

EXPLANATION OF PROPOSED AMENDMENTS TO CHAPTER 203

Chapter 203 of the Birchwood City Code is the chapter that adopts the State Building Code. The State Building Code was adopted in 1984 and Birchwood first adopted the State Building Code as a city ordinance sometime after that. The last amendments to the city ordinance were adopted by the City Council in 2004.

The reason for amending Chapter 203 at this time is to update the references to the State Building Code and to eliminate the provisions relating to fees since fees are addressed generally in chapter 701 and the amount of the fees is now established in a permit fee schedule adopted by the City Council from time to time by resolution. The Council just adopted the most recent fee schedule on March 12, 2012.

The following explanation addresses each of the proposed amendments to chapter 203.

203.010. STATE BUILDING CODE ADOPTED.

The changes here recognize that the State has renumbered the statutes where the State Building Code is found. Those statutes are now Minnesota Statutes §§ 326B.01 to 326B.153. (Sections 326B.163 to 326B.191 apply to elevators and are not proposed for inclusion in the Birchwood ordinance.) Also, language is proposed to be added to this section to simply recognize that this chapter 203 is called the Birchwood Building Code.

Language is also proposed to be added to recognize that the Birchwood Building Code includes any optional chapters the City decided to adopt. Section 203.020 does include optional requirements relating to grading. Finally, while it is not a change in the present language, it is pointed out that the city ordinance provides that any changes adopted by the Commissioner of the Department of Administration to the State Building Code are automatically included in the Birchwood Code. This allows the city ordinance to change as the State requirements change without requiring the City Council to specifically amend the ordinance. The Commissioner cannot change the state requirements, however, without completing a state rulemaking process, which does require notice to the public and written explanation and justification of the changes.

203.020. BUILDING CODE OPTIONAL CHAPTERS.

The primary change here is to recognize that the optional requirements of the State Building Code that are being adopted are the requirements for Grading that are now found in Appendix J of the 2006 International Building Code. These grading requirements used to be found in Appendix K of the 2002 Supplement of the 2000 International Building Code and that reference was included in the city ordinance.

Another optional requirement relates to fire protection systems and is found in chapter 1306 of the rules of the Commissioner of the Department of Administration. These are not proposed for adoption because they apply to larger buildings and to commercial structures, which are not found in Birchwood.

203.030. APPLICATION, ADMINISTRATION AND ENFORCEMENT. The proposed changes here simply strike language about a City Building Department. The City of White Bear Lake acts as Birchwood's building and planning agent and administers the Birchwood Building Code so any references to a city building department are unnecessary. The City has entered into a contract with the City of White Bear Lake to act as Birchwood's planning and zoning officials, and so the White Bear Lake Building Department, presently headed by Ben Eggen, would act as Birchwood's Building Official.

The present ordinance provides that the State Building Code shall be enforced within the incorporated limits of the city. That State Building Code, section 326B.121, does allow a city to enforce its building code in neighboring townships, but this provision has no application in a situation like Birchwood's.

203.040. PERMITS REQUIRED.

There are no changes proposed for this section.

203.050 PERMIT FEES.

The first paragraph of this provision simply states that the City of Birchwood has authority to impose fees for the consideration and issuance of building permits under the Birchwood Building Code. The language sets forth the statutory and rule authority for cities like Birchwood to impose fees. The citations have been updated to reflect the proper references to statute and rule. The fact that Birchwood charges fees for the issuance of building permits is not a change in existing practice nor is it unique to Birchwood; all governmental bodies have the authority and do charge fees for issuing building permits.

Presently there are eight (8) subsections in section 203.050. Most of them are proposed to be deleted. Discussed first below are the subsections that are proposed to be retained, which requires renumbering in some situations. Then the reasoning behind deleting those subsections that are proposed for repeal is discussed.

First, the rationale for the subsections that will be retained.

1. PERMIT FEES. The change proposed here is to indicate that the City Council has now decided to establish permit fees not in this ordinance but in a fee schedule promulgated by the Council from time to time by resolution. This fee schedule will not only show the building permit fees but will contain all other fees, such as dog licenses and conditional use permit applications as well.

