

TITLE I: GENERAL PROVISIONS

Chapter

10.GENERAL PROVISIONS

CHAPTER 10: GENERAL PROVISIONS

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§ 10.01 TITLE OF CODE.

(A) All ordinances of a permanent and general nature of the city, as revised, codified, rearranged, renumbered, and consolidated into component codes, titles, chapters, and sections, shall be known and designated as the “city code”, for which designation “code of ordinances”, “codified ordinances”, or “code” may be substituted. Code title, chapter, and section headings do not constitute any part of the law as contained in the code.

(B) All references to codes, titles, chapters, and sections are to the components of the code unless otherwise specified. Any component code may be referred to and cited by its name, such as the traffic code. Sections may be referred to and cited by the designation “§” followed by the number, such as §10.01. Headings and captions used in this code other than the title, chapter, and section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

§ 10.02 RULES OF INTERPRETATION.

(A) *Generally.* Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition, and application shall govern the interpretation of this code as those governing the interpretation of state law.

(B) *Specific rules of interpretation.* The construction of all ordinances of this city shall be by the following rules, unless that construction is plainly repugnant to the intent of the legislative body or of the context of the same ordinance:

(1) *AND or OR.* Either conjunction shall include the other as if written and/or, whenever the context requires.

(2) *Acts by assistants.* When a statute, code provisions, or ordinance requires an act to be done which, by law, an agent or deputy as well may do as the principal, that requisition shall be satisfied by the performance of the act by an authorized agent or deputy.

(3) *Gender; singular and plural; tenses.* Words denoting the masculine gender shall be deemed to include the feminine and neuter genders; words in the singular shall include the plural, and words in the plural shall include the singular; the use of a verb in the present tense shall include the future, if applicable.

(4) *General term.* A general term following specific enumeration of terms is not to be limited to the class enumerated unless expressly so limited.

§ 10.03 APPLICATION TO FUTURE ORDINANCES.

All provisions of Title I compatible with future legislation shall apply to ordinances hereafter adopted which amend or supplement this code unless otherwise specifically provided.

§ 10.04 CAPTIONS.

Headings and captions used in this code other than the title, chapter, and section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

§ 10.05 DEFINITIONS.

(A) *General rule.* Words and phrases shall be taken in their plain, or ordinary and usual sense. However, technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

(B) *Definitions.* For the purpose of this code, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CITY. The area within the corporate boundaries of the City of Avon as presently established or as amended by ordinance, annexation, or other legal actions at a future time. The term **CITY** when used in this code may also be used to refer to the City Council and its authorized representatives.

CODE, THIS CODE, or THIS CODE OF ORDINANCES. This city code as modified by amendment, revision, and adoption of new titles, chapters, or sections.

COUNTY. Stearns County, Minnesota.

MAY. The act referred to is permissive.

MONTH. A calendar month.

OATH. An affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in those cases the words **SWEAR** and **SWORN** shall be equivalent to the words **AFFIRM** and **AFFIRMED**. All terms shall mean a pledge taken by the person and administered by an individual authorized by state law.

OFFICER, OFFICE, EMPLOYEE, COMMISSION, or DEPARTMENT. An officer, office, employee, commission, or department of this city unless the context clearly requires otherwise.

PERSON. Extends to and includes an individual, person, persons, firm, corporation, copartnership, trustee, lessee, or receiver. Whenever used in any clause prescribing and imposing a penalty, the terms **PERSON** or **WHOEVER** as applied to any unincorporated entity shall mean the partners or members thereof, and as applied to corporations, the officers or agents thereof.

PRECEDING or FOLLOWING. Next before or next after, respectively.

SHALL. The act referred to is mandatory.

SIGNATURE or SUBSCRIPTION. Includes a mark when the person cannot write.

STATE. The State of Minnesota.

SUBCHAPTER. A division of a chapter, designated in this code by a heading in the chapter analysis and a capitalized heading in the body of the chapter, setting apart a group of sections related by the subject matter of the heading. Not all chapters have **SUBCHAPTERS**.

WRITTEN. Any representation of words, letters, or figures, whether by printing or otherwise.

YEAR. A calendar year, unless otherwise expressed.

§ 10.06 SEVERABILITY.

If any provision of this code as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

§ 10.07 REFERENCE TO OTHER SECTIONS.

Whenever in 1 section reference is made to another section hereof, that reference shall extend and apply to the section referred to as subsequently amended, revised, recodified, or renumbered unless the subject matter is changed or materially altered by the amendment or revision.

