

**CITY OF SUMMERSET****ORDINANCE 36  
ADMINISTRATIVE CODE ENFORCEMENT****Chapters:**

36.01: General Provisions  
36.02: Authority  
36.03: Citations  
36.04: Appeal  
36.05: Effective Date

**CHAPTER 36.01  
GENERAL PROVISIONS****SECTIONS:**

36.01.01: Scope and Purpose  
36.01.02: Definitions  
36.01.03: Penalty

**36.01.01: SCOPE AND PURPOSE**

The enforcement of the City's Code is an important public service and is vital to the protection of the public's health, safety and welfare. The City 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 process, penalties for any violation should be enhanced. The purpose of this Ordinance is to establish administrative regulations for the enforcement of the Summerset City Code of Ordinances in order to properly protect the public's health, safety and welfare.

**36.01.02: 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 City from the first discovery of the violations 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.

**CODE:** The City of Summerset Code of Ordinances

**CODE ENFORCEMENT OFFICER:** Any City employee or agent of the City designated with the authority to enforce any provision of this Ordinance and issue notice of violations or administrative citations.

**RESPONSIBLE PARTY:** any person or persons in charge of the premises or location, or the person or persons responsible for the event or incident, and includes any of the following:

- A. The person or persons who own 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 when 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 onsite supervisor where the violation exists.

**ROLLING 12-MONTH PERIOD:** Any 12 consecutive months following a violation. **36.01.03:**

## **CIVIL PENALTY**

For the purpose of this Ordinance, the authorized Civil Penalty is set forth at Section 36.03.06.

## **CHAPTER 36.02 AUTHORITY**

### **SECTIONS:**

36.02.01: General Enforcement Authority

36.02.02: Authority to Inspect

### **36.02.01: GENERAL ENFORCEMENT AUTHORITY**

For the purpose of this Ordinance, any code enforcement officer may issue notices of warning, notices for violations and administrative citations, inspect public and private property, and enforce any available administrative and judicial remedies.

### **36.02.02: AUTHORITY TO INSPECT**

Any code enforcement officer, having probable cause, may enter upon any property during business hours and make examination and surveys necessary to perform their 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 34-43.

## **CHAPTER 36.03 CITATIONS**

### **SECTIONS:**

- 36.03.01: Administrative Citations
- 36.03.02: Administrative Citations Procedures
- 36.03.03: Administrative Citation Penalties Assessed
- 36.03.04: Failure to Appeal or Pay Administrative Citation Penalties
- 36.03.05: Civil Penalty – List
- 36.03.06: Civil Penalty Amount
- 36.03.07: Remedies not Exclusive

### **36.03.01: 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 a code enforcement officer as provided for in this Ordinance.

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

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

Penalties assessed by an administrative citation shall be collected in accordance with the schedule of civil penalties.

### **36.03.02: ADMINISTRATIVE CITATION PROCEDURES**

A code enforcement officer may issue an administrative citation to a responsible party as described in this Ordinance. The citation shall be on forms approved by the City.

If the responsible party is not an individual, the code enforcement officer shall 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 onsite supervisor. A copy of the administrative citation shall also be mailed to the owner.

The responsible party shall 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 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 City shall mail the citation by certified mail to the address of the owner of the property at the address listed in the office of the Meade County Director of Equalization and such action by the City shall meet any notice requirement of this Ordinance.

The failure of any responsible party to receive notice shall not affect the validity of any proceedings taken under this Ordinance .

### **36.03.03: ADMINISTRATIVE CITATION PENALTIES ASSESSED**

Any civil penalties assessed shall be payable to the City within twenty (20) days from the date 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 City.

If the responsible party fails to correct the violation, subsequent administrative citations may be issued for the same violations. The amount of the civil penalty shall increase at a rate specified in ordinance.

### **36.03.04: 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 an irrefutable presumption that a violation has occurred. It may result in the city attorney filing legal proceedings in magistrate or circuit court. Alternatively, the City may pursue any other legal remedy available to collect the civil penalty or correct the violation.

