

DRAFT 12-6-11

CITY AND COUNTY OF DENVER DEPARTMENT OF PARKS AND RECREATION RULES & REGULATIONS

Governing Use of Administrative Citations for the Enforcement of Article I of Chapter 39 of the Denver Revised Municipal Code and associated Rules, Regulations and Directives

CONTENTS

- I. Purpose and Authority
- II. Definitions
- III. Administrative Citations
- IV. Filing an Appeal
- V. Notices and Hearing for an Appeal
- VI. AEO and Judicial Appeal
- VII. Qualifications and Recusal of AHO
- VIII. Payment, Collection & Legal Recourse
- IX. Miscellaneous

Attachment A: Form of Administrative Citation

Attachment B: Penalty Fines Chart

Attachment C: Subpoena Form

SECTION I – PURPOSE AND AUTHORITY

A. Purpose: The establishment of administrative (civil) citations, penalties and procedures for violations of the provisions of Article I (In General) of Chapter 39 (Parks and Recreation) of the Denver Revised Municipal Code **and associated rules, regulations and directives,** to be administered by the Denver Department of Parks and Recreation (“DPR”).

B. Authority:

1) Section 2.4.4(A) of the Denver City Charter delegates to DPR the duty and power to manage, operate and control all facilities located within and without the boundaries of the City and County of Denver and owned by the City for park and recreational purposes. This authority includes the power to adopt rules and regulations regarding the management, operation and control of these facilities. The enforcement of these rules and regulations is achieved through ordinances adopted by the Denver City Council and approved by the Mayor.

2) This Charter authority is recognized in Section 39-1(a) of the Denver Revised Municipal Code (“DRMC”), and additional authority is granted in Section 39-1(c), DRMC, for DPR to adopt rules and regulations for the use of administrative citations in accordance with Article XII of Chapter 2, DRMC.

3) The Manager of DPR has adopted a set of rules and regulations prescribing, restricting and prohibiting certain public behavior and uses in the Denver parks, parkways, mountain parks and other recreational facilities. These rules and regulations are set forth in a compilation known as _____ adopted by the Manager of DPR on _____ (generally referred to herein as the “Park Use R&R’s”).

DRAFT 12-6-11

4) The Park Use R&R's have been adopted and codified in Article I of Chapter 39, DRMC (namely, sections 39-3 *et seq.*) and have been typically enforced by the issuance of tickets and the imposition by courts of criminal fines as provided in Section 39-1(b), DRMC, and Section 1-13, DRMC. Nothing in section 39-1(c), DRMC, regarding administrative citations is intended to limit or supersede criminal enforcement under section 39-1(b), DRMC.

5) The rules and regulations contained herein are adopted and shall be implemented in accordance with the authority granted under Section 2.4.4(A) of the Denver City Charter, Section 39-1(c), DRMC, and Article XII of Chapter 2, DRMC, regarding administrative citations.

SECTION II – DEFINITIONS

- A. “Admin R&R’s” means the rules and regulations contained herein governing the use of administrative citations for the enforcement of **the Code**.
- B. “Administrative Enforcement Order” (referred to herein as “**AEO**”) means the final decision of the AHO following an appeal of an administrative citation by a Responsible Party.
- C. “Administrative Hearing Officer” (referred to herein as “**AHO**”) means the person appointed by the Manager to hear appeals of administrative citations and to perform other related duties in accordance with these Admin R&R’s.
- D. “City” means the City and County of Denver.
- E. “Code” means those provisions of Article I of Chapter 39, Denver Revised Municipal Code (“**DRMC**”), and the associated Park Use R&R’s and other rules, regulations and directives specified for enforcement under the Admin R&R’s.
- F. “Enforcement Official” means a person employed by the City and charged by the Manager with enforcing the ordinances contained in the Code, the Parks Use R&R’s and these Admin R&R’s, **such as a park ranger**. “Enforcement Official” shall include any Denver police officer.
- G. “Manager” means the Manager of the Denver Department of Parks and Recreation (“**DPR**”) or the Manager's designee.
- H. “Park Use R&R’s” means the rules and regulations set forth in a compilation known as _____ adopted by the Manager on _____, **as amended from time to time**.
- I. “Responsible Party” means a person **(including a minor under the age of 18)** who, or an entity which, **has been cited for violating** the Code; a parent or guardian of a minor under the age of 18 who **has been cited for violating** the Code; or the owner or operator of a vehicle which **was cited for violation** of the Code.

