

1st Reading: _____
2nd Reading: _____
Date Adopted: _____
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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SIOUX FALLS, SD, AMENDING THE CODE OF ORDINANCES OF THE CITY BY AMENDING CHAPTER 77, SUBCHAPTER PARKING TICKET APPEALS.

BE IT ORDAINED BY THE CITY OF SIOUX FALLS, SD:

Section 1. That Section 77.105 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 77.105 -PARKING TICKETS APPEALS; TIME FOR PAYMENT OR APPEAL.

The responsible party shall pay any parking ticket or citation issued under ~~§§ 77.001 through 77.013, 77.025 through 77.031, 77.045 through 77.047, 77.060 through 77.065 and 77.080 through 77.090~~ the authority of the Code of Ordinances of Sioux Falls, SD within ~~seven~~ 15 days from the date of issuance. However, any party may, in lieu of payment, appeal a parking ticket within that time period pursuant to the administrative appeals procedures as provided in Chapter 30 of this Code. ~~The mayor shall appoint hearing officers to hear any appeal.~~

Section 2. That Section 77.106 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 77.106 ~~APPEAL PERMITTED~~ ADMINISTRATIVE APPEALS PROCEDURES APPLY; SEPARATE PROCESSING FEE AUTHORIZED.

~~Appeals shall be commenced by filing a written appeal to the attention of the director of public parking, office of parking ticket clerk, within seven days of the issuance of a parking ticket. The appeal shall state why the parking ticket should be modified or dismissed, and an address where notice of the hearing should be mailed. Failure to timely file a written appeal shall constitute a waiver of the right to exhaust the administrative remedy provided herein. All terms and conditions for administrative appeals as provided in Chapter 30 of this Code shall apply except that the processing fee shall be \$25 for appeal of a parking ticket or citation.~~

Section 3. That Section 77.107 of the Code of Ordinances of Sioux Falls, SD, is hereby repealed.

§ 77.107 ~~HEARING.~~ (REPEALED)

~~A public hearing shall be held on all appeals within 20 days after the filing of the appeal, unless a later date is agreed to by both the appellant and the city. The city shall mail notice of the hearing to the appellant by first class mail at least five days before the hearing date.~~

Section 4. That Section 77.108 of the Code of Ordinances of Sioux Falls, SD, is hereby repealed.

§ 77.108 ~~HEARING PROCEDURES.~~(REPEALED)

~~The following procedures shall be followed at a parking ticket appeal hearing:~~

- ~~—(a) Parking ticket hearings will be informal and need not be conducted according to the technical rules relating to evidence and witnesses.~~
- ~~—(b) Receipt of the information appearing on a parking ticket or citation by the hearing officer from the parking ticket clerk or other city representative shall constitute a rebuttable presumption that the ticket or citation was validly and lawfully issued.~~
- ~~—(c) Oral evidence shall be taken only on oath or affirmation and shall be recorded by tape recording or other electronic means.~~
- ~~—(d) The clerk to the hearing officer shall administer oaths or affirmations to witnesses.~~
- ~~—(e) The hearing officer may consider any relevant evidence 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 of the evidence after objection in civil actions in courts of competent jurisdiction in the state.~~

Section 5. That Section 77.109 of the Code of Ordinances of Sioux Falls, SD, is hereby repealed.

§ 77.109 ~~RIGHTS AT HEARING.~~(REPEALED)

~~At the hearing, the appellant may:~~

- ~~—(a) Call and examine any witness on any matter directly relevant to the parking ticket;~~
- ~~—(b) Introduce physical evidence;~~
- ~~—(c) Cross-examine opposing witnesses; and~~
- ~~—(d) Rebut evidence.~~

Section 6. That Section 77.110 of the Code of Ordinances of Sioux Falls, SD, is hereby repealed:

§ 77.110 ~~DECISION AND RECORD.~~(REPEALED)

~~At the conclusion of the hearing, the hearing officer shall announce a decision based on a preponderance of the evidence. The hearing officer may sustain, modify or dismiss the parking ticket. The decision of the hearing officer shall constitute the city's final decision. The record of the hearing shall consist of: the decision of the hearing officer, as recorded by the clerk; a copy of the information from the ticket; any exhibits from the hearing; and the record of the testimony before the hearing officer. If a decision modifies the amount due on the ticket and the modified amount is not paid within 48 hours of the announcement of the hearing officer's decision, the original amount of the ticket shall be reinstated automatically.~~

Section 7. That Section 77.111 of the Code of Ordinances of Sioux Falls, SD, is hereby repealed:

§ 77.111- RULES OF ADMINISTRATIVE PROCEDURE APPLY. (REPEALED)

~~The sections of SDCL ch. 1-26 relating to appeals in contested cases shall apply to the procedure for city parking ticket appeals so far as the rules hereby adopted shall be consistent and applicable, unless a different procedure is specifically adopted by city ordinance. However, as permitted by South Dakota Constitution article IX, § 2, the provisions of SDCL 1-26-1(1) are superseded by this subchapter.~~

Section 8. That Section 77.112 of the Code of Ordinances of Sioux Falls, SD, is hereby repealed:

§ 77.112 APPEAL TO CIRCUIT COURT. (REPEALED)

~~Either party may appeal the decision of a parking ticket hearing officer to circuit court, utilizing the procedures set forth in §§ 77.113 through 77.115, inclusive.~~

Section 9. That Section 77.113 of the Code of Ordinances of Sioux Falls, SD, is hereby repealed:

§ 77.113- FILING OF APPEAL. (REPEALED)

~~Within 15 days of the date of the city's decision, either party may appeal by filing notice of appeal with the Minnehaha County Clerk of Courts. The appellant shall serve a copy of the notice of appeal prior to filing and proof of service shall accompany the original notice of appeal when filed. If appealed by the person who appealed pursuant to § 77.106, the notice of appeal shall be served upon the director of public parking and the city attorney. If appealed by the city, the notice of appeal shall be served on the person who appealed pursuant to § 77.106. The notice shall describe the parking ticket issued, the date of the hearing and a description of the decision from which the appeal is taken. The venue of the appeal shall be the Second Judicial Circuit. Once the notice of appeal is filed, the director of public parking or designee shall transmit the city's record of the hearing to the Minnehaha County Clerk of Courts within ten days. The city's transmittal of any record need not be in compliance with SDCL 1-26-33.~~

Section 10. That Section 77.114 of the Code of Ordinances of Sioux Falls, SD, is hereby repealed:

§ 77.114- COURT REVIEW. (REPEALED)

~~After the filing of notice of appeal and receipt of the record, the court shall review the matter and may elect to waive the receipt of briefs or further argument and make a decision on the record presented, or may request additional argument from the parties at a time established by the court. Any hearing conducted hereon shall not be de novo.~~

Section 11. That Section 77.115 of the Code of Ordinances of Sioux Falls, SD, is hereby repealed:

§ 77.115 STANDARD OF REVIEW. (REPEALED)

- ~~—(a) The court shall give great weight to the findings made and inferences drawn by the hearing officer on all questions of fact and related presumptions. The court may affirm the decision of the hearing officer or remand the case for further proceedings.~~
- ~~—(b) The court may reverse or modify the decision only if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions were:
 - ~~—(1) In violation of constitutional provisions;~~
 - ~~—(2) In excess of the authority of the city, as defined by city charter; or~~
 - ~~—(3) Arbitrary or capricious.~~~~

Date adopted: _____.

Mayor

ATTEST:

City Clerk