§ 10.08 REFERENCE TO OFFICES.

Reference to a public office or officer shall be deemed to apply to any office, officer, or employee of this city exercising the powers, duties, or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

§ 10.09 ERRORS AND OMISSIONS.

If a manifest error is discovered, consisting of the misspelling of any words; the omission of any word or words necessary to express the intention of the provisions affected; the use of a word or words to which no meaning can be attached; or the use of a word or words when another word or words was clearly intended to express the intent, the spelling shall be corrected and the word or words supplied, omitted, or substituted as will conform with the manifest intention, and the provisions shall have the same effect as though the correct words were contained in the text as originally published. No alteration shall be made or permitted if any question exists regarding the nature or extent of the error.

§ 10.10 OFFICIAL TIME.

The official time, as established by applicable state and federal laws, shall be the official time within this city for the transaction of all city business.

§ 10.11 REASONABLE TIME.

(A) In all cases where an ordinance requires an act to be done in a reasonable time or requires reasonable notice to be given, reasonable time or notice shall be deemed to mean the time which is necessary for a prompt performance of the act or the giving of the notice.

(B) The time within which an act is to be done, as herein provided, shall be computed by excluding the first day and including the last. If the last day is a legal holiday or a Sunday, it shall be excluded.

§ 10.12 ORDINANCES REPEALED.

This code, from and after its effective date, shall contain all of the provisions of a general nature pertaining to

the subjects herein enumerated and embraced. All prior ordinances pertaining to the subjects treated by this code shall be deemed repealed from and after the effective date of this code.

§ 10.13 ORDINANCES UNAFFECTED.

All ordinances of a temporary or special nature and all other ordinances pertaining to subjects not embraced in this code shall remain in full force and effect unless herein repealed expressly or by necessary implication.

§ 10.14 EFFECTIVE DATE OF ORDINANCES.

All ordinances passed by the legislative body requiring publication shall take effect from and after the due publication thereof, unless otherwise expressly provided.

§ 10.15 REPEAL OR MODIFICATION OF ORDINANCE.

(A) Whenever any ordinance or part of an ordinance shall be repealed or modified by a subsequent ordinance, the ordinance or part of an ordinance thus repealed or modified shall continue in force until the publication of the ordinance repealing or modifying it when publication is required to give effect to it, unless otherwise expressly provided.

(B) No suit, proceedings, right, fine, forfeiture, or penalty instituted, created, given, secured, or accrued under any ordinance previous to its repeal shall in any way be affected, released, or discharged, but may be prosecuted, enjoyed, and recovered as fully as if the ordinance had continued in force unless it is otherwise expressly provided.

(C) When any ordinance repealing a former ordinance, clause, or provision shall be itself repealed, the repeal shall not be construed to revive the former ordinance, clause, or provision, unless it is expressly provided.

§ 10.16 ORDINANCES WHICH AMEND OR SUPPLEMENT CODE.

(A) If the City Council shall desire to amend any existing chapter or section of this code, the chapter or section shall be specifically repealed and a new chapter or section, containing the desired amendment, substituted in its place.

(B) Any ordinance which is proposed to add to the existing code a new chapter or section shall indicate, with reference to the arrangement of this code, the proper number of the chapter or section. In addition to this indication as may appear in the text of the proposed ordinance, a caption or title shall be shown in concise form above the ordinance.

§ 10.17 PRESERVATION OF PENALTIES, OFFENSES, RIGHTS, AND LIABILITIES.

All offenses committed under laws in force prior to the effective date of this code shall be prosecuted and remain punishable as provided by those laws. This code does not affect any rights or liabilities accrued, penalties incurred, or proceedings begun prior to the effective date of this code. The liabilities, proceedings, and rights are continued; punishments, penalties, or forfeitures shall be enforced and imposed as if this code had not been enacted. In particular, any agreement granting permission to utilize highway rights-of-way, contracts entered into or franchises granted, the acceptance, establishment or vacation of any highway, and the election of corporate

officers shall remain valid in all respects, as if this code had not been enacted.

§ 10.18 COPIES OF CODE.

The official copy of this code shall be kept in the office of the City Clerk/Administrator for public inspection. The Clerk/Administrator shall provide a copy for sale for a reasonable charge.

§ 10.19 ADOPTION OF STATUTES AND RULES BY REFERENCE.