2. VALUATION. This language is taken from the present subsection 4. It is proposed to be kept because it explains how the value of a building project will be determined. The value is important because in many instances the amount of the permit fee is based on the value. The language is reworded slightly to eliminate any possible confusion over whether Birchwood has a separate building official besides the City of White Bear Lake.

The changes discussed above relate to those provisions that will continue to be in chapter 203. Several subsections are proposed to be deleted, however. Those are discussed below, under their present numbers in the existing ordinance.

2. PLAN REVIEW. This provision is proposed to be deleted because there no longer will be a separate fee for reviewing plans.
3. STATE SURCHARGE FEES. This provision is proposed to be deleted because it will now be included in the fee schedule adopted by the City Council by resolution. The obligation to pay a surcharge, however, will continue. This obligation is found in Minnesota Statutes § 326B.148 and the money goes to the state. The surcharge is equivalent to one-half mil of the fee, or \$5.00, whichever amount is greater.
5. MECHANICAL PERMIT FEES. This is existing subsection 5. It is proposed to be deleted because it is really more of a permit requirement than a permit fee. The fee for plumbing, heating, electrical, and fire suppression are set forth in the permit fee schedule that the Council adopts. The obligation to obtain a permit for such work is set forth in chapter 205.
6. INVESTIGATION FEE. This provision is no longer necessary since it will be included in the fee schedule or in chapter 701 relating to fees generally. The City Council does intend to continue the provision that the fees will double if work starts before the necessary permit or permits are issued.
7. ADDITIONAL CHARGES. This provision is presently untitled. It is proposed to be deleted for the same reason other provisions are proposed to be deleted – the requirement will be included in the fee schedule or in chapter 701. It is unnecessary to repeat it here.
8. FEE REFUND. This subsection is proposed to be eliminated because refunds are now addressed in the fee schedule and in chapter 701, section 701.040. The requirements for applying for a refund of building permit fees will now be the same as refunds for any other kind of fee. Below is an explanation of the changes.

Presently, the existing language provides that an applicant has 180 days after payment to apply for a refund; the proposed language allows the same 15 days that is provided for other types of fees. The existing language allows the city to refund up to 80% of the fee, but the amount is discretionary; the proposed language only allows 50% of the fee to be refunded if the circumstances warrant but the award is mandatory. Also, the existing language does not allow any refund of the plan review fee; the proposed language does not distinguish this fee and 50% may be refunded. The existing language requires the request for a refund to be in writing; the new language in 701.040 does not specify how the request must be made. Therefore, an oral request would satisfy the ordinance. Since the White Bear Lake Building Department is acting as Birchwood's Building Official, any request for a refund should be directed to that department. Finally, depending on application, the new language could result in a lesser refund than the existing language would allow, or in no refund, but it is appropriate to make the procedure the same for building permit fee refunds as it is for other permit fees.

203.060. SCHEDULE OF PERMIT FEES.

This is the section that sets forth the fees that are required when a permit is applied for. This section is no longer necessary because the fees are now set forth in the fee schedule adopted by the City Council by resolution on March 13, 2012, Resolution 2012-07. Therefore, this section is proposed to be repealed.

The fees for building permits established in the recently adopted fee schedule are identical to what the City of White Bear Lake charges so that it is easier for White Bear Lake to implement the Birchwood requirements. Not only does it make sense to make Birchwood's fees consistent with the fee structure in White Bear Lake, but also, the present Birchwood ordinance does not even set forth fees for certain types of construction that require review and a permit and the new fee schedule addresses that. Moreover, the fees charged by White Bear Lake are reasonable fees that cover the costs of administration.

