

ORDINANCE 215 - 16

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILLIAMS
REPEALING AND REPLACING CHAPTER 10.33 OF THE WILLIAMS MUNICIPAL CODE REGARDING
ADMINISTRATIVE CITATION – NOTICE OF PARKING / NON-PROPERTY VIOLATION AND
AMENDING SECTION 1.12.070 OF THE WILLIAMS MUNICIPAL CODE REGARDING
ADMINISTRATIVE CITATION

The City Council of the City of Williams does ordain as follows:

SECTION 1. Purpose. The purpose of this ordinance is to repeal and replace Chapter 10.33 of the City's Municipal Code regarding Administrative Citation – Notice of Parking / Non-Property Violation and amend Section 1.12.070 of the City's Municipal Code regarding Administrative Citation.

SECTION 2. Authority. The City Council enacts this ordinance under the authority granted to cities by Article XI, Section 7 of the California Constitution.

SECTION 3. Amendment. Chapter 10.33 is hereby repealed and replaced in its entirety as follows:

Chapter 10.33 Administrative citation – Notice of parking / non-property violation

10.33.010 – Title of this article and authority.

This article shall be known as the “administrative citation – Notice of parking / non-property violation ordinance.” It is adopted pursuant to Government Code Section 53069.4, authorizing local agencies, by ordinance, to make violation of any ordinance of the city subject to administrative fine or penalty, and Vehicle Code 40200, authorizing local authorities, by ordinance, to make violation of any regulation that is not a misdemeanor governing the standing or parking of a vehicle subject to a civil penalty.

10.33.020 – Applicability.

Notice of parking / non-property violations shall be in addition to all other remedies, whether criminal, civil or equitable, which may be pursued by the city to address any parking violation of this Code.

10.33.030 – Definitions

A. “Administrative citation - Notice of parking / non-property violation” or “Administrative Citation” or “Notice of Violation” shall mean the written notice provided to a responsible person to inform that person of a violation of this Code, its adopted codes or applicable state codes.

- B. "Enforcement officer" shall mean any officer or employee, including his or her designee, with the authority to enforce this Code, its adopted codes or applicable state codes.
- C. "Hearing officer" shall mean the qualified and trained hearing, pursuant to Vehicle Code 40215(c)(4), officer appointed by the city council. A hearing officer shall not be employed, managed or controlled by a person whose primary duties are parking enforcement or parking citation, processing, collection, or issuance. A hearing officer's continued employment, performance evaluation, compensation, and benefits shall not, directly or indirectly, be linked to the amount of fines collected by the hearing officer.
- D. "Responsible person" shall mean either of the following:
1. Any individual or legal entity who is the registered owner, agent of the registered owner, rentee, lessee, sub-lessee, occupant or other person with any right to possession of the vehicle, owner or authorized agent of any business, company or entity, or the parent or the legal guardian of any person under the age of eighteen years, who causes, permits or maintains a violation of this Code, its adopted codes or applicable state codes.
 2. Any individual, legal entity or the parent or the legal guardian of any person under the age of eighteen years who causes, permits or maintains a violation of this Code, its adopted codes or applicable state codes.

10.33.040 – Administrative citation – Notice of parking /non-property violation.

- A. Whenever an enforcement officer charged with the enforcement of a provision of this Code determines that a violation of that provision has occurred, the enforcement officer shall have the authority to issue an administrative parking citation to the person or entity responsible for the violation.
- B. Each administrative parking citation shall contain the following information:
1. The date of the violation;
 2. The approximate time of the violation;
 3. The location where the violation occurred;
 4. The violation, including reference to the local ordinance or code so violated;
 5. A statement printed on the notice indicating the date of payment is required to be made not later than 21 calendar days from the date of citation issuance;
 6. The procedure for the registered owner, lessee, or rentee to deposit the parking penalty or contest the citation.
 7. The vehicle license number (if visible);
 8. The registration expiration date (if visible);
 9. The last four digits of the vehicle identification number (if readable through the windshield);
 10. The color of the vehicle;
 11. The make of the vehicle (if possible);
 12. The amount of the parking penalty due for the violation;

C. Each administrative non-property citation shall contain the following information:

1. The date of the violation;
2. The approximate time of the violation;
3. The location where the violation occurred;
4. The violation, including reference to the local ordinance or code so violated;
5. A statement printed on the notice indicating the date of payment is required to be made not later than 21 calendar days from the date of citation issuance;
6. The procedure for the responsible person to deposit the parking penalty or contest the citation.
7. The amount of the parking penalty due for the violation;

D. Each administrative citation shall be accompanied by a written notice containing the following information:

1. The address of the person authorized to receive a deposit of the violation penalty;
2. A statement in bold print that payments of the penalty for the violation may be sent through the mail; and
3. Instructions on obtaining information on the procedures to contest the notice of violation.

