pursuant to law except any offense which might result in the assessment of points by the State Department of Revenue against the responsible party's driving license or privilege.

(b) The Referee shall be an attorney admitted to practice law in the State, have a minimum of five (5) years of legal or judicial experience and be a resident of the City.

(c) A Referee appointed by the Municipal Judge to hear civil infractions shall be appointed from a list of candidates chosen by a staff committee representing each of the following: Neighborhood and Building Services, the City Attorney's Office and the Human Resources Department.

(d) The City Manager is authorized to appoint a designee to represent the City's interest, with the advice and consent of the City Attorney's Office, in parking and civil infraction proceedings heard by the Referee. (Code 1972, § 7-10; Ord. No. 125, 2005, § 1, 11-15-05; Ord. No. 198, 2006, § 7, 12-19-06; Ord. 055, 2007, § 1, 5-1-07)

Sec. 19-37. Defendant's right to hearing before Judge.

Prior to conducting a hearing on a civil infraction or parking citation, the Referee shall inform the defendant that he or she has the right to a trial before the Municipal Judge. If such request is made, the Referee shall terminate the hearing and refer the matter to the Municipal Court for trial.

(Code 1972, § 7-11; Ord. No. 125, 2005, § 2, 11-15-05; Ord. 055, 2007, § 2, 5-1-07)

Sec. 19-38. Procedures for hearings before Referee.

(a) The Referee is authorized to adopt rules and procedures governing conduct of hearings in accordance with the provisions of this Article. The Municipal Judge shall approve all such rules and procedures prior to their adoption by the Referee.

(b) Hearings held before the Referee shall be informal, but shall in all other respects be conducted in the manner provided for the hearing of cases by the Municipal Court. The Referee may consider statements and evidence presented by the parties at the time of the hearing. The Referee is empowered to administer oaths, take testimony and obtain the issuance of subpoenas through the Municipal Court Clerk to compel the presence of prospective witnesses and the production of documentary evidence and other tangible objects at any hearing. The defendant shall also have the right to the issuance of a subpoena by making application to the Municipal Court Clerk.

(Code 1972, § 7-12(A), (B); Ord. No. 125, 2005, § 3, 11-15-05)

Sec. 19-39. Order of the Referee.

(a) At the completion of a hearing on a civil infraction or parking citation held under the provisions of this Article, the Referee shall enter an order either:

- (1) Excusing or dismissing a citation if the Referee finds that the violation has not been sustained by the evidence presented; or
- (2) Making a finding of guilt or responsibility, based upon either a plea of guilty entered or an admission of responsibility tendered, failure of the defendant to appear for the hearing or the evidence presented at the hearing; and assessing a penalty against the defendant within the schedule of fines published by the Municipal Judge or set by ordinance which was in effect at the time of the violation; and entering any orders or assessing any costs and/or fees that may be permitted pursuant to § 1-15 or any other ordinance or resolution; or
- (3) Referring the case to the Municipal Court for hearing before the Municipal Judge where the Referee determines, in the exercise of the Referee's discretion, that the facts of the particular case or the issues raised therein require such a hearing. Statements made by the defendant during the course of the hearing before the Referee

shall not be introduced against the defendant at any subsequent proceeding before the Municipal Court, nor may the Referee hearing the case be called as a witness against the defendant.

(b) If a defendant fails to answer a citation or notice to appear before a Referee, a default judgment will enter in the amount of the civil penalty plus all costs, expenses and damages. In the event a defendant fails to pay a civil penalty, costs, damages and expenses within thirty (30) days after the payment is due or fails to pay a default judgment, the City may pursue any legal means for collection and, in addition, may obtain an assessment against the property that is the subject of the violation if the Code violation is designated as a civil infraction.
(Code 1972, § 7-12(C); Ord. No. 125, 2005, § 4, 11-15-05; Ord. No. 198, 2006 § 8, 12-19-06; Ord. 055, 2007, § 3, 5-1-07)

Sec. 19-40. Record of proceedings and hearings.