**STATE OF MINNESOTA
COUNTY OF WASHINGTON
CITY OF BIRCHWOOD VILLAGE**

RESOLUTION 2012-##

**A Resolution Approving Ordinance 2012-02 Amending Chapter 203
to Update the Building Code, and to Eliminate References to Permit Fees**

WHEREAS, the City of Birchwood Village is a political subdivision, organized and existing under the laws of the State of Minnesota; and

WHEREAS, the City has adopted chapter 203 adopting the state Building Code; and

WHEREAS, the present ordinance needs to be updated to reflect changes in certain parts of the state Building Code,

WHEREAS, the City has amended chapter 701 of the city code to address permit fees for all kinds of permits, including building permit fees, and has adopted a fee schedule establishing permit fees for all permits issued by the City; and

WHEREAS, the Birchwood Planning Commission reviewed the draft ordinance amendments and made a recommendation to the Council and the Council has taken this recommendation into account; and

WHEREAS, the City Council held a public hearing on April 10, 2012, and no person testified in opposition to the proposed amendments; and

WHEREAS, the amendments proposed for chapter 203 are reasonable and appropriate

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BIRCHWOOD VILLAGE, MINNESOTA, AS FOLLOWS:

1. That Chapter 203 of the City Code, entitled CITY BUILDING REGULATIONS, is amended as shown in the attached document to update the references to the state Building Code, to make the provisions consistent with those of the City of White Bear Lake, and to eliminate all references to permit fees.

2. The effective date of these Ordinance amendments shall be upon publication as required by law.

Adopted by the City Council on this 10th day of April, 2012.

Approved:

Alan Mitchell, Mayor

Attest:

Dale Powers, City Clerk/Coordinator

**STATE OF MINNESOTA
COUNTY OF WASHINGTON
CITY OF BIRCHWOOD VILLAGE**

ORDINANCE 2012-02

**AN ORDINANCE AMENDING CHAPTER 203 (CITY BUILDING REGULATIONS) TO
UPDATE REFERENCES TO THE STATE BUILDING CODE AND TO ELIMINATE
ALL FEE PROVISIONS IN THIS CHAPTER**

WHEREAS, the City of Birchwood Village has adopted chapter 203 adopting the State Building Code and establishing requirements and fees for construction in the city; and

WHEREAS, the references to the State Building Code need to be updated; and

WHEREAS, the City Council has elected to address permit fees generally in chapter 701 and to establish all permit fees by resolution adopting a permit fee schedule rather than set the permit fees in the ordinance.

NOW, THEREFORE, the City Council of the City of Birchwood Village ordains that chapter 203 is hereby amended to read as follows:

203 CITY BUILDING REGULATIONS

AN ORDINANCE ADOPTING THE MINNESOTA STATE BUILDING CODE PROVIDING FOR THE APPLICATION, ADMINISTRATION, AND ENFORCEMENT BY REGULATING THE ERECTION, CONSTRUCTION, ENLARGEMENT, ALTERATION, REPAIR, MOVING, REMOVAL, DEMOLITION, CONVERSION, OCCUPANCY, AND MAINTENANCE OF ALL BUILDINGS AND/OR STRUCTURES WITHIN THE CITY OF BIRCHWOOD VILLAGE; PROVIDING FOR THE ISSUANCE OF PERMITS

203.010. STATE BUILDING CODE ADOPTED. The Minnesota State Building Code, as adopted by the Commissioner of Administration pursuant to Minnesota Statutes Sections 326B.01 through 326B.16, including all optional chapters hereinafter specifically adopted by the City Council and including all of the amendments, rules and regulations established, adopted and published from time to time by the Minnesota Commissioner of Administration, through the Building Codes and Standards Division, is hereby adopted by reference and incorporated in this ordinance as if fully set out herein, and shall be known as the Birchwood Building Code.

203.020. BUILDING CODE OPTIONAL CHAPTERS. The following optional provisions identified in the most current edition of the State Building Code are hereby adopted and incorporated as part of the building code for Birchwood Village:

Chapter 1305, Grading Appendix chapter J of the 2006 International Building Code.

203.030. APPLICATION, ADMINISTRATION AND ENFORCEMENT. The application, administration, and enforcement of the code shall be in accordance with Minnesota State Building Code. The City Council shall appoint a Building Official who shall attend to all aspects of Building Code administration including enforcement. The Birchwood Building Code shall be enforced within the incorporated limits of the City.

