

## Ordinance 2018-01 ADMINISTRATIVE CODE ENFORCEMENT

### Sections

2018-01.1: General Provisions  
2018-01.2: Authority  
2018-01.3: Citations  
2018-01.4: Appeal

### Section 2018-01.1 General Provisions

#### Articles:

2018-01.1.1: Scope and Purpose  
2018-01.1.2: Definitions  
2018-01.1.3: Penalty

#### 2018-01.1.1 Scope and Purpose

The enforcement of the Town's Code is an important public service and is vital to the protection of the public's health, safety and welfare. The Town has determined that there is a need for alternative methods of comprehensive code enforcement using both administrative and judicial remedies and because life-safety issues may be regulated through an administrative enforcement, penalties for any violation should be enhanced. The purpose of this Ordinance is to establish administrative regulations for the enforcement of the Newell Code of Ordinances in order to properly protect the public's health, safety and welfare.

#### 2018-01.1.2 Definitions

The following words, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

**ADMINISTRATIVE CODE ENFORCEMENT REMEDIES:** Administrative citations and civil penalties as contained in this Ordinance.

**CIVIL PENALTY:** The administrative civil penalty assessed and all costs incurred by the Town from the first discovery of the violation until compliance is achieved. It includes, but is not limited to, staff time and expense in inspecting the property, sending notices, preparing reports and files, and/or other legal remedy permitted by law.

**CODE:** The Town of Newell Ordinances.

**CODE ENFORCEMENT OFFICER:** Any qualified Town of Newell employee or agent designated by the Mayor shall have the authority to enforce any provision of this Ordinance and issue notice of violations or administrative citations.

**RESPONSIBLE PARTY:** Any person or agent, or representative responsible for the premises or location, or the person or persons responsible for the event or incident, and includes any of the following.

- A. The person who owns or is an agent or representative responsible for the premises the property where the violation exists.
- B. The person or persons in charge of the premises where the violation exists.
- C. The person or persons using or renting the premises where the violation exists.
- D. If any of the above is a minor, a parent or guardian of such minor shall be the responsible party.
- E. If any of the above is a business entity, the manager or on-site supervisor where the violation exists.

**ROLLING 12-MONTH PERIOD:** Any 12 consecutive months following a violation.

#### 2018-01.3: **CIVIL PENALTY**

For the purpose of this Ordinance the authorized Civil Penalty is set forth at 2018-01.3.6

### Section 2018-01.2

#### **AUTHORITY**

Articles:

2018-01.02.01 General Enforcement Authority

2018-01.02.02 Authority to Inspect

#### 2018-01.02.01: **GENERAL ENFORCEMENT AUTHORITY**

For the purposes of this Ordinance, any code enforcement staff member may issue notices of violation and administrative citations, inspect public and private property, and enforce any available administrative and judicial remedies.

#### 2018-01.02.02: **AUTHORITY TO INSPECT**

Any code enforcement officer may enter upon any property and make any examination and surveys necessary to perform enforcement duties. Inspections may include the taking of photographs, samples, or other physical evidence. If an owner, occupant or agent refuses permission to enter to inspect, the code enforcement officer may seek an administrative inspection warrant pursuant to the procedures provided for in South Dakota Codified Laws.

## Section 2018-01.3

### Articles:

- 2018-01.3.1 Administrative Citations
- 2018-01.3.2 Administrative Citations Procedures
- 2018-01.3.3 Administrative Citation Penalties Assessed
- 2018-01.3.4 Failure to appeal or pay Administrative Citation penalties
- 2018-01.3.5 Civil Penalty list
- 2018-01.3.6 Civil Penalty amount
- 2018-01.3.7 Remedies not Exclusive
- 2018-01.3.8 Landowner responsible for any costs

#### 2018-01.3.1: **ADMINISTRATIVE CITATIONS**

Any person violating any provision of the Code, for which a civil penalty may be assessed, may be issued an administrative citation by code enforcement staff as provided for in this ordinance.

A continuing violation of the Code constitutes a separate and distinct violation for each day the violation exists.

A civil penalty shall be assessed by means of an administrative citation issued by code enforcement staff and shall be payable directly to the Town of Newell.