### **36.03.05: CIVIL PENALTY – LIST**

Civil penalties may be imposed by the City of Summerset for the violation of any City Ordinance. This includes, but is not limited to, the following sections. Criminal Enforcement is also allowed for ordinance violations.

- A. Ordinance 1 General Municipal Code
- B. Ordinances 2 Zoning
- C. Ordinance 5 Business License
- D. Ordinance 9 Drainage
- E. Ordinance 11 Fireworks.
- F. Ordinance 22 Traffic.
- G. Ordinance 25 Adult Businesses.
- H. Ordinance 111 Offenses and Regulations
- I. Ordinance 115 Subdivision

Or any other current or subsequent ordinances as approved by the City Commission of Summerset.

**(36.03.05 Amended May 2014 by Ordinance 36A effective May 15, 2014)**

### **36.03.06: CIVIL PENALTY AMOUNT**

The civil penalties within any rolling 12-month period shall be as follows:

First violation \$100.00

Second violation \$200.00

Third or subsequent violation \$300.00

### **36.03.07: REMEDIES NOT EXCLUSIVE**

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

### **36.03.08: FILING A NUISANCE COMPLAINT**

Unless otherwise stated in this Chapter, in the event any City representative receives a complaint, either orally or in writing, he/she shall forward the complaint to the Code Enforcement Officer for investigation.

As part of the investigation, the Code Enforcement Coordinator shall obtain the following information in writing:

- A. Name, address and phone number of the person making said complaint;
- B. Address of the property for which the complaint is being filed; and
- C. Nature of the complaint.

After obtaining the necessary information from the complainant, the Code Enforcement Coordinator will request assistance from the Code Enforcement Officer or request an investigation by a more appropriate City employee and/or agent as is necessary based upon the nature of the complaint.

### **36.03.09: COURTESY LETTER /NOTICE OF VIOLATION**

Unless otherwise stated in this Chapter, in the event the Code Enforcement Coordinator, Code Enforcement Officer, and/or agent finds that any violation exists, the Code Enforcement Coordinator shall send a Courtesy Letter/Notice of Violation to the property owner. The letter shall state the following:

- A. Name and address of the property owner;
- B. Address and legal description of the property in violation;
- C. Nature of the violation;
- D. Title, Chapter and Section violated;
- E. Demand that the property owner become compliant; and
- F. The date upon which the representative will inspect the property for compliance.

#### **36.03.10: NOTICE TO COMPLAINANT AND RIGHT TO REVIEW**

In the event the Code Enforcement Coordinator or Code Enforcement Officer and/or agent concludes that a violation does not exist, the Code Enforcement Coordinator shall send a letter to the complainant within fifteen (15) days of advising him/her of said determination.

#### **36.03.11: ABATEMENT OR FILING OF REVIEW REQUIRED WITHIN FIFTEEN (15) DAYS**

Any person who has received written notification of an existing violation shall either abate said nuisance or file a written notice of review with the Code Enforcement Coordinator within fifteen (15) days of receipt of the Courtesy Letter/Notice of Violation. A complaint of a second or subsequent Ordinance violation subject to this Title at the same property shall reduce the notice period established herein to (7) days. Thereafter the Administrative Citation may immediately be issued by the Code Enforcement Officer.

#### **36.03.12: IMMEDIATE ABATEMENT REQUIRED IN CERTAIN CASES**

Ordinance violations involving subjects such as, but not limited to, bonfires, campfires, dead animals, undressed hides, fireworks, depositing filth, spoiled foods or similar items which are determined by the Code Enforcement Officer to be an immediate threat to public health and safety shall be abated immediately, unless it is otherwise dictated by the Mayor.

#### **36.03.13: ISSUANCE OF SUMMONS AND COMPLAINT FOR VIOLATION**

If the landowner fails to abate the nuisance or request a review from the Public Works Commissioner within the given time, the City may issue a complaint and summons to the landowner ordering the landowner to appear in court to answer said violation. Each violation may be considered a Class II Misdemeanor for each day of violation until the nuisance is abated.