203.040. PERMITS REQUIRED.

1. No person, firm or corporation shall erect, construct, enlarge, alter, repair, move, improve, convert, or demolish any building or structure in the City or cause the same to be done, without first obtaining from the city a separate building permit for each such building or structure.

2. It shall be unlawful for any person, partnership, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, convert, demolish, equip, use, occupy or maintain any building or structure in the City of Birchwood Village or cause the same to be done contrary to, or in violation of any of the provisions of this Code. Any person, partnership, firm or corporation violating any of the provisions of this Code shall be guilty of a misdemeanor, and shall be guilty of a separate offense for each and every day, or portion thereof, during which any violation of the provisions of this Code is committed, continued or permitted.

203.050 PERMIT FEES. The city is authorized pursuant to Minnesota Statutes, section 326B.121, and the Minnesota State Building Code , Minnesota Rules part 1300.0160, to establish fees for the consideration and issuance of building permits under the Birchwood Building Code.

1. PERMIT FEES. The City shall establish appropriate permit fees for the various activities conducted under the Birchwood Building Code by resolution and promulgate such fees in a fee schedule.

2. VALUATION. The Chart of Estimated Construction Cost as annually provided by the Minnesota Department of Administration State Building Codes and Standards Division shall be utilized to compute building valuations for the purposes of establishing the appropriate permit fee. Permit valuation shall include total value of all construction work, including materials and labor, for which the permit is being issued, such as electrical, gas, mechanical, plumbing equipment, and permanent systems. Permit fees for prefabricated structures shall be based on a valuation of on-site work only.

“AMENDED BY ORDINANCE 2004-5; April 13, 2004.”

AMENDED BY ORDINANCE 2012- 02, April 10, 2012

**STATE OF MINNESOTA
COUNTY OF WASHINGTON
CITY OF BIRCHWOOD VILLAGE**

ORDINANCE 2011-06

AN ORDINANCE AMENDING CHAPTER 203 (CITY BUILDING REGULATIONS) TO UPDATE REFERENCES TO THE STATE BUILDING CODE AND TO ELIMINATE ALL FEE PROVISIONS IN THIS CHAPTER

WHEREAS, the City of Birchwood Village has adopted chapter 203 adopting the State Building Code and establishing requirements and fees for construction in the city; and

WHEREAS, the references to the State Building Code need to be updated; and

WHEREAS, the City Council has elected to address permit fees generally in chapter 701 and to establish all permit fees by resolution adopting a permit fee schedule rather than set the permit fees in the ordinance.

NOW, THEREFORE, the City Council of the City of Birchwood Village ordains that chapter 203 is hereby amended to read as follows:

203 CITY BUILDING REGULATIONS

-AN ORDINANCE ADOPTING THE MINNESOTA STATE BUILDING CODE PROVIDING FOR THE APPLICATION, ADMINISTRATION, AND ENFORCEMENT BY REGULATING THE ERECTION, CONSTRUCTION, ENLARGEMENT, ALTERATION, REPAIR, MOVING, REMOVAL, DEMOLITION, CONVERSION, OCCUPANCY, AND MAINTENANCE OF ALL BUILDINGS AND/OR STRUCTURES WITHIN THE CITY OF BIRCHWOOD VILLAGE; PROVIDING FOR THE ISSUANCE OF PERMITS ~~AND COLLECTION OF FEES~~

203.010. STATE BUILDING CODE ADOPTED. The Minnesota State Building Code, as adopted by the Commissioner of Administration pursuant to Minnesota Statutes Sections ~~326B.01 46B.59~~ through ~~326B.16, 46B.75,~~ including all optional chapters hereinafter specifically adopted by the City Council and including all of the amendments, rules and regulations established, adopted and published from time to time by the Minnesota Commissioner of Administration, through the Building Codes and Standards Division, is hereby adopted by reference and incorporated in this ordinance as if fully set out herein, and shall be known as the Birchwood Building Code.