It is the intention of the City Council that, when adopting this code, all future amendments to any state or federal rules and statutes adopted by reference in this code or referenced in this code are hereby adopted by reference or referenced as if they had been in existence at the time this code was adopted, unless there is clear intention expressed in the code to the contrary.

§ 10.20 ENFORCEMENT.

(A) Any licensed peace officer of the city's Police Department, or the County Sheriff, or any Deputy Sheriff shall have the authority to enforce any provision of this code.

(B) As permitted by M.S. § 626.862, as it may be amended from time to time, the City Clerk/Administrator shall have the authority to administer and enforce this code. In addition, under that statutory authority, certain individuals designated within the code or by the Clerk/Administrator or City Council shall have the authority to administer and enforce the provisions specified. All and any person or persons designated may issue a citation in lieu of arrest or continued detention to enforce any provision of the code.

(C) The City Clerk/Administrator and any city official or employee designated by this code who has the responsibility to perform a duty under this code may with the permission of a licensee of a business or owner of any property or resident of a dwelling, or other person in control of any premises, inspect or otherwise enter any property to enforce compliance with this code.

(D) If the licensee, owner, resident, or other person in control of a premises objects to the inspection of or entrance to the property, the City Clerk/Administrator, peace officer, or any employee or official charged with the duty of enforcing the provisions of this code may, upon a showing that probable cause exists for the issuance of a valid search warrant from a court of competent jurisdiction, petition and obtain a search warrant before conducting the inspection or otherwise entering the property. This warrant shall be only to determine whether the provisions of this code enacted to protect the health, safety and welfare of the people are being complied with and to enforce these provisions only, and no criminal charges shall be made as a result of the warrant. No warrant shall be issued unless there be probable cause to issue the warrant. Probable cause occurs if the search is reasonable. Probable cause does not depend on specific knowledge of the condition of a particular property.

(E) Every licensee, owner, resident, or other person in control of property within the city shall permit at reasonable times inspections of or entrance to the property by the City Clerk/Administrator or any other authorized city officer or employee only to determine whether the provisions of this code enacted to protect the health, safety, and welfare of the people are being complied with and to enforce these provisions. Unreasonable refusal to permit the inspection of or entrance to the property shall be grounds for termination of any and all permits, licenses, or city service to the property. Mailed notice shall be given to the licensee, owner, resident, or other person in control of the property, stating the grounds for the termination, and the licensee, owner, resident, or other person in control of the property shall be given an opportunity to appear before the City Clerk/Administrator to object to the

termination before it occurs, subject to appeal of the Clerk/Administrator's decision to the City Council at a regularly scheduled or special meeting.

(F) Nothing in this section shall be construed to limit the authority of the city to enter private property in urgent emergency situations where there is an imminent danger in order to protect the public health, safety, and welfare.

§ 10.98 SUPPLEMENTAL ADMINISTRATIVE PENALTIES.

(A) Purpose and intent.

(1) Administrative offense procedures established pursuant to this section are intended to provide the public and the City of Avon with an informal, cost effective, and expeditious alternative to traditional criminal charges for violations of certain City Code provisions.

(2) The procedures are intended to be voluntary on the part of those who have been charged with administrative offenses.

(3) At any time prior to the payment of the administrative penalty as is provided for thereafter, the individual may withdraw from participation in the procedures, in which event the city may bring criminal charges in accordance to law.

(4) Likewise, the City of Avon, in its discretion, may choose not to initiate an administrative offense and may bring criminal charges in the first instance.

(5) In the event a party participates in the administrative offense procedures, but does not pay the monetary penalty, which may be imposed, the City of Avon will seek to collect the costs of administrative offense procedures as part of a subsequent criminal sentence, in the event the party is charged and is adjudicated guilty of a criminal violation.

(B) Administrative offense defined. An administrative offense is a violation of a provision of the City Code and is subject to the administrative penalties set forth in the schedule of offenses and penalties referred to in division (I) below.

(C) Notice. Any officer of the City of Avon Police Department or any other person employed by the city, authorized in writing by the Mayor of Avon, and having authority to enforce the City Code, shall upon determining that there has been a violation, notify the violator, or in the case of a vehicular violation, attach to the vehicle a notice of the violation. The notice shall set forth the nature, date, and time of the violation, the name of the official issuing the notice, and the amount of the scheduled penalty.