E. The administrative citation, or copy thereof, shall be considered a record kept in the ordinary course of business of the issuing agency and the processing agency and shall be prima facie evidence of the facts contained therein.

10.33.050 – Service of administrative citation.

An administrative citation for a parking / non-property violation shall be on a form approved by the Chief of Police and shall be issued to the responsible person by an enforcement officer for violations of this Code, its adopted codes, or applicable state codes in the following manner:

- A. Personal service-parked vehicle. The enforcement officer shall serve the administrative citation by attaching it to the vehicle either under the windshield wiper or in another conspicuous place upon the vehicle so as to be easily observed by the person in charge of the vehicle upon the return of that person.
- B. Personal service. The enforcement officer shall attempt to locate and personally serve the responsible person and, if possible, obtain the signature of the responsible person on the administrative citation. If the served responsible person refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity of the administrative citation or of subsequent proceedings.
- C. Service of citation by mail-vehicle driven away. If, during the issuance of the administrative citation, without regard to whether the vehicle was initially attended or

unattended, the vehicle is driven away prior to attaching the notice to the vehicle, the issuing officer shall file the notice with the processing agency. The processing agency shall mail, within 15 calendar days of issuance of the notice of violation, a copy of the notice of violation or transmit an electronic facsimile of the notice to the registered owner.

1. Service by mail shall be sent to the registered owner's address as shown on the records of the California Law Enforcement Telecommunications System, Department of Motor Vehicles or as known by the city.

D. Service of citation by posting notice. If the enforcement officer does not succeed in serving the responsible person personally, the enforcement officer shall post the administrative citation in a conspicuous location on any personal or real property within the city in which the city has knowledge that the responsible person has a legal interest. Posting of the administrative citation shall be deemed effective service as of the date that the citation is actually posted.

10.33.060 – Amount of fines.

A. The amounts of the fines for each parking / non-property violation, other than those fines specifically set forth in this Code, shall be as set forth in a schedule of fines established from time-to-time by resolution of the city council.

B. The schedule of fines shall specify the amount of any late payment charge imposed for the payment of a fine after its due date.

C. The schedule of fines shall also include the criminal justice facilities and court construction assessments due the County of Colusa pursuant to Government Code Title 8, Chapter 12 (commencing with Section 76000).

10.33.070 – Satisfaction of administrative citation.

A. Upon receipt of an administration citation, the responsible person shall do the following:

1. Pay the fine to the city within twenty-one calendar days from the issue date on the notice of violation. If the penalty is received by the person authorized to receive the deposit of the penalty and there is no contest as to that violation, the proceedings under this chapter shall terminate.

B. If the responsible person fails to correct the violation(s) set forth in the notice of violation, subsequent notice of parking violations may be issued for the same violation(s).

C. Any administrative citation – notice of parking / non-property violation fine paid pursuant to Subsection A of this section shall be refunded in accordance with Subsection 10.33.120(C) of this chapter if it is determined, after a hearing, that the person charged in the administrative citation – notice of parking / non-property violation either was not responsible for the violation or that there was no violation as charged in the administrative citation.

10.33.080 – Initial review request.