A written record of all proceedings shall be maintained by the Referee. The record shall contain the name of the alleged responsible party, the date of the appearance before the Referee, the complaint number, the date, place and type of violation and any order of the Referee. All hearings and evidence presented at the hearing shall be recorded verbatim, by either electronic devices or stenographic means.

(Code 1972, § 7-12(D); Ord. No. 125, 2005, § 5, 11-15-05; Ord. No. 198, 2006 § 9, 12-19-06)

Sec. 19-41. Authorization to reduce or waive penalties and assessments.

(a) For parking violations, the Referee may assess a penalty less than the fine prescribed in the schedule of fines published by the Municipal Judge or may suspend such fine in any case where the Referee determines, based upon evidence obtained during the course of the hearing, that such action would be in the best interests of justice.

(b) For all other civil infractions, the Referee shall assess a penalty within the range of fines established by ordinance or in the schedule of fines published by the Municipal Judge. In addition, the Referee may impose any other costs, damages, expenses and orders that may be authorized under Subsection 1-15(f).

(c) The Referee may also reduce or waive any costs or fees assessed by the City in connection with the abatement or removal of a nuisance, except those fees that may be imposed by the City to defray the cost of hearing an appeal of the amount of the assessment, if the Referee determines, based upon mitigating circumstances, that such reduction or waiver would be in the best interests of justice.

(Code 1972, § 7-14; Ord. No. 125, 2005, § 6, 11-15-05; Ord. No. 198, 2006 § 10, 12-19-06; Ord. 055, 2007, § 4, 5-1-07)

Sec. 19-42. Appeal of decisions.

(a) Any defendant affected by a final order or judgment of a Referee with respect to parking and civil infraction citations, under the authority of this Article, may appeal the Referee's final order or judgment to the Municipal Court by filing a written notice of appeal with the Municipal Court Clerk within ten (10) days after the entry of the final order or judgment and depositing with the Municipal Court a fee for preparing the record, or portions thereof designated. Upon the filing of the notice of appeal, no stay of execution of the Referee's order or action shall be granted until the appellant has deposited with the Municipal Court a cash bond in the amount of any fines and costs imposed by the Referee.

- (1) If for any reason an adequate record cannot be certified to the Municipal Court, the case shall be tried de novo by the Municipal Judge. No action on appeal shall result in an increased penalty.
- (2) If a notice of appeal is not filed within ten (10) days after the final order or judgment or the order or action is not vacated by the Municipal Judge upon the motion of the Municipal Judge within such period, the order or action of the Referee shall be final.
- (3) In no event shall the Referee testify on appeal regarding any action previously before the Referee, except concerning actions in the nature of contempt, including failure to appear.

(4) Appeals shall be in accordance with Rule 37 of the Colorado Rules of Criminal Procedure.

(b) A Referee's decision regarding abatement or removal assessment reviews is final.
(Code 1972, § 7-13; Ord. No. 125, 2005, § 7, 11-15-05; Ord. No. 198, 2006 § 11, 12-19-06; Ord. 055, 2007, § 5, 5-1-07)

ARTICLE IV. RULES FOR TRAFFIC INFRACTIONS

Sec. 19-43. In general.

Notwithstanding any provisions of this Code to the contrary, all violations of any provision classified as a traffic infraction in § 1-15 shall constitute civil matters and not criminal violations.
(Ord. No. 105, 1990, § 3, 12-18-90)

Sec. 19-44. Scope and purpose.

These rules are promulgated pursuant to Article VII, Section 1 of the Charter and govern practice and procedures for the handling of traffic infractions, as described in § 1-15. The purpose of these rules is to provide for the orderly, expeditious and fair disposition of such infractions. For this purpose, the rules apply concepts of both civil and criminal law, as deemed appropriate, to establish informal hearing procedures in the Municipal Court.
(Ord. No. 105, 1990, § 3, 12-18-90)

Sec. 19-45. Application.