(D) Payment. Once such notice is given, the alleged violator may, within 15 days of the time of issuance of the notice, pay the amount set forth on the schedule of penalties for the violation, or may request a hearing in writing, as is provided for hereinafter. The penalty may be paid in person or by mail, and payment shall be deemed to be an admission of the violation.

(E) Hearing. Any person contesting an administrative offense pursuant to this section may, within 7 days of the time of issuance of the notice, request a hearing by a hearing officer who shall forthwith conduct an informal hearing to determine if a violation has occurred. The hearing officer shall have the authority to dismiss the violation or reduce or waive the penalty imposed within 7 days.

(F) *Hearing officer.* The Mayor shall designate in writing a hearing officer. The hearing officer is authorized to hear and determine any controversy relating to administrative offenses provided for in this section and may be compensated by the city for the hearings and related findings.

(G) *Failure to Pay.* In the event a party charged with an administrative offense fails to pay the penalty, a misdemeanor or petty misdemeanor charge may be brought against the alleged violator in accordance with applicable statutes. If the penalty is paid or if an individual is found not to have committed the administrative offense by the hearing officer, no such charge may be brought by the City of Avon for the same violation.

(H) *Disposition of penalties.* All penalties collected pursuant to this section shall be paid to the City of Avon and deposited in the General Fund.

(I) *Offenses and penalties.* Offenses which may be charged as administrative offenses and the penalties for the offenses shall be established by resolution of the City Council from time to time. Copies of the resolution shall be maintained in the office of the City Clerk/Administrator.

(J) *Effective date.* This section shall be effective upon passage and publication required by law. (Ord. 144, passed 4-7-2003)

§ 10.99 GENERAL PENALTY.

(A) Any person, firm, or corporation who violates any provision of this code for which another penalty is not specifically provided, shall, upon conviction, be guilty of a misdemeanor. The penalty which may be imposed for any crime which is a misdemeanor under this code, including Minnesota Statutes specifically adopted by reference, shall be a sentence of not more than 90 days or a fine of not more than \$1,000, or both.

(B) Any person, firm, or corporation who violates any provision of this code, including Minnesota Statutes specifically adopted by reference, which is designated to be a petty misdemeanor shall, upon conviction, be guilty of a petty misdemeanor. The penalty which may be imposed for any petty offense which is a petty misdemeanor shall be a sentence of a fine of not more than \$300.

(C) In either the case of a misdemeanor or a petty misdemeanor, the costs of prosecution may be added. A separate offense shall be deemed committed upon each day during which a violation occurs or continues.

(D) The failure of any officer or employee of the city to perform any official duty imposed by this code shall not subject the officer or employee to the penalty imposed for a violation.

(E) In addition to any penalties provided for in this section or in § 10.98, if any person, firm, or corporation fails to comply with any provision of this code, the Council or any city official designated by it, may institute appropriate proceedings at law or at equity to restrain, correct, or abate the violation.

**APPENDIX A: RESOLUTION TO ADOPT A SCHEDULE OF OFFENSES
AND VOLUNTARY ADMINISTRATIVE PENALTIES**

WHEREAS, the City Council wishes to adopt the provisions of Avon City Code §10.98, establishing a procedure for requesting the voluntary payment of administrative penalties for certain violations of the code; and

WHEREAS, the provisions of Avon City Code §10.98 authorize the City Council, by a resolution adopted by a majority of its members, to identify administrative offenses and establish penalties for these offenses;

NOW THEREFORE, be it resolved by the City Council as follows:

The City Council hereby adopts the provisions of Avon City Code 10.98 and adopts the following administrative penalties:

| <i>Offense</i> | <i>Code Section</i> | <i>Amount of Administrative Penalty</i> |
|--|---------------------|---|
| All offenses for which an administrative penalty may be established under this code, other than those specified below: | | \$75 |

EFFECTIVE DATE: The effective date of the resolution is the date of its passage by a majority of the members of the City Council. Passage of this resolution implements the provisions of Avon City Code §10.98.

Mayor:

Attest:
City Clerk/Administrator

APPENDIX B: NOTICE OF CODE VIOLATION

To: (Name and address of person who is alleged to have violated the code)

From: (Name and title of city official giving the notice)

Re: Alleged violation of Section of the Avon City Code, relating to (give title of section)

Date: (Date of notice)

I hereby allege that on (date of violation) you violated § _____ of the Avon City Code relating to _____.

The City Council has by resolution established an administrative penalty in the amount of \$____ for this violation.