- A. For a period of 21 calendar days from the issuance of a notice of violation or 14 calendar days from the mailing of a notice of delinquent violation, exclusive of any days from the day the processing agency receives a request for a copy or facsimile of the original notice of violation and the processing agency complies with the request, a person may request an initial review of the notice by the issuing agency. The request may be made by telephone, in writing, or in person. There shall be no charge for this review.
- B. If following the initial review, the issuing agency is satisfied that the violation did not occur, that the registered owner was not responsible for the violation, or that extenuating circumstances make dismissal of the citation appropriate in the interest of justice, the issuing agency shall cancel the notice of violation or notice of delinquent violation. The issuing agency shall advise the processing agency, if any, of the cancellation. The issuing agency or the processing agency shall mail the results of the initial review to the person contesting the notice, and, if following that review, cancellation of the notice does not occur, include a reason for that denial, notification of the ability to request an administrative hearing, and notice of the procedure for waiving prepayment of the penalty based upon an inability to pay.
- C. An issuing agency may, in lieu of collecting a fine for a citation for failure to display a disabled placard, charge an administrative fee not to exceed twenty-five dollars (\$25) to process cancellation of a citation in any case where the individual who received the citation can show proof that he or she had been issued a valid placard at the time the citation was received.

10.33.090 – Hearing request.

- A. If a person is dissatisfied with the results of the initial review, the person may request an administrative hearing of the violation no later than 21 calendar days following the mailing of the results of the issuing agency's initial review.
- B. The request may be made by telephone, in writing, or in person.
- C. The person requesting an administrative hearing shall deposit the amount of the penalty with the processing agency. The issuing agency shall adopt a written procedure to allow a person to request an administrative hearing without payment of the penalty upon satisfactory proof on an inability to pay the amount due.

- D. The administrative hearing shall be held within 90 calendar days following the receipt of a request for an administrative hearing.
- E. The person requesting the hearing may request one continuance, not to exceed 21 calendar days.

10.33.100 – Deposit waiver.

- A. Any person who request a hearing who is financially unable to make the advance deposit of the fine as required in Subsection 10.33.090(C) of this chapter may file a request for deposit waiver.
- B. The request shall be filed with the processing agency within 10 calendar days of the date of the request for hearing on a deposit waiver application form. The processing agency shall either issue or decline to issue the deposit waiver within two business days.
- C. The processing agency shall issue the deposit waiver if the cited party submits to the processing agency a sworn affidavit, or declaration under penalty of perjury, together with any supporting documents or materials, demonstrating to the satisfaction of the processing agency the person’s actual financial inability to deposit with the city the full amount of the fine in advance of the hearing.
- D. The processing agency shall issue a written determination listing the reasons for the determination to issue or not issue the deposit waiver. The written determination of the processing agency shall be final, and shall be served upon the person who applied for the deposit waiver, the enforcement officer and the city clerk.

10.33.110 – Hearing procedural matters and conduct.

- A. The administrative hearing procedure shall include the following:
 - 1. The person requesting the hearing shall have the choice of a hearing by mail or in person. An in-person hearing shall be conducted within the jurisdiction of the issuing agency. If an issuing agency contracts with an administrative provider, hearings shall be held within the jurisdiction of the issuing agency or within the county of the issuing agency.
 - 2. If the person requesting the hearing is a minor, that person shall be permitted to appear at a hearing or admit responsibility for the parking violation without the necessity of the appointment of a guardian. The processing agency may proceed against the minor in the same manner as an adult.
 - 3. The hearing shall provide an independent, objective, fair, and impartial review of contested parking violations.
 - 4. The officer issuing the citation shall not be required to appear at the hearing. The contestant shall appear at the hearing, unless a hearing by mail has been designated by the contestant in the hearing request form. If the contestant does not appear at the hearing, the contest shall be decided by the hearing officer based on the citation, the record of the administrative review, and any other

relevant material in the record, taking into account the reasons specified by the contestant in the hearing request form.