203.020. BUILDING CODE OPTIONAL CHAPTERS. The following optional provisions identified in the most current edition of the State Building Code are hereby adopted and incorporated as part of the building code for Birchwood Village:

~~Chapter 1305, Appendix chapter K of the 2002 supplement of the 2000 International Building Code~~

Chapter 1305, Grading Appendix chapter J of the 2006 International Building Code.

203.030. APPLICATION, ADMINISTRATION AND ENFORCEMENT. The application, administration, and enforcement of the code shall be in accordance with Minnesota State Building Code. The City Council shall appoint a Building Official who shall attend to all aspects of Building Code administration including enforcement. ~~Additional members of a City Building Department shall be authorized by the City Council as needed. Organization of the City's Building Department shall be as amended by Minnesota Rules.~~ The Minnesota State Birchwood Building Code shall be enforced within the incorporated limits of the City.

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203.040. PERMITS REQUIRED.

1. No person, firm or corporation shall erect, construct, enlarge, alter, repair, move, improve, convert, or demolish any building or structure in the City or cause the same to be done, without first obtaining from the city a separate building permit for each such building or structure.

2. It shall be unlawful for any person, partnership, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, convert, demolish, equip, use, occupy or maintain any building or structure in the City of Birchwood Village or cause the same to be done contrary to, or in violation of any of the provisions of this Code. Any person, partnership, firm or corporation violating any of the provisions of this Code shall be guilty of a misdemeanor, and shall be guilty of a separate offense for each and every day, or portion thereof, during which any violation of the provisions of this Code is committed, continued or permitted.

203.050 PERMIT FEES. ~~The city is authorized pursuant to issuance of permits and the collection of fees shall be as authorized in Minnesota Statutes, section 326B.121, 46B.62, Subdivision 1, and as per the Minnesota State Building Code, Minnesota Rules Chapter-part 1300.0160 regarding fees, to establish fees for the consideration and issuance of building permits under the Birchwood Building Code.~~

1. PERMIT FEES. ~~The City shall establish appropriate permit fees for the various activities conducted under the Birchwood Building Code by resolution and promulgate such fees in a fee schedule. Permit fees shall be assessed for work governed by this code in accordance with the fee Schedule set forth in Section 203.060.~~

2. VALUATION. ~~The building official shall utilize the Chart of Estimated Construction Cost as annually provided by the Minnesota Department of Administration State Building Codes and~~

Standards Division shall be utilized to compute building valuations for the purposes of establishing the appropriate permit fee. Permit valuation shall include total value of all construction work, including materials and labor, for which the permit is being issued, such as electrical, gas, mechanical, plumbing equipment, and permanent systems. Permit fees for prefabricated structures shall be based on a valuation of on-site work only.

~~2. PLAN REVIEW. Plan review fees shall be as required by the State of Minnesota. The plan review fee for dwellings, apartment houses, and their accessory structures shall be 50 percent of the building permit fee. Plan review fee for commercial building permits shall be 65 percent of the building permit fee. Submitted documents approved as similar plans under Chapter 1300.0160 Subp. 6 plan review fees shall not exceed 25% of the building permit fee.~~

~~3. STATE SURCHARGE FEES. All municipal permits issued for work under the code are subject to a surcharge fee. The fees are established by Minnesota Statutes, Section 16B.70. In addition to the permit fee required, the applicant shall pay a surcharge to be remitted to the Minnesota Department of Administration. State surcharge fees shall be computed in accordance with City Ordinance 203.050. 2.~~

~~4. VALUATION. The building official shall utilize the Chart of Estimated Construction Cost as annually provided by the Minnesota Department of Administration State Building Codes and Standards Division to compute building valuations for the purposes of establishing the City of Birchwood Village permit fee schedules. Permit valuation shall include total value of all construction work, including materials and labor, for which the permit is being issued, such as electrical, gas, mechanical, plumbing equipment, and permanent systems. Permit fees for prefabricated structures shall be based on a valuation of on-site work only.~~