Penalties assessed by an administrative citation shall be collected in accordance with the schedule of civil penalties listed herein and/or passed or amended from time to time by resolution by the Town Commissioners.

#### 2018-01.3.2: **ADMINISTRATIVE CITATION PROCEDURES**

A code enforcement staff member may issue an administrative citation to a responsible party as described in this ordinance. The citation shall be on forms approved by the Town.

If the responsible party is not an individual, the code enforcement officer may attempt to issue the owner an administrative citation. If the owner cannot be located, the administrative citation may be issued in the name of the entity and given to a manager, or officer, or on-site supervisor or agent of the entity. A copy of the administrative citation will also be mailed to the owner and/or agent of the entity.

The responsible party, if present during issuance of a citation, shall be requested to sign the administrative citation. If the responsible party refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity or issuance of the citation.

If the code enforcement officer cannot locate a responsible party, the administrative citation may be mailed to the responsible party.

If no one can be located at the property, the administrative citation may be posted in a conspicuous place near the property and a copy subsequently mailed to the responsible party.

In the case of mailing, the town may mail the citation by certified mail to the address of the owner and/or agent of the entity.

#### **2018-01.3.3: ADMINISTRATIVE CITATION PENALTIES ASSESSED**

Any civil/administrative penalties assessed shall be payable to the Town of Newell within twenty (20) days from the date of the mailing of the administrative citation.

Payment of the civil penalty shall not excuse the failure to correct the violation, nor shall it bar further enforcement action by the Town of Newell.

If the responsible party fails to correct the violation within the identified days, each day the violation is not corrected shall constitute a separate and individual violation thereof and be subject to additional penalties. The amount of the civil penalty shall increase at a rate specified in ordinance and any amendments thereto.

#### **2018-01.3.4: FAILURE TO APPEAL OR PAY ADMINISTRATIVE CITATION PENALTIES**

The failure of any person to file a timely appeal or pay the civil penalties within the time specified on the citation shall constitute a non-rebuttable presumption that a violation has occurred. Failure to pay the penalties may result in legal proceedings in magistrate or circuit court to enforce this ordinance. Alternatively, the Town may pursue any other legal remedy available to collect the civil penalty or correct the violation.

#### **2018-01.3.5: CIVIL/ADMINISTRATIVE PENALTY - LIST**

- A. Nuisance Ordinance 03-05
- B. Town of Newell Zoning Ordinance
- C. 2015 International Property Maintenance Code
- D. Animal Control Ordinance 2007-04
- E. Business regulations

#### **2018-01.3.6: CIVIL/ADMINISTRATIVE PENALTY AMOUNT**

Unless otherwise established by Resolution of the Town Commission, the administrative penalties and fees, within any rolling 12-month period, shall be as follows.

First violation - \$100.00

Second violation - \$200.00

Third or subsequent violation - \$500.00

#### **2018-01.3.7 REMEDIES NOT EXCLUSIVE**

The procedures established in this ordinance are in addition to other legal remedies established by the law which may be pursued to address violations of the code. The use of this ordinance shall be at the sole discretion of the Town.

## SECTION 2018-01.4 APPEALS

### Articles:

- 2018-01.4.1: Appeal Permitted
- 2018-01.4.2: Time of Hearing and Notice
- 2018-01.4.3 Hearing Procedures
- 2018-01.4.4 Rights of Parties at Hearing
- 2018-01.4.5 Decision
- 2018-01.4.6 Report, Costs
- 2018-01.4.7 Subject to Judicial Review

### 2018-01.4.1 **APPEAL PERMITTED**

Any person aggrieved by a citation issued by any code enforcement staff under this ordinance, may appeal said citation to the Town Commission.

Any person wishing to file an appeal may do so with the Finance Officer no later than twenty (20) days from the issuance date of the citation. There shall be a twenty-five dollar (\$25.00) filing fee which will be paid to the Newell Finance Office. The notice of appeal shall include a statement of the action complained of, why the same should be modified or rescinded; an address where the appellant can be mailed notice of hearings, and a copy of the citation issued. Upon receipt of the appeal documents, the Finance Officer shall deliver a copy of the appeal to the Town Commissioners and Mayor.