These rules apply to actions in which only the commission of traffic infractions are charged. In any action in which the commission of a traffic infraction and a misdemeanor offense are alleged in one (1) complaint, the action shall be treated as one (1) proceeding governed by the rules and statutes applicable to the alleged misdemeanor offense.
(Ord. No. 105, 1990, § 3, 12-18-90)

Sec. 19-46. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

Charging document shall mean the document commencing or initiating the traffic infraction matter, whether denoted as a complaint, summons and complaint, citation, penalty assessment notice, parking assessment or other document charging the person with the commission of a traffic infraction or infractions.

Defendant shall mean any person charged with the commission of a traffic infraction.

Judgment shall mean a finding by the Municipal Court of guilt or liability against any person for the commission of a traffic infraction.

Officer shall mean a peace officer who tenders or serves a charging document under these rules.

Penalty shall mean a fine imposed pursuant to this Code for the violation of a traffic infraction.
(Ord. No. 105, 1990, § 3, 12-18-90)

Sec. 19-47. No jury trial of infractions.

A defendant brought to trial solely upon a traffic infraction or infractions shall have no right to a trial by jury as contemplated by Section 13-10-114, C.R.S., or Rule 223, C.M.C.R., and trial of traffic infractions shall be to the Municipal Court. No defendant found civilly liable for a traffic infraction shall be punished by imprisonment for said infraction.

(Ord. No. 105, 1990, § 3, 12-18-90)

Sec. 19-48. Commencement of action.

An action under these rules is commenced by the tender or service of a charging document upon a defendant or by conspicuously attaching a parking assessment to the subject vehicle and by the filing of a charging document with the Municipal Court.

(Ord. No. 105, 1990, § 3, 12-18-90)

Sec. 19-49. Payment before appearance.

(a) The Municipal Court Clerk shall accept payment of a penalty assessment notice by a defendant without an appearance before the Municipal Court if payment is made within the period following the issuance of the charging document and ending at the time scheduled for the first hearing, provided that the Municipal Court Clerk has a copy of the charging document.

(b) At the time of payment, the defendant shall sign a waiver of rights and acknowledgement of guilt or liability or tender a no contest plea upon a form approved by the Municipal Judge.

(c) This procedure shall constitute an entry and satisfaction of judgment.
(Ord. No. 105, 1990, § 3, 12-18-90; Ord. 18, 2002, § 1, 2-19-02)

Sec. 19-50. First hearing.

(a) If the defendant has not previously acknowledged guilt or liability and satisfied the judgment, he or she shall appear before the Municipal Court at the time scheduled for first hearing.

(b) The defendant may appear in person or by counsel, who shall enter appearance in the case; provided, however, that if an admission of guilt or liability is entered or a no contest plea is tendered, the Municipal Court may require the presence of the defendant for the assessment of the penalty.

(c) If the defendant appears in person, the Municipal Court shall advise the defendant in writing or in open court of the following:

- (1) The nature of the infractions alleged in the charging document;
- (2) The penalty, any fees and costs that may be assessed and the penalty points that may be assessed against the driving privilege, if any;
- (3) The consequences of the failure to appear at any subsequent hearing, including entry of judgment against the defendant and reporting the judgment to the State Motor Vehicle Division, which may assess points against the driving privilege and may cancel a driver's license or deny an application for a driver's license;
- (4) The right to be represented by an attorney at the defendant's expense;
- (5) The right to deny the allegations and to have a hearing before the Municipal Court;
- (6) The right to remain silent, because any statement made by the defendant may be used as evidence against the defendant;
- (7) The fact that guilt or liability must be proven beyond a reasonable doubt;
- (8) The right to testify, subpoena witnesses, present evidence and cross-examine any witnesses for the City;
- (9) The fact that any answer must be voluntary and not the result of undue influence or coercion on the part of anyone; and
- (10) The fact that an admission of guilt or liability constitutes a waiver of the foregoing rights and any right to appeal.

(d) The defendant personally or by counsel shall answer the allegations in the charging document either by admitting guilt or liability, by tendering a no contest plea or by denying the allegations.