~~5. MECHANICAL PERMIT FEES. Mechanical permit procedures and fees are as follows: Mechanical permits shall include plumbing, heating, electrical, and fire suppression. It shall be unlawful for any person to perform work subject to the Building Code for which a permit is required without first obtaining a permit; such permits shall be issued by the City only to persons licensed by the City or by the State of Minnesota as required and registered as such with the City or to persons making application to do any such work wholly within a residence owned and occupied by the applicant.~~

~~6. INVESTIGATION FEE. Where work for which a permit is required is started or continued prior to obtaining said permit, the permit fee shall be doubled, but the payment of such double fee shall not relieve any persons from fully complying with existing codes or ordinances in the execution of the work nor from any other applicable penalties.~~

~~7. An additional charge, not to exceed actual expenses incurred, may be required in such instances where repeated violations of the building codes and ordinances make necessary an excessive number of re-inspections in order to ensure compliance with the provisions by the applicant prior to the issuance of Certificate of Occupancy.~~

~~8. FEE REFUNDS. The building official may authorize refunding of any paid fee that was erroneously paid or collected. The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code. When plan review services have been provided, the plan review fee portion of the permit fee shall not be refunded. The building official shall not authorize refunding of any fee paid except on written application filed by the original applicant not later than 180 days after the date of fee payment.~~

~~203.060. SCHEDULE OF PERMIT FEES. The applicant for a permit for building, plumbing, heating, electrical or fire suppression systems shall pay the following fees.~~

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~~1. BUILDING PERMIT FEE SCHEDULE~~

TOTAL VALUATION	FEE
\$1.00 to \$500.00	\$29.50 -
\$501.00 to \$2,000.00	\$23.50 for the first \$500.00 plus \$3.05 for each additional \$100.00 or fraction thereof, to and including \$2,000.00
\$2001.00 to \$25,000.00	\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00 or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$391.25 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00 or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00 or fraction thereof, to and including \$100,000.00.
\$100,001.00 to \$500,000.00	\$993.75 for the first \$100,000 plus \$5.60 for each additional \$1,000.00 or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00 or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00 and up	\$5,608.75 for the first \$1,000,000.00 plus \$3.15 for each additional \$1,000.00 or fraction thereof.

Other Inspections and Fees:

Inspections outside of normal business hours \$47.00 per hour*
 (Minimum charge – two hours)

Re-inspection fees \$47.00 per hour*

Inspection for which no fee is specifically indicated
 (Minimum charge – one-half hour) \$47.00 per hour*

Additional plan review required by changes,
 additions or revisions to Plans
 (minimum charge – one-half hour) \$47.00 per hour*

Outside consultants for plan checking and
 inspections or both Actual costs**

*Or the total hourly cost to the city, whichever is the greatest. This cost shall include supervision, overhead, equipment, hourly wages, and fringe benefits of the employees involved.

**Actual cost includes administrative and overhead costs.

2. STATE SURCHARGE FEES

If the fee for the permit issued is fixed in amount the surcharge is equivalent to one-half mil (0.0005) of the fee or 50 cents, whichever amount is greater. For all other permits the surcharge is as follows:

VALUATION OF STRUCTURE, ADDITION OR ALTERATION	SURCHARGE COMPUTATION
\$1,000,000 or less	.0005 x valuation (minimum \$.50)

- \$1,000,000 to \$2,000,000	- \$500 + .0004 x (Value - \$1,000,000)
- \$2,000,000 to \$3,000,000	- \$900 + .0003 x (Value - \$2,000,000)
- \$3,000,000 to \$4,000,000	- \$1200 + .0002 x (Value - \$3,000,000)
- \$4,000,000 to \$5,000,000	- \$1400 + .0001 x (Value - \$4,000,000)
- Greater than \$5,000,000	- \$1500 + .0005 x (Value - \$5,000,000)

3. OTHER PERMIT FEES

Heating Permit ————— \$60.00

Plumbing Permit ————— \$60.00

“AMENDED BY ORDINANCE 2004-5; April 13, 2004.”

