

BILL NO. 2013-9

ORDINANCE NO. _____

AN ORDINANCE TO AUTHORIZE THE CITY TO TREAT LICENSING VIOLATIONS UNDER LVMC TITLE 6 AS CIVIL VIOLATIONS SUBJECT TO A CIVIL PENALTY RATHER THAN PROCEEDING BY MEANS OF A MISDEMEANOR PROSECUTION, TO ESTABLISH PROCEDURES FOR THE PROCESSING AND DISPOSITION OF NOTICES OF VIOLATION, AND TO PROVIDE FOR OTHER RELATED MATTERS.

Sponsored by: Councilwoman Lois Tarkanian

Summary: Authorizes the City to treat licensing violations under LVMC Title 6 as civil violations subject to a civil penalty rather than proceeding by means of a misdemeanor prosecution, and establishes procedures for the processing and disposition of Notices of Violation.

THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN
AS FOLLOWS:

SECTION 1: Title 6, Chapter 2, of the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, is hereby amended by adding thereto eight new sections, designated as Sections 390 to 460, inclusive, reading as follows:

6.02.390: As an alternative to a criminal prosecution for the violation of any provision of Title 6, the City may treat the violation as a civil violation and proceed in accordance with the provisions of LVMC 6.02.400 to 6.02.460, inclusive.

6.02.400: (A) A proceeding under LVMC 6.02.390 shall be commenced by the issuance of a Notice of Violation. The Notice of Violation must contain, at a minimum, the following information:

(1) The name and address (if known) of the person or entity responsible for the violation;

(2) A brief description of the violation and a reference to the applicable ordinance or Code citation(s);

(3) The location, date and time of the violation;

(4) The name of the person issuing the Notice of Violation;

(5) The amount of the civil fine applicable to the violation;

(6) Information advising of the manner and time for responding to the

1 Notice of Violation; and

2 (7) Such other pertinent information as may be necessary or appropriate.

3 (B) No error concerning or omission of any of the above-described information is
4 grounds for the dismissal of an action relating to a Notice of Violation unless the person requesting
5 such a disposition demonstrates substantial prejudice therefrom by a preponderance of the evidence.

6 (C) Where the Notice of Violation data is entered into and stored in a computer or
7 similar device, any printout or other output readable by sight which accurately reflects such data is an
8 "original" Notice of Violation for purposes of a proceeding under LVMC 6.02.390. Any such
9 recording which is moved or copied into another computer or similar device and is intended to have
10 the same effect by the issuing officer is also an "original" Notice of Violation for purposes of a
11 proceeding under LVMC 6.02.390.

12 (D) Any Notice of Violation issued pursuant to this Section shall constitute a
13 declaration which is subject to the penalty of perjury.

14 **6.02.410:** The Notice of Violation may be issued by any peace officer or by any officer or
15 employee of the Department who is assigned to enforcement.

16 **6.02.420:** An original Notice of Violation, or a facsimile thereof, must be filed with and retained
17 by the Department and is deemed to be a public record of matters which are observed pursuant to a
18 duty which is imposed by law and is prima facie evidence of the facts which are alleged therein. An
19 original or duplicate of the Notice of Violation must be served on the person responsible for the
20 violation or, in the case of an entity, an officer of that entity.

21 **6.02.430:** (A) A person must respond to a Notice of Violation in one of the following ways:

22 (1) "Admit" responsibility for the commission of the violation and liability
23 for the civil fine imposed, and pay the amount of the fine applicable to the violation;

24 (2) Contact the Business Licensing Division, "admit" such responsibility
25 and liability, and arrange a schedule for payment of the fine; or

26 (3) Request a binding hearing, as provided for in Subsections (B) to (I),
27 inclusive, of this Section in order to dispute the propriety of the issuance of the Notice of Violation
28 or liability for the violation.

1 (B) A person may initiate a hearing pursuant to Paragraph (3) of Subsection (A) of
2 this Section by:

- 3 (1) Contacting the Business Licensing Division;
4 (2) Providing his/her name, current address and the Notice(s) of
5 Violation(s) which the person wishes to be the subject of the hearing; and
6 (3) Obtaining a date for the hearing.