Payment of this administrative penalty is voluntary, but if you do not pay it the city may initiate criminal proceedings for this alleged violation.

Payment is due within 14 days of the date of this notice. Before the due date, you may request an additional 14-day extension of the time to pay the administrative penalty.

As an alternative to the payment of this administrative penalty, if the situation that gave rise to this alleged violation is corrected by _____ (establish date), then the payment of the administrative penalty will be waived.

Even if the administrative penalty is paid, the city reserves the right to institute appropriate proceedings at law or at equity to restrain, correct, or abate the violation.

Before the due date, you may request to appear before the City Council to contest the request for payment of the penalty. After a hearing before the Council, the Council may determine to withdraw the request for payment or to renew the request for payment. Because the payment of the administrative penalty is voluntary, there shall be no appeal from the decision of the Council.

If you pay the administrative penalty, the city will not initiate criminal proceedings for this alleged violation. However, the Council, or any city official designated by it, may institute appropriate proceedings at law or at equity to restrain, correct, or abate the violation.

Payment of the administrative penalty may be made by check, cash, or money order to the City Treasurer.

Signed:
(Name and title of person giving notice)

APPENDIX C: SCHEDULE OF OFFENSES AND RESPECTIVE ADMINISTRATIVE PENALTIES

The administrative offenses and administrative penalties for the offenses listed below are hereby established:

| | |
|--|---------------------|
| <i>Alcohol and Tobacco Sale - Ord. 135</i> | |
| Purchase/possession by underage person | \$50 |
| License holder violations: | |
| - First offense | \$150 |
| - Second offense (within 12 months) | \$275 |
| - Third offense | \$500 |
| <i>Animal Violations - Ord. 61, Ord. 107</i> | |
| - First offense | \$35 |
| - Second offense | \$70 |
| - Third offense | \$100 |
| <i>Building Code Violations - Ord. 138</i> | |
| Permit violations | \$100 per day |
| Lack of permit | \$100 |
| <i>Curfew - Minnesota Basic Code</i> | \$50 |
| <i>Exhibition Driving - Ord. 70</i> | \$50 |
| <i>Fireworks</i> | |
| Use, possession, prohibited sales - SS 624.21 | \$50 |
| <i>Housing Codes - Ord. 114</i> | \$50 per day |
| <i>Zoning Ordinance/Land Use - Ord. 84, Ord. 129, Ord. 133</i> | \$100 per day |
| <i>Violation of Variance/Conditional Use Permit</i> | \$200 per day |
| <i>Miscellaneous</i> | |
| Seat belt violations - SS 169.686 | * See bail schedule |
| Expired registration - SS 168.09 | * See bail schedule |

| | |
|--|---------------------|
| Missing plates or license tabs - SS 169.79 | * See bail schedule |
| Speed (1-10 mph over) - SS 169.14 | * See bail schedule |
| Stop sign violation - SS 169.30 | * See bail schedule |
| Failure to yield to pedestrians in crosswalk - SS 169.21 | * See bail schedule |
| Window tint - SS 169.71 S4 | * See bail schedule |
| <i>Park and Beach Violations</i> - Ord. 139, Ord. 112 | \$50 |
| <i>Public Nuisances</i> - Ord. 137 | |
| Weeds, composting - Sect. 2 | \$20 |
| Snow/obstructions placed on street - Sect. 1,2, and 3 | \$25 |
| Junk or vehicles lacking current registration - Sect. 3 | \$50 |
| Discharge of air rifles/similar guns - Sect. 6 | \$50 |
| Public urination - Sect. 3 | \$50 |
| Amplified sound in motor vehicle - Sect. 3 | \$50 |
| Public consumption of alcohol | \$50 |
| Sewer system, illegal dumping - Ord. 73 | \$200 |
| All others identified in Sections 1-6 of Ord. 137 | \$50 |
| Prohibiting concealed property - Ord. 163 | \$100 |
| Violations of Ord. 112 and 165 | \$50 |
| <i>Open Fire Violation</i> - Ord. 111, Ord. 137 | \$25 |
| <i>Snowmobile Violations</i> - Ord. 126 | \$50 |
| <i>Wetland/Shoreland Violations</i> - Ord. 131 | \$100 per day |
| NOTES TO TABLE: * - Fee for any violation charged by SS is determined by 50% of what current county bail schedule establishes the fine to be. | |

(Res. 578, passed 7-7-2003; Revised 2-1-10)