SECTION III – ADMINISTRATIVE CITATIONS

- A. Issuance of Citation. An Enforcement Official shall have the authority to issue an administrative citation in accordance with these Admin R&R’s to any Responsible Party **who the Enforcement Officer has reason to believe** has violated the Code.

DRAFT 12-6-11

B. Form of Citation. Any administrative citation issued by an Enforcement Official shall be substantially in the form as set forth in Attachment A of these Admin R&R's.

C. Penalty; Payments. The fine or fines to be assessed as a penalty upon the Responsible Party for the violation of the Code shall be as prescribed in Attachment B of these Admin R&R's. Fines are to be paid in accordance with Section VIII below.

D. Signature of Responsible Party. The Enforcement Official will request the signature of the Responsible Party on the administrative citation. The signature of the Responsible Party shall not constitute an admission by said Responsible Party of having violating the Code, **but rather an acknowledgment that an administrative citation has been issued to the Responsible Party.** Failure or refusal to sign an administrative citation shall not affect the validity of the citation and subsequent proceedings.

E. Service. An administrative citation is to be issued directly to the Responsible Party. **If the Responsible Party is a minor (under the age of 18) and a parent or guardian is not present, the citation is to be sent by first class mail to the parent or guardian of the minor. If administrative citation is to be issued to a vehicle involved in a violation of the Code, the citation is to be sent by first class mail to the owner or operator (if known) of the vehicle.** Service is effective upon personal service to the Responsible Party or, for mailed administrative citations, five (5) calendar days following placement of the administrative citation in the mail. The mailing address of the Responsible Party is the most recent address contained in the accessible records of the City, state or federal government, including motor vehicles records. Failure or refusal to accept hand or mail delivery of an administrative citation shall not affect the validity of the citation and subsequent proceedings.

F. Identification. The Enforcement Official may require 1) that any person who the Enforcement Official believes has violated the Code to present a valid form of identification, such as a driver's license, a work or school badge, or other recognized form of ID **(if the person is carrying ID)**, and/or 2) that said person correctly and completely state his or her name, address, and other personal identifying information that the Enforcement Official may need to prepare an administrative citation. It shall be unlawful under both section 2-284(b), DRMC, and section 39-24(b), DRMC, for any person to fail or refuse to provide the requested identification.

G. Warning. Instead of issuing an administrative citation or other ticket, the Enforcement Official may issue a warning, either verbally or in writing, as an order to the Responsible Party to immediately cease or not to repeat a violation of the Code. It shall be unlawful under section 39-24(a), DRMC, for any person to fail or refuse to comply with any lawful order issued by an Enforcement Official.

H. Order to Leave. Whether or not the Enforcement Official issues an administrative citation or other ticket, the Enforcement Official may order a Responsible Party to leave a park, parkway, mountain park or other recreational facility if the Enforcement Official has reason to believe that the Responsible Party will not cease to violate the Code, will repeat a violation of the Code, or will violate the Code in a different way. Any statement, action, or inaction by the Responsible Party which indicates an intent not to comply with the warning, order, administrative citation or other ticket given or issued by the Enforcement Official or to behave in other ways in violation of the Code shall be sufficient reason to believe that the Responsible Party will not cease to violate the Code, will repeat a violation of the Code, or will violate the Code in a new way. It shall be

DRAFT 12-6-11

unlawful under section 39-24(a), DRMC, for any person to fail or refuse to leave a park, parkway, mountain park or other recreational facility if so ordered by an Enforcement Official.

I. Interference/Evasion. No person shall interfere with or attempt to evade efforts of an Enforcement Official to stop, prevent or enforce against a violation of the Code. This prohibition shall include the actions of any person to assist a violator of the Code in eluding lawful enforcement actions of any Enforcement Official or the efforts of any person violating the Code to evade receiving any warning, administrative citation or other ticket or complying with any lawful order of an Enforcement Official, including an order to leave a park, parkway, mountain park or other recreational facility. It shall be unlawful under section 39-24(c), DRMC, for any person to interfere with an Enforcement Official in the performance of that Official's duties or to evade lawful actions by an Enforcement Official against said person.

SECTION IV - FILING AN APPEAL

A. Right of Appeal. Any Responsible Party served with an administrative citation shall have the right to appeal that citation subject to the requirements and restrictions of this Section IV.