5. The hearing officer shall write pertinent information into the record during the in-person hearing. The hearing record, and any supporting documentation will remain with the case file. If the contestant appeals the hearing officer's decision to the court, the entire case file will be forwarded to the court. The hearing records for those cases not appealed to the court will be retained by the city per the city's record retention policy.
6. At the commencement of the hearing, the hearing officer shall:
 - a. Make a pre-hearing statement, briefly explaining the nature of the civil proceedings, the manner of conducting the hearing and the limits on the introduction of evidence, the process of rendering a decision, the effects of the decision in terms of collection remedies available to the city, the right of the contestant to appear to the court for a de novo hearing, and any other matters in the hearing officer's discretion;
 - b. Read the citation into the record;
 - c. Administer an oath to the contestant and any prospective witnesses;
 - d. Record the name and address of the contestant; and
 - e. Write the registered owner's name and address; and the contestant's relationship to the registered owner, if applicable.
7. Proof requirements – validity of citation for the issuing agency will be as follows:
 - a. The issuing agency bears the burden of proof, by a preponderance of the evidence that the citation meets statutory requirements for validity.
 - b. If the parking citation, or a copy thereof, contains all of the items specified in California Vehicle Code Section 40202 and if the issuing agency has included in the record the information received from the DMV identifying the registered owner of the vehicle, the citation and such information shall be prima facie evidence of the facts contained therein, and of the parking violation. The issuing agency shall not be required to produce any other information in order to establish the parking violation.
 - c. If the non-property citation, or a copy thereof, contains all of the items specified in 10.33.040(C), such information shall be prima facie evidence of the facts contained therein, and of the non-property violation.
 - d. The contestant may introduce credible relevant rebuttal evidence relating to the validity of the citation.
8. Proof requirements – contestant's defenses will be as follows:
 - a. The contestant bears the burden of proof, by a preponderance of the evidence, that although the citation is facially valid, a viable defense exists which would preclude the contestant's liability for the penalty, or that a viable defense exists which would limit the contestant's liability for late payment penalties.

- b. Non-receipt of the notice of violation itself, if based on sufficient credible evidence, may constitute a defense to late payment penalties based on nonpayment of the notice of violation, however, is not a defense to late response to the notice of delinquent parking violation. The defense of non-receipt of the notice of violation is not available to the registered owner, where the person operating the vehicle at the time of the citation was not the registered owner. Clear proof of timely payment of the citation is a defense to late payment penalties.
- c. Defenses relating to the merits of the citation must be established by the contestant by credible evidence. Such defenses may include, but are not limited to signage matters (missing, obscured or defaced signs), where the contestant demonstrates that it was impossible for him or her to become aware of the applicable parking restrictions; of the exercise of due diligence in efforts to replace the permit or placard; mechanical breakdown of the vehicle, where the vehicle was not illegally parked prior to the breakdown, where the violation in fact results from the breakdown and reasonable steps were taken to remove the vehicle prior to the occurrence of the violation. Personal reasons, inconvenience, lack of funds, forgetfulness, failure to observe signs, lack of available parking elsewhere, lack of knowledge of the applicable restrictions, and similar or related matters are not under any circumstances a defense to liability for the parking penalties. No defense which was not included in the statement of reasons contained in the contestant's appeal hearing request will be considered.
9. The rules of evidence for civil court proceedings shall not apply in hearings conducted pursuant to this procedure. Evidence relevant to the issues raised by the contestant's statement of reasons, and to the validity of the citation itself under California Vehicle Code Section 40202, will be received. Determinations of credibility of evidence are committed to the sound discretion of the hearing officer.
10. Other than the citation and the DMV information, the hearing officer shall receive into the record the issuing agency's record from the administrative review, together with relevant testimony, documentation and other material which is submitted by a party. Credibility determinations, together with determinations as to the weight to be assigned to evidence, are committed to the sound discretion of the hearing officer. The hearing officer, may, but is not required to, admit evidence in the form of declarations of witnesses, submitted by the contestant. Such declarations shall not be admitted unless presented in the form required for statements under California Code of Civil Procedure Section 2015.5, and shall contain the statements required by California Code of Civil Procedure 437c(d).

11. The contestant may present witnesses in support of the contestant's contentions. The hearing officer, after conducting the initial procedures of the hearing, may exclude witnesses until their turn to testify occurs. The hearing officer may limit the number of witnesses in the interest of preventing cumulative or repetitive testimony.
12. The hearing officer may conduct such cross-examination of the contestant or any witness, as in the hearing officer's sole and exclusive discretion is warranted under all of the circumstances.
13. The hearing officer shall make a decision on liability for the parking penalties based on the testimony and other evidence in the record.
14. The hearing officer shall enter the disposition on the hearing record, and enter the total amount of the parking penalties. The decision, including the rationale therefor, shall be placed in written form.
15. The decision may be personally delivered to the contestant by the hearing officer but a written decision shall be sent to the contestant via first class mail for the record.
16. The decision shall be the final decision of the city. The decision shall set forth the time limits for the contestant to file for judicial review in the Colusa County Superior Court, and a notice that if no such review is sought within the applicable time limitation, the decision shall be final for all purposes.