(e) If the defendant admits guilt or liability or tenders a no contest plea, the Municipal Court shall enter judgment and assess the appropriate penalty, fees and costs after determining that the defendant understood the matters set forth in this Section and has made a voluntary, knowing and intelligent waiver of rights.

(f) If the defendant denies the allegations, the matter shall be set for final hearing, and the defendant, prosecuting attorney and officer shall be notified.

(Ord. No. 105, 1990, § 3, 12-18-90; Ord. 18, 2002, § 2, 2-19-02)

Sec. 19-51. Discovery.

(a) Discovery shall not be available prior to final hearing.

(b) At the time of final hearing, the defendant shall be entitled to inspect all documents prepared by the officer which the officer intends to use in the presentation of evidence.

(Ord. No. 105, 1990, § 3, 12-18-90)

Sec. 19-52. Subpoena.

(a) A subpoena shall be issued only for the attendance of a witness or for the production of documentary evidence at the final hearing.

(b) A subpoena shall be issued within the City either by the Clerk of the Municipal Court at the request of the defendant, prosecuting attorney or officer, or by counsel who has entered an appearance in the case.

(c) The service of a subpoena shall be by first class mail if the person to whom it is directed waives personal service. No fees or mileage need be tendered with service by mail.

(d) If the person to whom a subpoena is directed does not waive personal service, the issuance and service of a subpoena shall be as provided in Rule 217, C.M.C.R., except as otherwise provided in this rule.

(Ord. No. 105, 1990, § 3, 12-18-90)

Sec. 19-53. Dismissal before final hearing.

(a) Except as provided in § 19-57, the charges shall be dismissed with prejudice if the officer fails to appear at the final hearing.

(b) The charges shall be dismissed if the final hearing is not held within the time period described in Rule 248, C.M.C.R.

(Ord. No. 105, 1990, § 3, 12-18-90)

Sec. 19-54. Final hearing.

The hearing of all traffic infractions shall be conducted pursuant to the Colorado Rules of Evidence, and the order of proceedings shall be those followed by the Municipal Court in misdemeanor offenses tried to the Municipal Court.

(Ord. No. 105, 1990, § 3, 12-18-90)

Sec. 19-55. Judgment after final hearing.

(a) If all elements of a traffic infraction are proven beyond a reasonable doubt, the Municipal Court shall find the defendant guilty or liable and enter appropriate judgment.

(b) If any element of a traffic infraction is not proven beyond a reasonable doubt, the Municipal Court shall dismiss the charge and enter appropriate judgment; provided, however, that the Municipal Court may find the defendant guilty of or liable for a lesser included traffic infraction if based on the evidence offered and enter appropriate judgment.

(c) If the defendant is found guilty or liable, the Municipal Court shall assess the appropriate penalty and any additional costs or fees generally imposed in connection with municipal offenses.

(d) The judgment shall be satisfied upon payment to the Clerk of the total amount assessed as set forth above.

(e) If the defendant fails to satisfy the judgment immediately following the final hearing or within the time allowed by a reasonable extension granted upon a showing of good cause by and upon application of the defendant, then such failure shall be treated as a default.

(Ord. No. 105, 1990, § 3, 12-18-90)

Sec. 19-56. Post-hearing motions.

There shall be no post-hearing motions except for a motion to set aside a default judgment as provided in § 19-58.
(Ord. No. 105, 1990, § 3, 1218-90)

Sec. 19-57. Continuances.

Continuances may be granted on a showing of good cause by the City or the defendant.
(Ord. No. 105, 1990, § 3, 12-18-90)

Sec. 19-58. Default.

(a) If the defendant fails to appear for any hearing, the Municipal Court shall enter judgment against the defendant.

(b) The amount of the judgment shall be the appropriate penalty assessed after a finding of guilt or liability and any additional fees or costs assessable generally upon conviction of municipal offenses.

(c) The Municipal Court may set aside a judgment entered under this rule on a showing of good cause or excusable neglect by the defendant. A motion to set aside the judgment shall be made to the Municipal Court not more than seven (7) calendar days after entry of judgment.