B. Deadline. A Responsible Party may file a written notice of appeal **and the fee required below** with the Manager within ten (15) calendar days from the effective date of service of the administrative citation on the Responsible Party. Compliance with this deadline shall be a jurisdictional prerequisite to any appeal brought under this Section IV, and failure to comply with this deadline shall bar an appeal. The Manager shall deny any notice of appeal not in compliance with the deadline or deadline extension prescribed in this Section IV.

C. Filing. The notice of appeal may either 1) be mailed to the Manager at the Department of Parks and Recreation, 201 West Colfax Avenue, Dept. 601, Denver, Colorado 80202 ATTN: Appeal; 2) be emailed to ParksRec-Manager@denvergov.org; or 3) hand-delivered to the Manager at the address above.

D. Fee. An appeal processing fee of twenty-five dollars (\$25.00) must be delivered with the notice of appeal. If the notice of appeal is mailed or emailed to the Manager, a check for the required amount must be sent by mail and made out to the Denver Manager of Finance. If the notice is hand-delivered, cash or check will be accepted at the cashier on the second floor of the Wellington E. Webb Municipal Building at 201 West Colfax Avenue. The notice of appeal will not be processed if the required fee is not tendered or if a check is returned for insufficient funds. The \$25.00 fee shall be refunded if the appellant prevails on his or her appeal; however, an appellant shall not be deemed to have prevailed if only a portion of the appeal is successful or if there is a reduction in fine due to a finding of mitigation of circumstances.

E. Form. The notice of appeal must be in writing and shall be electronically produced or legibly hand printed. No particular form of notice of appeal is required; provided, that the following information and/or documents are provided:

- 1) A legible copy of the administrative citation OR the following information from the administrative citation re-stated in the written appeal: citation number; date of issuance; the violation indicated; the amount of the fine; the location where the citation was issued (or statement that it was mailed); and the name of the Enforcement Official who issued the administrative citation.

DRAFT 12-6-11

2) The name, address and telephone number of the appellant and an affirmative statement that the appellant **is a Responsible Party**.

3) If the appellant is to be represented by another person, the name, address and telephone number of said representative. If that representative is an attorney and is representing the Responsible Party as an attorney, it must be so stated in the appeal. Any corporate or other legal entity (i.e., not a natural person) must be represented by legal counsel.

4) The reason(s) the appellant believes the appellant is not guilty of the alleged violation of the Code or that the administrative citation or penalty is objectionable, incorrect or not lawful; provided, however, an objection to the **enforceability**, legality or constitutionality of the Park Use R&R's, Article I of Chapter 39, DRMC, these Admin R&R's or Article XII of Chapter 2, DRMC, shall not be a basis for appeal under these Admin R&R's.

5) The signature of the appellant, representative or legal counsel. **Any minor under the age of 18 who is a Responsible Party must have a parent or guardian sign the notice of appeal and provide their name, address and telephone number.**

F. Processing Notice of Appeal. If, in the opinion of the Manager, the notice of appeal substantially meets the requirements of 1 to 5 of Part E above, the Manager shall assign a case number and submit the appeal to the assigned Administrative Hearing Officer (AHO). If, in the opinion of the Manager, the notice of appeal does not substantially meet the requirements of 1 to 5 of Part D above, the Manager shall promptly return the notice of appeal and notify the appellant of what requirement the notice of appeal fails to meet. The deadline set forth in Part B above shall still apply unless the Manager determines, in the Manager's estimation, that the deficiency is reasonably excusable so as to warrant a one-time time extension of up to three (3) days in order to amend the notice of appeal.

SECTION V – NOTICES AND HEARING FOR AN APPEAL

A. Notice; parties. Upon receipt from the Manager of the notice of appeal and any DPR record of the matter on appeal, the AHO shall set a date, time and place for the hearing of the appeal and shall mail notice of said hearing to the appellant at least seven (7) calendar days in advance of the scheduled hearing date. The same notice shall be provided to the Manager and the Enforcement Official. The appellant and DPR shall be regarded as parties to the hearing.

B. Pre-Hearing Statement. In the discretion of the AHO, the parties to the hearing may be required to file a pre-hearing statement before the case is set for hearing. The pre-hearing statement includes: the issues raised by the appellant and the responses of DPR; a concise statement of relevant facts, both agreed upon and disputed; copies of exhibits not previously included in the record (whether presented by the appellant or DPR); names of witnesses with a brief statement summarizing their testimony; an estimate of the time necessary to present each party's evidence and witnesses, and other matters as specified by the AHO. The AHO shall thoroughly consider the pre-hearing statements submitted along with, and in the same manner as, any other testimony and evidence presented at hearing.