AMENDED BY ORDINANCE 2012- 02, April 10, 2012

EXPLANATION OF PROPOSED AMENDMENTS TO CHAPTER 205

Chapter 205 of the Birchwood City Code sets forth a licensing requirement for persons (the term "person" includes individuals, firms, and corporations) who want to perform certain construction activities within the city limits. The Code requires that those persons who want to perform any of the identified construction activities either obtain a state license to do so, or if a state license is not required, a license from the City of Birchwood. There are thirteen separate activities listed in section 205.020 that require a state or city license, including plastering, masonry, roofing, and carpentry.

The City of White Bear Lake, which acts as the building official for Birchwood, has suggested that Birchwood either make the Birchwood requirements identical to those of White Bear Lake or eliminate the requirements for a city license for certain activities for which neither the state nor White Bear Lake requires a license. White Bear Lake does not require a separate city license for residential building contractors but it does require a separate city license for Commercial General Contractors. White Bear Lake also requires a city license for Heating and Ventilating Contractors and Tree Trimmers. White Bear Code section 1102.010.

The State of Minnesota does not require a state license for every single person who acts as a building contractor. For residential construction, only those persons or firms who engage in two or more of the construction activities identified in the statute are required to obtain a state license. Minnesota Statutes §§ 326B.801 to 326B.805. A person can do plastering or masonry work or carpentry, for example, without a state license, if that is the only work the person engages in. Electricians and plumbers, however, are required to obtain a license. Minnesota Statutes §§ 326B.31 to 326B.399 (electricians) and 326B.41 to 326.49 (plumbers).

It is appropriate to take a fresh look at whether Birchwood wants to require a city license for those persons who are doing work in the city for which neither the state nor the City of White Bear Lake requires a license. The amendments proposed here would eliminate all requirements to have a separate city license from the city of Birchwood. If a state license is required, then, of course, no person can engage in that kind of construction activity in Birchwood without that state license. If, on the other hand, a state license is not required to engage in certain construction activities, then the person can engage in that work without any license at all. In such a circumstance, a Birchwood resident can decide to hire an unlicensed person to do the work. A Birchwood resident may have any number of reasons to hire an unlicensed contractor, including a family relationship, or a previous relationship, or just to save money.

The city of White Bear Lake requires a city license to engage in commercial construction. Birchwood has no property zoned commercial so it is unnecessary to require a separate city license for that kind of work. White Bear Lake also requires a license for heating and ventilating and tree trimming. Birchwood has never required a city license for tree trimming. The present

code, section 205.020, subsection 1.f. does require a city license for heating, ventilation, and refrigeration (HVAC). The proposed amendments would eliminate the requirement to obtain a Birchwood license for heating, ventilation, and refrigeration, but if the contractor selected did work in White Bear Lake and perhaps other nearby cities, a license from White Bear Lake and these other cities would be held by that contractor. Again, a Birchwood homeowner may have any number of reasons to hire an unlicensed heating or air conditioning contractor but the homeowner would at least know that the contractor was unlicensed and did not do work in other cities where a city license was required.

The City of White Bear Lake began providing mechanical inspections for Birchwood in 2008. Most of the local contractors doing HVAC work in Birchwood were licensed by White Bear Lake. The past practice has been for Birchwood to recognize the White Bear licenses.

The White Bear Lake license fees for HVAC contractors are \$35.00 from January 1 through June 30th each year. After June 30, the fee drops to \$25.00. All licenses expire on December 31 and must be renewed the following year. Since 2008 White Bear Lake reports that it has licensed the number of contractors and collected the amount of fees shown in the list below.

2008	-	13 Licenses Issued	-	Total Fees = \$375 collected
2009	-	14 Licenses Issued	-	Total Fees = \$410 collected
2010	-	9 Licenses Issued	-	Total Fees = \$255 collected
2011	-	5 Licenses Issued	-	Total Fees = \$135 collected

Total fees collected for licensing since January of 2008 through November 29, 2011 = \$1175.00
Thus, there is not a significant amount of money involved if Birchwood were to eliminate the requirement to have a separate Birchwood license.