(d) The defendant may satisfy a judgment entered under this rule by paying the Clerk.

(e) No warrant shall issue for the arrest of a defendant who fails to appear at a hearing or fails to satisfy a judgment.

(Ord. No. 105, 1990, § 3, 12-18-90)

Sec. 19-59. Appeal.

Appeal of any finding of guilt or liability for a traffic infraction shall be subject to the same rules and procedures applicable to convictions of municipal offenses generally.

(Ord. No. 105, 1990, § 3, 12-18-90)

Sec. 19-60. Collection of judgments.

Upon finality of a judgment for a traffic infraction, and in addition to all legal and administrative enforcement or collection procedures and remedies otherwise available, the City Attorney is authorized to file a civil action with any state court having appropriate jurisdiction, which filing shall include the transcript of the case certified by the Municipal Court Clerk, praying for judgment based thereon, and upon the entry of such judgment, the City Attorney shall be authorized to proceed with all judgment execution and collection procedures authorized by law for the amount of the judgment, costs and fees incurred in the proceedings and legal interest.

(Ord. No. 105, 1990, § 3, 12-18-90)

**ARTICLE V.
RULES FOR CIVIL INFRACTIONS**

Sec. 19-61. In general.

All violations of any provision of this Code classified as a civil infraction shall constitute civil matters and not criminal violations, except as provided in § 1-15.

(Ord. No. 198, 2006 § 12, 12-19-06)

Sec. 19-62. Scope and purpose.

These rules are promulgated pursuant to Article VII of the Charter to govern practice and procedures for the handling of civil infractions. The purpose of these rules is to provide for the orderly, expeditious and fair disposition of such infractions.

(Ord. No. 198, 2006 § 12, 12-19-06)

Sec. 19-63. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

Charging document shall mean the document initiating the civil infraction matter, whether denoted as a complaint, summons and complaint, citation, penalty assessment notice, removal assessment or other document charging the person with the commission of a civil infraction or infractions.

Defendant shall mean any responsible party charged with the commission of a civil infraction.

Judgment shall mean a finding by the Municipal Judge or Referee of liability against any person for the commission of a civil infraction.

Officer shall mean a peace officer, code enforcement officer or inspector, or other City official who is authorized pursuant to Subsection 2-503(b) to enforce the provisions of this Code.

Penalty shall mean a fine imposed pursuant to this Code for the violation of a civil infraction.

Responsible party shall mean a person or entity upon whom a duty to perform or refrain from performing an act, or to maintain or prohibit a condition, is imposed, by a provision of this Code classified as a civil infraction, including, in the case of property violations, any adult resident or tenant, the property owner or an individual or entity who, acting as an agent for or in any other legal capacity on behalf of the owner, has authority over the subject property.

(Ord. No. 198, 2006 § 12, 12-19-06; Ord. 005, 2007, § 1, 2-6-07)

Sec. 19-64. No jury of trial infractions.

A defendant brought to hearing solely upon a civil infraction or infractions shall have no right to a trial by jury as contemplated by Section 13-10-114, C.R.S., or Rule 223, C.M.C.R., and the trial or hearing of civil infractions shall be to the Municipal Court or Referee. No defendant found liable for a civil infraction shall be punished by imprisonment for said infraction.

(Ord. No. 198, 2006 § 12, 12-19-06)

Sec. 19-65. Commencement of action; citation procedure.

(a) Officers shall have the authority to initiate enforcement proceedings as provided below.

(1) An officer who has reasonable grounds to believe that a responsible party has committed a civil infraction under this Code is authorized to serve a notice of violation to the responsible party. Except as otherwise provided in this Code, the officer shall set a reasonable time period within which the responsible party must correct the violation. This determination shall be based on considerations of fairness, practicality, ease of correction, the nature, extent and probability of danger or damage to the public or property, and any other relevant factor re-

lating to the reasonableness of the time period prescribed. An officer may immediately serve a civil citation to a responsible party, without prior notice, if there is reason to believe that the violation presents a threat to the public health, safety or welfare, if the damage done by the violation is irreparable or irreversible, or if the violation is a second or subsequent violation by the responsible party.

