

### **364.22 Municipal infractions.**

1. A municipal infraction is a civil offense punishable by a civil penalty of not more than seven hundred fifty dollars for each violation or if the infraction is a repeat offense, a civil penalty not to exceed one thousand dollars for each repeat offense. However, notwithstanding section 364.3, a municipal infraction arising from noncompliance with a pretreatment standard or requirement, referred to in 40 C.F.R. § 403.8, by an industrial user may be punishable by a civil penalty of not more than one thousand dollars for each day a violation exists or continues.

A city may classify a municipal infraction, other than a violation arising from noncompliance with a pretreatment standard or requirement, as an environmental violation if the infraction is a violation of chapter 455B or 459, subchapters II and III, or a violation of a standard established by the city in consultation with the department of natural resources, or both. The discharge of airborne residue from grain, created by the handling, drying, or storing of grain by a person, shall not be subject to an ordinance, the violation of which is classified as an environmental violation, unless the person is engaged in industrial production or manufacturing of grain products. The discharge of airborne residue from grain, created by the handling, drying, or storing of grain by a person engaged in industrial production or manufacturing of grain products, shall not be subject to an ordinance, the violation of which is classified as an environmental violation, if the discharge occurs from September 15 to January 15. A municipal infraction which is classified an environmental violation is punishable by a civil penalty of not more than one thousand dollars for each occurrence. A person committing an environmental violation is not subject to a civil penalty, if all of the following conditions are satisfied:

- a.* The violation results solely from the person conducting an initial start-up, cleaning, repairing, performing scheduled maintenance, testing, or conducting a shutdown, of either equipment causing the violation or the equipment designed to reduce or eliminate the violation.
- b.* The person notifies the city of the violation within twenty-four hours from the time that the violation begins.
- c.* The violation does not continue in existence for more than eight hours.

A city shall not enforce this section against a person committing an environmental violation, until the city offers to participate in informal negotiations with the person. If the person accepts the offer, the city and the person shall participate in good faith negotiations to resolve issues alleged to be the basis for the violation.

2. A city by ordinance may provide that a violation of an ordinance is a municipal infraction.
3. A city shall not provide that a violation of an ordinance is a municipal infraction if the violation is a felony, an aggravated misdemeanor, or a serious misdemeanor under state law or if the violation is a simple misdemeanor under chapters 687 through 747.
4. An officer authorized by a city to enforce a city code or regulation may issue a civil citation to a person who commits a municipal infraction. The citation may be served by personal service as provided in rule of civil procedure 1.305, by certified mail addressed to the defendant at the defendant's last known mailing address, return receipt requested, or by publication in the manner as provided in rule of civil procedure 1.310 and subject to the conditions of rule of civil procedure 1.311. A copy of the citation shall be retained by the issuing officer, and one copy shall be sent to the clerk of the district court. The citation shall serve as notification that a civil offense has been committed and shall contain the following information:

- a.* The name and address of the defendant.
- b.* The name or description of the infraction attested to by the officer issuing the citation.

- c.* The location and time of the infraction.
- d.* The amount of civil penalty to be assessed or the alternate relief sought, or both.
- e.* The manner, location, and time in which the penalty may be paid.
- f.* The time and place of court appearance.
- g.* The penalty for failure to appear in court.

5. In municipal infraction proceedings:

- a.* The matter shall be tried before a magistrate, a district associate judge, or a district judge in the same manner as a small claim. The matter shall only be tried before a judge in district court if the total amount of civil penalties assessed exceeds the jurisdictional amount for small claims set forth in section 631.1.
- b.* The city has the burden of proof that the municipal infraction occurred and that the defendant committed the infraction. The proof shall be by clear, satisfactory, and convincing evidence.
- c.* The court shall ensure that the defendant has received a copy of the charges and that the defendant understands the charges. The defendant may question all witnesses who appear for the city and produce evidence or witnesses on the defendant's behalf.
- d.* The defendant may be represented by counsel of the defendant's own selection and at the defendant's own expense.
- e.* The defendant may answer by admitting or denying the infraction.
- f.* If a municipal infraction is proven the court shall enter a judgment against the defendant. If the infraction is not proven, the court shall dismiss it.

6. All penalties or forfeitures collected by the court for municipal infractions shall be remitted to the city in the same manner as fines and forfeitures are remitted for criminal violations under section 602.8106. If the person named in the citation is served as provided in this section and fails without good cause to appear in response to the civil citation, judgment shall be entered against the person cited.

7. A person against whom judgment is entered, shall pay court costs and fees as in small claims under chapter 631. If the action is dismissed, the city is liable for the court costs and court fees. Where the action is disposed of without payment, or provision for assessment, of court costs, the clerk shall at once enter judgment for costs against the city.

8. Seeking a civil penalty as authorized in this section does not preclude a city from seeking alternative relief from the court in the same action.

9. When judgment has been entered against a defendant, the court may do any of the following:

- a.* Impose a civil penalty by entry of a personal judgment against the defendant.
- b.* Direct that payment of the civil penalty be suspended or deferred under conditions imposed by the court.
- c.* Grant appropriate alternative relief ordering the defendant to abate or cease the violation.

*d.* Authorize the city to abate or correct the violation.

*e.* Order that the city's costs for abatement or correction of the violation be entered as a personal judgment against the defendant or assessed against the property where the violation occurred, or both.

If a defendant willfully violates the terms of an order imposed by the court, the failure is contempt.

A magistrate or district associate judge shall have jurisdiction to assess or enter judgment for costs of abatement or correction in an amount not to exceed the jurisdictional amount for a money judgment in a civil action pursuant to section 631.1, subsection 1, for magistrates and section 602.6306, subsection 2, for district associate judges. If the city seeks abatement or correction costs in excess of those amounts, and the matter is not before a judge in district court, the case shall be referred to the district court for hearing and entry of an appropriate order. The procedure for hearing in the district court shall be the same procedure as that for a small claims appeal pursuant to section 631.13.

10. The defendant or the city may file a motion for a new trial or may appeal the decision of a magistrate, district associate judge, or a district judge to the district court. The procedure on appeal shall be the same as for a small claim pursuant to section 631.13. A factual determination made by the trial court, supported by substantial evidence as shown in the record, is binding for purposes of appeal relating to the violation at issue, but shall not be admissible or binding as to any future violation for the same or similar ordinance provision by the same defendant.

11. This section does not preclude a peace officer of a city from issuing a criminal citation for a violation of a city code or regulation if criminal penalties are also provided for the violation. Each day that a violation occurs or is permitted to exist by the defendant, constitutes a separate offense.

12. The issuance of a civil citation for a municipal infraction or the ensuing court proceedings do not provide an action for false arrest, false imprisonment, or malicious prosecution.

13. An action brought pursuant to this section for a municipal infraction which is an environmental violation does not preclude, and is in addition to, any other enforcement action which may be brought pursuant to chapter 455B, 455D, 455E, or 459, subchapters II, III, and VI.

14. A police department may dispose of personal property under section 80.39.

86 Acts, ch 1202, § 2; 87 Acts, ch 99, §46; 89 Acts, ch 150, § 58; 90 Acts, ch 1210, § 15; 96 Acts, ch 1067, § 1; 98 Acts, ch 1144, §4; 2000 Acts, ch 1203, §21; 2003 Acts, ch 178, §24