7 (C) Any person initiating such a hearing in this manner (the "defendant") shall be
8 bound by the decision of the Hearing Officer concerning liability for the violation(s) and responsibility
9 for the fines related thereto. If a defendant scheduling a hearing before the Hearing Officer fails to
10 appear at the hearing without having first sought and obtained a continuance of the hearing, the
11 Hearing Officer may enter a decision against the defendant for the full amount of fines scheduled to
12 be reviewed. In connection with the request for a hearing, the defendant must acknowledge the
13 binding nature of the hearing and the Hearing Officer's authority in the event the defendant fails to
14 appear at a hearing. The acknowledgment shall be in substantially the following form:

15 I _____, hereby request a binding hearing before the Hearing Officer. My address is
16 _____. I request that this hearing involve Notice(s) of Violation(s)
17 Number _____. I understand that the Hearing Officer is an attorney and not an elected
18 or appointed judge.

19 I understand that I am bound by the decision of the Hearing Officer. I understand that if I fail
20 to appear for the scheduled hearing before the Hearing Officer without first obtaining a
21 continuance of such hearing, the Hearing Officer may enter a decision against me for the full
22 amount of the penalties scheduled to be reviewed. I understand and agree that if necessary due
23 to my lack of timely payment, the City of Las Vegas can and will use this binding decision to
24 have a formal civil judgment entered against me in the Las Vegas Municipal Court.

25 I understand that if a civil judgment is obtained, the City may seek and obtain a writ of
26 execution against me. I understand that if a writ of execution is obtained, my wages and/or
27 bank accounts may be garnished, and liens may be put on my property.

28 Knowing all of the above, I still wish to request a binding hearing before the Hearing Officer

1 on the above-described Notice(s) of Violation(s). I hereby acknowledge the above and further
2 acknowledge that at my request a hearing has been set for _____, 20____ at the
3 hour of _____ m.

4 _____
5 Defendant

6 (D) Any hearing conducted pursuant to this Section shall be presided over by a
7 Hearing Officer who shall be an attorney licensed to practice law in the State of Nevada. With respect
8 to any such hearing, a properly filed Notice of Violation shall constitute a claim of liability and a claim
9 for relief and no other such claim shall be required. Prima facie proof of the violation alleged shall
10 be established by the City providing the Hearing Officer with either a certified copy of the Notice of
11 Violation or the data stored in a computer or other device as described in LVMC 6.02.400. No formal
12 appearance by the City Attorney's Office is required. The hearings and dispositions of all such actions
13 shall be informal, with the Hearing Officer receiving witness statements or testimony and other
14 evidence for the sole purpose of dispensing fair and speedy justice between the parties. A defendant
15 may pay the amount of the civil fine in lieu of appearing before the Hearing Officer.

16 (E) The burden of proving any defense shall be upon the person raising such
17 defense.

18 (F) If the Hearing Officer finds that a violation did not occur or that the defendant
19 should not be held liable, the Hearing Officer shall enter a decision for the defendant.

20 (G) The defendant shall pay the total civil fines forthwith or at such times and on
21 such conditions as the Hearing Officer shall prescribe if it is found that the person has either failed to
22 appear or otherwise defend against the issuance of the Notice of Violation as agreed or that the
23 violation was committed and no applicable defense exists.

24 (H) Upon reaching a decision, the Hearing Officer shall as soon as practicable
25 thereafter, file a written decision substantially conforming to the following form:

26 ...

27 ...

28 ...

1 City of Las Vegas, Clark County, Nevada

2 City of Las Vegas, Plaintiff v. _____, Defendant. Before, _____,
3 Hearing Officer for the City of Las Vegas, Nevada, decision is entered in favor of
4 _____, (plaintiff or defendant) for \$ _____ (enter \$0.00 if judgment is for
5 the defendant), on the ____ day of _____, 20____. I certify that the foregoing is a
6 correct reflection of the decision entered in the action properly brought for my consideration
7 pursuant to LVMC 6.02.390 et seq.

8 _____
9 Hearing Officer

10 (I) The City Attorney may petition the Las Vegas Municipal Court for the entry
11 of a civil judgment against the defendant in an amount equal to that stated in the written decision of
12 the Hearing Officer if the City Attorney determines this action to be necessary to enforce the decision.
13 Service of such petition on the defendant must be made by certified mail, return receipt requested,
14 restricted delivery, addressed to the defendant at the defendant's last known address, or in any other
15 manner which is authorized by law. An affidavit or declaration of mailing, a signed, returned receipt,
16 or other evidence of service shall be filed upon such service of the petition. Once a petition for civil
17 judgment pursuant to this Subsection (I) has been filed with the Municipal Court, the assigned judge
18 has jurisdiction to grant or deny the relief prayed for therein.