C. AHO Powers. The AHO shall perform those duties and functions necessary and incidental to determining the case at hand, including issuing of subpoenas, calling and questioning of witnesses, hearing all evidence, examining all documents, ruling on evidentiary questions and witness qualifications, and generally establishing protocol and conducting the hearing as a tribunal and quasi-judicial proceeding in conformance with Article XII of Chapter 2,

DRAFT 12-6-11

DRMC, and these Admin R&R's. While judicial rules of evidence are not applicable, the AHO shall have the authority to determine admissibility of evidence and testimony based on relevance and probative value in light of the issues at hand. The AHO may utilize any experience, technical skills, or specialized knowledge the AHO may have in the evaluation of evidence and testimony presented.

D. Subpoena. The AHO, at the written request of any party to the hearing, may subpoena witnesses, documents and other evidence where the attendance of the witnesses or the admission of the evidence is deemed necessary by the AHO in order 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. Witness and mileage fees shall be the same as established for the Colorado County Courts. Any subpoena issued shall be substantially in the form as set forth in Attachment C to these Admin R&R's. Any subpoena must be served on a witness or the person or entity providing any evidence at least five (5) days prior to the date of the hearing. The AHO may entertain a continuance of a hearing date if a witness or the person or entity providing any evidence is unable to attend or provide the evidence, for good cause shown, on the scheduled hearing date. It shall be unlawful for any person to refuse to obey a subpoena issued by an AHO, and failure to obey a subpoena constitutes contempt and may be criminally prosecuted and have penalties imposed under section 1-13(a), DRMC, all as provided in section 2-289, DRMC.

E. Failure to appear. The AHO shall dismiss the appeal, with prejudice, if the appellant should fail to appear, without reasonable excuse, after having been sent timely notice of the hearing. The AHO shall grant the appeal and dismiss the administrative citation if either the Enforcement Official who issued the administrative citation or a City employee who witnessed the violation of the Code fails to appear without reasonable excuse. The hearing may be rescheduled if the AHO should determine that there is a reasonable excuse for failure to appear.

F. Oath; legal counsel; evidence and testimony. All testimony in proceedings before the AHO is to be given under oath or solemn statement administered by the AHO. A party may be represented by legal counsel, and an appellant who is not a natural person (e.g., a corporation, a limited liability company, a partnership, etc.) must be represented by legal counsel. The parties may present evidence and call and question witnesses and cross examine witnesses called by the other parties. The AHO may allow witnesses, other than the Responsible Party and the Enforcement Official, to testify by telephone or live by other electronic means, provided that neither party has a legitimate objection to such telephonic testimony and the identity of the witness is acknowledged by the parties or is determined to the satisfaction of the AHO.

G. Burden of proof; preponderance of evidence. DPR shall have the initial burden of proof to show that the Responsible Party is guilty of the alleged violation of the Code and that the administrative citation was lawfully issued. This burden is satisfied through a preponderance of the evidence or testimony presented by DPR at the hearing. Upon the AHO's determination that DPR has satisfied this burden, the burden shifts to the appellant to establish by countervailing testimony or evidence that there is factual or legal grounds for showing that the appellant is not guilty of the alleged violation of the Code or that the administrative citation or penalty is objectionable, incorrect or not lawful. An appellant may not base the appellant's case on a challenge to **the enforceability**, legality or constitutionality of the Park Use R&R's, Article I of Chapter 39, DRMC, these Admin R&R's or Article XII of Chapter 2, DRMC.

H. Recordings; transcripts. All hearings shall be recorded by electronic means, and transcripts shall be made at the expense of the party requesting the transcript. The appellant may

DRAFT 12-6-11

employ at its own expense a general or certified shorthand reporter. All evidence presented at the hearing shall be kept and preserved until the applicable judicial appeal periods have lapsed.

SECTION VI – AEO AND JUDICIAL APPEAL

A. AEO. The decision of the AHO, known as the Administrative Enforcement Order or AEO, shall be in writing and sent by first class mail to the appellant promptly upon issuance of the AEO. A copy of the AEO shall be provided to the Manager and the Enforcement Official.