- (2) The citation form shall include, but need not be limited to, the following:
 - a. Date and time of issuance.
 - b. Name and signature of officer.
 - c. Name and address of the responsible party.
 - d. Code section for violation charged.
 - e. Brief description of the nature of the violation, including location, date and time of violation and description of the actions required to correct the violation.
 - f. Amount of the applicable civil penalty and costs, assessments and fees.
 - g. Procedure for the defendant to follow in paying the civil penalty, costs, assessments and fees or contesting the citation.
 - h. Notice that additional citations may be served for each day that the applicable violation is found to exist.
 - i. Notice that failure to pay the civil penalty, costs, assessments and fees within the time allowed and failure to request a hearing within ten (10) days of service of the citation shall constitute a waiver of the responsible party's opportunity for a hearing, and that, in such case, judgment may be entered up to the amount stated on the citation together with any court, abatement or removal costs, as applicable.
- (3) The officer may require that a responsible party or any person receiving a citation provide proof of identity and residential or work address.
- (4) The officer shall attempt to serve the citation to a responsible party at the site of the violation. If no responsible party can be located at the site of the violation, a copy of the citation shall be served by mail to the responsible party via first class mail at any last known address of said party in the records of the City or County and a copy shall also be left with any adult person residing or working at the site of the violation. If no adult person is found at the site and the violation occurred on private property or on property for which a responsible party has responsibility under any other ordinance or the violation involves a vehicle or trailer as the nuisance, then a copy of the citation shall be posted in a conspicuous place on the property or attached to the vehicle or trailer, whichever is applicable.
- (5) The officer or inspector shall attempt to obtain the signature of the person to whom he or she served the citation; however, if the citation is mailed or posted or if the person fails or refuses to sign the citation, such failure or refusal shall not affect the validity of the citation or any subsequent proceedings.
- (6) Proper notice shall be deemed served on the date of receipt by the responsible party if personally served, or upon the fifth day after mailing, attaching or posting of the citation.

(Ord. No. 198, 2006 § 12, 12-19-06)

Sec. 19-66. Payment without appearance.

(a) The Neighborhood and Building Services Director or, in the case of a forestry code violation, the Forestry Director, shall accept payment of the amount due for a civil infraction from a defendant if such payment is made within ten (10) days following service of the citation for the violation. Such payment shall be separately accounted for and deposited into the City's general fund in accordance with rules and procedures of the Finance Department.

(b) Payment of the total penalty, costs and fees shall constitute a waiver by the responsible party of rights and acknowledgment of liability.

(c) Such payment shall constitute an entry and satisfaction of judgment.

(d) Payment of the penalty and costs shall not excuse the failure to correct violations nor shall it bar further enforcement by the City.
(Ord. No. 198, 2006 § 12, 12-19-06)

Sec. 19-67. Hearing procedures.

(a) If a defendant wishes to contest a citation, he or she, within ten (10) days following service of the citation, shall file a written request with the Neighborhood and Building Services Director for a hearing before the Referee.

(b) The hearing of all civil infractions shall be conducted pursuant to the Colorado Rules of Evidence and the order of proceedings shall be those followed by the Municipal Court in offenses tried to the Municipal Judge, except as otherwise specifically stated herein.

(c) The City and the defendant may be represented by counsel.
(Ord. No. 198, 2006 § 12, 12-19-06)

Sec. 19-68. Subpoenas and discovery.

(a) At the request of any party to the hearing, the Referee may subpoena witnesses, documents or other evidence where the attendance of the witness or the admission of evidence is necessary to decide the issues at the hearing. The issuance and service of a subpoena shall be as provided in Rule 217, C.M.C.R.

(b) Discovery shall not be available prior to hearing.

(c) At the time of hearing, the defendant and prosecuting officer or attorney shall be entitled to inspect all documents prepared by the other which are intended to be used in the presentation of evidence.
(Ord. No. 198, 2006 § 12, 12-19-06)

Sec. 19-69. Judgment and procedures after hearing.