19 **6.02.440:** (A) A response to a Notice of Violation, as provided in LVMC 6.02.430, must be
20 made within thirty calendar days after the date on which the Notice of Violation is served. If no
21 response is received during such thirty-day period, an additional civil penalty which is equal to the
22 amount of the original civil fine must be assessed.

23 (B) After the expiration of the thirty-day response period, the Director, or an
24 authorized designee, must send a Notice of Delinquency by mail to the registered owner or operator
25 of the business at the owner's last known address, as indicated by the records of the Business
26 Licensing Division. The Notice of Delinquency must contain the date of the violation, the amount of
27 the civil fine and the amount of any penalty which is associated therewith. The owner has fifteen
28 calendar days after the date of the Notice of Delinquency in which to respond to the Business

1 Licensing Division. If no response is made to the Notice of Delinquency within such additional
2 fifteen-day period, a civil penalty must be assessed equal to two times the original civil fine amount,
3 in addition to the original civil fine.

4 (C) If a person fails to respond to a Notice of Violation or a Notice of Delinquency
5 in accordance with this Chapter, the City is entitled to collect the amount of any fines and penalties
6 by means of any remedy available under applicable law, including without limitation referring the
7 matter to a collection agency.

8 **6.02.450:** (A) The schedule of civil fines contained in LVMC 6.02.460 is hereby established
9 for the violations described therein.

10 (B) In addition to the fines and penalties provided for in LVMC 6.02.390 to
11 6.02.460, inclusive, the person responsible for any violation shall be liable for an additional collection
12 fee where the collection of the penalties provided for herein is referred for collection to a private
13 collection agency. The amount of such fee shall be twenty-five percent of the outstanding
14 indebtedness or two hundred fifty dollars, whichever is less. The amount of any such collection fee
15 shall accrue and become due and payable at the time the indebtedness is referred for collection to the
16 collection agency, and that amount may be added by the collection agency to the amount sought to be
17 collected. Any judgment or amended judgment entered under this Chapter may include the amount
18 of the collection fee authorized by this Subsection (B).

19 **6.02.460:** (A) The civil fines for violations that are processed under the provisions of LVMC
20 6.02.390 to 6.02.460, inclusive, are as follows:

21 (1) For a first offense, two hundred fifty dollars.

22 (2) For a subsequent offense, five hundred dollars.

23 (B) In connection with any violation sustained or confirmed by judgment of a
24 Hearing Officer, a separate fine may be assessed for each day the violation occurred or continued to
25 the extent the violation on that day was alleged in the Notice of Violation.

26 SECTION 2: If any section, subsection, subdivision, paragraph, sentence, clause or
27 phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or
28 ineffective by any court of competent jurisdiction, such decision shall not affect the validity or

1 effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the
2 City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision,
3 paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections,
4 subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional,
5 invalid or ineffective.

6 SECTION 3: All ordinances or parts of ordinances or sections, subsections, phrases,
7 sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada,
8 1983 Edition, in conflict herewith are hereby repealed.

9 PASSED, ADOPTED and APPROVED this _____ day of _____, 2013.

10 APPROVED:

11 By _____
12 CAROLYN G. GOODMAN, Mayor

13 ATTEST:

14 _____
15 BEVERLY K. BRIDGES, MMC
City Clerk

16 APPROVED AS TO FORM:

17 Val Steed 2-4-13

18 Date

1 The above and foregoing ordinance was first proposed and read by title to the City Council on the
2 ____ day of _____, 2013, and referred to a committee for recommendation, the
3 committee being composed of the following members _____
4 _____; thereafter the said committee reported favorably on said ordinance on the
5 ____ day of _____, 2013, which was a _____ meeting of said
6 Council; that at said _____ meeting, the proposed ordinance was read by title
7 to the City Council as first introduced and adopted by the following vote:

8 VOTING "AYE": _____

9 VOTING "NAY": _____

10 ABSENT: _____

11

12

APPROVED:

13

14

By _____
CAROLYN G. GOODMAN, Mayor

15 ATTEST:

16

17 _____
BEVERLY K. BRIDGES, MMC
18 City Clerk

19

20

21

22

23

24

25

26

27

28