#### **36.03.14: LANDOWNER RESPONSIBLE FOR ANY COSTS**

Any related expenses, receipts, and administrative, legal, and/or investigative fees shall be billed to the landowner. The Code Enforcement Coordinator that conducted the authority to employ a contractor to assist with said abatement. In the event the landowner fails to pay said bill within thirty (30) days, the City Finance Officer shall add those costs to the sewer bill owed by the property owner. In addition the City Finance Officer may file a special assessment on the property with the Meade County Auditor's Office.

**(36.03.08-36.03.14 Added May 2014 by Ordinance 36A effective May 15, 2014)**

## **CHAPTER 36.04 APPEAL**

### **SECTIONS:**

- 36.04.01: Appeal Permitted
- 36.04.02: Time of Hearing and Notice
- 36.04.03: Hearing Procedures
- 36.04.04: Rights of Parties at Hearing
- 36.04.05: Decision
- 36.04.06: Report, Costs
- 36.04.07: Subject to Judicial Review

### **36.04.01: APPEAL PERMITTED**

Any person aggrieved by a citation issued by any code enforcement officer under this Title may appeal said citation to the City Commission. Before filing an appeal, the aggrieved person is strongly encouraged to meet with the City Attorney to discuss why the person believes the citation was issued in error. If unresolved, the Appeal may be commenced.

Appeals shall be commenced by filing a notice of appeal with the Finance Officer for the City of Summerset. There shall be a (\$100) fee assessed for filing an appeal, which shall be paid to the City of Summerset at the time of filing the appeal. 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 all documents including the appeal shall be forwarded from the Code Enforcement Coordinator and Finance Officer to the City Attorney. The appeal shall be heard by the Summerset Board of Commissioners which may be during a special or regular commission meeting or executive session as decided by the Board.

**(36.04.01 Amended May 2014 by Ordinance 36A effective May 15, 2014)**

### **36.04.02: TIME OF HEARING AND NOTICE**

A public hearing shall be held on all appeals within 45 working days after the filing of the appeal, unless a later date is agreed upon by the aggrieved person and the City. The

City 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 days prior to the hearing. The appeal shall be scheduled on the agenda of a regularly scheduled meeting of the City Commission for a period of 30 minutes unless otherwise directed by the City Commission.

#### **36.04.03: 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 or competent jurisdiction in this state.
- C. Irrelevant and unduly repetitious evidence and evidence that lacks trustworthiness shall be excluded.

#### **36.04.04: RIGHTS OF PARTIES AT HEARING**

The aggrieved person and the City shall have these rights among others:

- A. To call and examine witnesses on any matter relevant to the issue of the hearing;
- B. To introduce documentary, physical and oral evidence;
- C. To cross examine opposing witnesses on any matter relevant to the issues of the hearing; and
- D. To rebut evidence.

#### **36.04.05: DECISION**

After each appeal hearing, the Commission shall consider the evidence in executive session, and may state its decision when it has concluded the executive session. In addition, the commission shall provide written findings stating the following:

- A. The evidence the City Commission relied upon in reaching its decision.



- B. Based upon such written findings, the Commission may sustain or dismiss the citation or decision. In sustaining citation, the City Commission may in its discretion reduce or waive the payment of any civil penalty, permit, reinstatement or late penalty fee.

**36.04.06: REPORT, COSTS**

A written report of the decision, including the findings, shall be furnished to the aggrieved person within 20 working days from the date the appeal hearing is closed. The decision of the City Commission shall be final.

**36.04.07: SUBJECT TO JUDICIAL REVIEW**

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

**36.05.01: EFFECTIVE DATE**

This Ordinance shall be effective 21 days following publication per state statute.

(SEAL)

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Rebecca J. Phillips  
Finance Officer

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Duane K. Fink  
Mayor

**VOTE:**

Butler: Aye  
Fink: Aye  
Wagner: Aye

Date of 1<sup>st</sup> Reading: October 21, 2010  
Date of 2<sup>nd</sup> Reading: November 4, 2010  
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