B. Content of Decision. As part of the AEO, the AHO shall issue a final decision regarding the violations alleged in and penalties assessed by the administrative citation. The order shall:

1) uphold the administrative citation and penalties as to any violation proven by DPR and require payment by the Responsible Party of any outstanding assessed fines and other costs assessed under these Admin R&R's by a specified date; or

2) uphold the administrative citation and penalties as to any violation proven by DPR but make a finding of mitigation of circumstances and reduce the assessed fines in accordance with Attachment B to these Admin R&R's and require payment by the Responsible Party of the reduced fines and other costs assessed under these Admin R&R's by a specified date; or

3) dismiss the administrative citation and penalties as to any violation not proven by DPR.

The AEO may not reduce the amount of any fines specified in Attachment B, except to the extent that any discretion is granted to the AHO in reducing fines in the Attachment B and only upon making appropriate findings in the AEO justifying the reduction in fines.

C. Failure to Comply with AEO. Under section 2-292, DRMC, it shall be unlawful for the Responsible Party who has been served with a copy of the AEO to fail to comply with the AEO, and failure to comply with the AEO may be criminally prosecuted and have penalties imposed under section 1-13(a), DRMC.

D. Judicial appeal. An AEO shall be considered a final decision subject to judicial appeal. In the alternative, the decision of the AHO may be appealed, in writing, to the Manager within fifteen (15) days of the date of the AEO, in which case the decision of the Manager in response to this appeal shall be considered a final decision. In either case, the final decision shall be effective as of the date the AEO is mailed by first class mail to the appellant or, in the event of an appeal to the Manager, the final decision shall be effective as of the date the Manager's written decision is mailed by first class mail to the appellant. Judicial review shall be under Rule 106(a)(4) of the Colorado Rules of Civil Procedure upon the timely filing of an appeal to the Denver District Court.

SECTION VII – QUALIFICATIONS AND RECUSAL OF AHO

A. Qualifications. The AHO shall be a person designated by the Manager to serve as an AHO under these Admin R&R's. The AHO may be a City employee or a person retained on a temporary contractual basis to serve as an AHO. The AHO shall have such qualifications and skills as specified by the Manager to perform the duties of an AHO under these Admin R&R's.

DRAFT 12-6-11

B. Recusal. The AHO shall recuse himself or herself, or the Manager will recuse an AHO, for any conflict of interest, evidence of impropriety or appearance of impropriety as provided in the City's Code of Ethics set forth in Article IV of Chapter 2, DRMC.

SECTION VIII – PAYMENT, COLLECTION & LEGAL RECOURSE

A. Payment of Fines. The fine(s) stated on an administrative citation are to be paid by delivery of a check or cash to the cashier, along with the administrative citation or a legible copy thereof, on the second floor of the Wellington E. Webb Municipal Building at 201 West Colfax Avenue in Denver or by mailing the same to _____ . All checks are to be payable to the Denver Manager of Finance. Checks denied payment due to insufficient funds or other reasons shall be subject to a charge set by the Manager of Finance. Failure to pay the fine specified on the administrative citation within thirty (30) days of service of the administrative citation will result in a twenty-five dollar (\$25) late charge plus ten percent (10%) per annum being added to the fine.

B. Effect of Appeal and AEO. The obligation to pay the fine(s) stated on an administrative citation will be suspended upon the filing of an appeal in accordance with Section IV above. The suspension shall terminate upon the AHO issuing an AEO upholding the administrative citation and the penalty. The fine(s) and any costs assessed by the AHO shall be paid within such time frame and in such manner as prescribed in the AEO. Late payments and bad checks shall be subject to the charges, fees and interest specified in Part A above. The obligation to pay the fine(s) stated on an administrative citation shall terminate upon the AHO issuing an AEO dismissing the administrative citation and the penalty.

C. Collection. If the Responsible Party fails to pay the fine(s) and costs within the time frame prescribed by this Section VIII, the Manager may refer the matter for collection by any means available to the City.

E. Other Action. Any action or other recourse or remedy provided by law may be pursued by the City to recover or collect any amounts owing under these Admin R&R's or to recover damages, seek injunctive relief, or to assure that the restrictions and prohibitions of Article I of Chapter 39, DRMC, are complied with.

SECTION IX – MISCELLANEOUS

A. These Admin R&R's have been considered and adopted in accordance with Article XII of Chapter 2, DRMC, on Administrative Citations and section 39-2, DRMC, on adoption of rules for the Department of Parks and Recreation. Any judicial action to contest the validity of the procedure in adopting these Admin R&R's must be commenced no more than one hundred twenty (120) days from the effective date of these Admin R&R's.