10.33.120 – Hearing officer's decision.

- A. The hearing officer's decision following the administrative hearing may be personally delivered to the person by the hearing officer or sent by first-class mail, and, if the notice is not cancelled, include a written reason for that denial. If the administrative citation is upheld, the fine amount on deposit with the city shall be retained by the city.
- B. Following a determination by the hearing officer that a person has committed the violation, the hearing officer may, consistent with the written guidelines established by the issuing agency, allow payment of the parking penalty in installments, or an issuing agency may allow for deferred payment or allow for payments in installments, if the person provides evidence satisfactory to the hearing officer or the issuing agency, as the case may be, of an inability to pay the parking penalty in full.
- C. If the hearing officer determines the administrative citation should be canceled or reduced and the fine was deposited with the city, then the city shall promptly refund the amount of the deposited fine or excess, as the case may be, together with interest at the average rate earned on the city's investment portfolio for the period of time that the fine amount was held by the city.

10.33.130 – Recovery of administrative citation parking fines and costs.

- A. The city may collect any past due administrative citation fine or late payment penalty and interest by use of all available legal means. Without limiting the generality of the forgoing, all such fines or late payments shall constitute civil debts and may be recovered in an action at law.
- B. The city may file an itemization of unpaid parking penalties and service fees with the Department of Motor Vehicles for collection with the registration of the vehicle pursuant to Vehicle Code Section 4760 or proceed under one of the options available per Vehicle Code Sections 40220, 40221, or 40222 in order to collect an unpaid parking penalty.

10.33.140 – Right to judicial review.

- A. Within 30 calendar days after the mailing or personal delivery of the final decision described in Subsection 10.33.120(A), the contestant may seek review by filing an appeal to be heard by the superior court where the same shall be heard de novo, except that the contents of the processing agency's file in the case shall be received in evidence. A copy of the notice of violation or, if the citation was issued electronically, a true and correct abstract containing the information set forth in the notice of violation shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the processing agency by the contestant. For purposes of computing the 30-calendar-day period, Section 1013 of the Code of Civil Procedure shall be applicable. A proceeding under this subdivision is a limited civil case.
- B. The fee for filing the notice of appeal is as provided in Section 70615 of the Government Code. The court shall request that the processing agency's file on the case be forwarded to the court, to be received within 15 calendar days of the request. The court shall notify the contestant of the appearance date by mail or personal delivery. The court shall retain the fee under Section 70615 of the Government Code regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fee shall be reimbursed to the contestant by the processing agency. Any deposit of parking penalty shall be refunded by the processing agency in accordance with the judgment of the court.
- C. The conduct of the appeal under this section is a subordinate judicial duty that may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court.
- D. If notice of appeal of the processing agency's decision is filed within the period set forth in subsection (A), the decision shall be deemed final.
- E. If the parking penalty has not been deposited and the decision is against the contestant, the processing agency shall, after the decision becomes final, proceed to collect the penalty pursuant to Section 10.33.130.

SECTION 4. Amendment. Section 1.12.070 is hereby amended to read in its entirety as follows:

As set forth in Chapter 10.33 of this code and Article VI of Chapter 8.16 of this Code, the city may issue an administrative citation for any violation of this Code.

SECTION 5. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption.

SECTION 6. Publication. Within fifteen (15) days of passage of this ordinance, the City Clerk shall certify to the adoption of this ordinance and cause it, or a summary of it, to be posted in three public places within the City of Williams.

INTRODUCED to the City Council on the 17th day of February, 2016.

PASSED AND ADOPTED BY THE City Council of the City of Williams, this 17th day of February, 2016 by the following vote:

AYES:	Council Member Troughton Jr., Sellers Jr., Boes, Bergson, Jauregui
NOES:	None.
ABSTAIN:	None.
ABSENT:	None.

APPROVED:

John J. Troughton, Jr, Mayor

ATTEST:

APPROVED AS TO FORM:

Shelly Kittle, Deputy City Clerk

Ann M. Siprelle, City Attorney