### 2018-01.4.2 **TIME OF HEARING AND NOTICE**

A public hearing shall be held by the Town Commission on all appeals within forty five (45) days after the filing of the appeal, unless the aggrieved person and the Town agree upon a later date. The Town shall cause written notice of the date, time and place of such hearing to be served upon the aggrieved person, by personal service or certified mail to the address set forth in the appeal documents, at least ten (10) days prior to the hearing. The appeal shall be scheduled on the agenda of a regularly scheduled or special meeting of the Town Commission, for a time period not to exceed thirty (30) minutes, unless otherwise directed by the Town Commission.

### 2018-01.4.3 **HEARING PROCEDURES**

The following rules shall govern the procedures for an administrative hearing.

- A. Hearings and administrative appeals need not be conducted according to the technical rules relating to evidence and witnesses.
- B. Any relevant evidence shall be admitted, if it is the type of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule, which might make improper the admission for such evidence after objection in civil actions in courts of competent jurisdiction in this state.
- C. Irrelevant and unduly repetitious evidence, and evidence that lacks trustworthiness shall be excluded.

#### 2018-01.4.4 **RIGHTS OF PARTIES AT HEARING**

The aggrieved person and the Town of Newell shall have these rights among others.

- A. A Right to be represented by an attorney
- B. To call and examine witnesses on any matter relevant to the issues of the hearing.
- C. To introduce documentary, physical and oral evidence.
- D. To cross examine opposing witnesses on any matter relevant to the issues of the hearing.
- E. To rebut evidence.

#### 2018-01.4.5 **DECISION**

After each appeal hearing, the Commission shall consider the evidence as related to legal matters; and shall state its decision for the record. The Commission may at its discretion reduce or waive any civil penalties.

#### 2018-01.4.6 **REPORT, COSTS**

A written report of the decision, including the findings and/or fines shall be furnished to the aggrieved person and the Code Enforcement Officer within twenty (20) working days from the date of the decision. The Town of Newell and the aggrieved person shall bear their own respective costs of the appeal proceeding. The decision of the Commission shall be final.

#### 2018-01.4.7 **SUBJECT TO JUDICIAL REVIEW**

The decision of the Town Commission may be subject to judicial review as provided by law.

# Town of Newell

PO Box 405, 101 East Third Street, Newell, SD 57760

Phone: 605-456-2737 Option 1 Fax: 605-456-9820

## ADMINISTRATIVE CITATION

Citation # \_\_\_\_\_

Date: \_\_\_\_\_

Property owner/ responsible party: \_\_\_\_\_

Property location: \_\_\_\_\_

Legal description: \_\_\_\_\_

Code Violation: \_\_\_\_\_

Description: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Fine Amount: \_\_\_\_\_

*First Offense \$100.00, Second Offense \$200.00, Third and Subsequent Offense, \$500.00*

This administrative citation has been issued pursuant to Town of Newell Ordinance 2018-01, abatement of this violation is required and payment must be remitted to the Town of Newell Finance Office within 20 days of this notice. Payment of this civil penalty shall not excuse the failure to correct the violation nor shall it bar further enforcement action by the Town of Newell. Failure to abate this violation will result in further fines and fees, including but not limited to any expenses expended to abate this violation by the Town of Newell.

Property Owner/Responsible Party: **X** \_\_\_\_\_

Code Enforcement Officer: \_\_\_\_\_

*Town of Newell*

*PO Box 405, 101 East Third Street, Newell, SD 57760*

Phone: 605-456-2737 Option 1 Fax: 605-456-9820

# ADMINISTRATIVE CITATION APPEAL

To appeal an Administrative Citation, please provide this form including payment of the appeal fee of \$25.00 dollars and the amount of the fine stated on the citation no later than 20 calendar days from the date the Administrative Citation was issued.

AMOUNT OF APPEAL: \_\_\_\_\_

## Citation issued to

Name: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Daytime phone: \_\_\_\_\_

Citation issued by: \_\_\_\_\_

Date: \_\_\_\_\_

Citation #: \_\_\_\_\_

Property address: \_\_\_\_\_

Newell municipal ordinance 2018-01 requires that the request for an appeal shall consist of a detailed written explanation as to why specific sections of the citation are being contested. In the area provided below give a detailed account of why you are contesting this citation. You may attach extra sheets of paper as needed.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.