(a) If the civil infraction is proven by a preponderance of the evidence, the Referee shall find the defendant liable for the violation and enter appropriate judgment. If, however, the civil infraction is not proven by a preponderance of the evidence, the Referee shall dismiss the charge and enter appropriate judgment.

(b) If the defendant is found liable, the Referee shall assess the appropriate penalty and any additional costs or fees authorized by law or ordinance.

(c) The judgment shall be satisfied upon payment to the Neighborhood and Building Services or Forestry Director, with respect to forestry code violations, in the total amount of penalty, costs and fees assessed.

(d) If the defendant fails to satisfy the judgment immediately following the final hearing or within the time allowed by a reasonable extension, not to exceed thirty (30) days granted upon a showing of good cause by and upon application of the defendant, then such failure shall be treated as a default.
(Ord. No. 198, 2006 § 12, 12-19-06)

Sec. 19-70. Post-hearing motions.

There shall be no post-hearing motions except for a motion to set aside a default judgment as provided in § 19-73.
(Ord. No. 198, 2006 § 12, 12-19-06)

Sec. 19-71. Continuances.

Continuances may be granted by the Referee only upon a showing of good cause by the City or the defendant.
(Ord. No. 198, 2006 § 12, 12-19-06)

Sec. 19-72. Default.

(a) If any defendant fails to answer a citation or fails to appear for any hearing, a default judgment shall enter against the defendant pursuant to Subsection 19-39(b).

(b) The Municipal Judge or Referee may set aside a judgment entered under this rule on a showing of good cause or excusable neglect by the defendant. A motion to set aside the judgment shall be filed at the office where default entered not more than seven (7) consecutive days after entry of judgment.

(c) No warrant shall issue for the arrest of any defendant who fails to appear at a hearing or fails to satisfy a judgment entered pursuant to this Article.

(Ord. No. 198, 2006 § 12, 12-19-06)

Sec. 19-73. Appeal.

Appeal of any finding of liability for a civil infraction by a Referee shall be subject to the same rules and procedures contained in § 19-42. Appeal of findings by the Municipal Court shall be pursuant to rules and procedures applicable to municipal offenses generally.

(Ord. No. 198, 2006 § 12, 12-19-06)

Sec. 19-74. Collection of judgments.

Upon finality of a judgment for a civil infraction, and in addition to all legal and administrative enforcement or collection procedures including assessment liens on property, and remedies otherwise available, the City Attorney is authorized to file a civil action with any state court having appropriate jurisdiction, which filing shall include the transcript of the case certified by the Municipal Court Clerk, and shall ask for judgment based thereon. Upon the entry of such judgment, the City Attorney shall be authorized to proceed with all judgment execution and collection procedures authorized by law for the amount of the judgment, costs and fees incurred in the proceedings and legal interest.

(Ord. No. 198, 2006 § 12, 12-19-06)

Sec. 19-75. Inspection.

(a) Whenever necessary to make an inspection to enforce any of the provisions of this Article or any other section of this Code or the Land Use Code or whenever the Enforcement Officer has reasonable grounds to believe that there exists in any building or upon any premises any condition or violation which makes such building or premises unsafe, dangerous or hazardous, the Enforcement Officer may enter such building or premises at all reasonable times to inspect it or to perform any duty imposed upon the Enforcement Officer by this Article. If such building or premises are occupied, the Enforcement Officer shall first present proper credentials and request entry. If such building or premises are unoccupied, the Enforcement Officer shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused or if no person having control of the building or premises can be located, the Enforcement Officer shall have recourse to every remedy provided by law to secure entry.

(b) If the Enforcement Officer has first obtained an inspection warrant or other remedy provided by law to secure entry, no owner, occupant or any other persons having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the Enforcement Officer for the purpose of inspection and examination pursuant to this Article. Any such failure to permit entry upon request pursuant to a valid inspection warrant shall be a misdemeanor punishable by the provisions set forth in § 1-15.

(Ord. No. 198, 2006 § 12, 12-19-06)