It is important to note that chapter 205 applies to individuals, firms, and corporations – the individuals and entities that are hired to do certain construction work. It does not apply to the obligation to obtain the necessary building permits authorizing the work and ensuring that it is completed in conformance with Birchwood zoning laws and building code. Even if a specific contractor is not required to obtain a city license or a state license, the homeowner undertaking the work must still obtain the necessary building permits. The City of White Bear Lake, as Birchwood's agent administering Birchwood's building code, will still review the permit application and determine whether the contractor is properly licensed by the state or does not need a license.

If what is intended in the ordinance is to eliminate any requirement for a separate Birchwood license and to rely entirely on state licensing requirements, it would probably be sufficient to simply provide in the ordinance that no person may do construction work in Birchwood without a state license if a state license is required. However, the proposed amendment identifies certain

construction activities that cannot be performed in Birchwood without a state license if such a license from the state is required. It is preferable to identify these specific construction activities because they cover the major home construction and remodeling activities that occur and focus homeowners' and contractors' attention on the importance of having a state license if one is required.

The following discussion describes the rationale for the specific changes proposed in chapter 205.

205.010. Purpose This provision is proposed to be amended slightly to simply eliminate the recognition that a city license is required for certain construction activities if a state license is not required. The Purpose of the ordinance – to ensure that construction work is properly done in the city – remains the same.

205.020. CONTRACTORS LICENSE.

1. State License or Certification. The language in this section is changed to eliminate any requirement to obtain a license from the city of Birchwood to engage in construction activities. Instead, the language says that if a license is required from the state, then no person can engage in that type of construction work without the appropriate license. A sentence is also included to recognize that the word “license” should be interpreted broadly, to include other forms of authorization from the state, such as certification. In some cases, there are different levels of license, such as a Master Electrician or a Journeyman electrician. Either designation will satisfy the requirement of the ordinance, provided, of course, that the contractor not engage in work outside the limits of the license.

What these changes would do is allow a resident to select a contractor to perform certain tasks at the resident's home even though the contractor was not licensed by the state if a state license were not required to engage in the activities the contractor was hired to do. For example, as explained below, under state law, a license is not required to do plastering work if that is the only kind of work the contractor engaged in. A resident could hire an unlicensed plasterer if the resident wanted to do that. Indeed, White Bear Lake would not require a license to do plastering work either.

(a) Residential building. The first category of work listed in the proposed ordinance is “residential building.” A “residential building contractor” is defined in Minnesota Statutes § 326B.802, subd. 11 as “ a person in the business of building residential real estate, or of contracting or offering to contract with an owner to build residential real estate, by providing two or more special skills as defined in this section. A residential building contractor may also contract or offer to contract with an owner to improve existing residential real estate.”

The statute refers to providing two or more special skills. The term “special skills” is defined in section 326B.802, subd. 15 to include the following: excavation, masonry and concrete, carpentry, interior finishing, exterior finishing, drywall and plaster, residential roofing, and general installation specialties including pools, garage doors, and fireplaces.

The mechanism established by state law is that a contractor does not need to obtain a state license for residential building unless the contractor offers two or more special skills. An individual, firm, or corporation engaging in only one of these special skills is not required to obtain a state license except for roofing.

When a license from the state is required to engage in certain construction activities, it is the Commissioner of the Department of Labor and Industry who issues the license. Minnesota Statutes § 326B.805, subd. 1.

(b) Residential remodeling. The term “residential remodeling” is defined in section 326B.802, subd. 12 as “a person in the business of contracting or offering to contract with an owner to improve existing residential real estate by providing two or more special skills as defined in this section.” Again, the person must engage in two or more of the special skills identified in the statute. A license is not required from the state to engage just in carpentry, or only in plastering, for example.

A person who remodels homes and constructs new homes is not required to hold two licenses. Holding a license as a “residential building contractor” is sufficient to allow the person to engage in home remodeling as well.

(c) Residential roofing. Roofing of homes is the only single skill that requires a license. A roofer must be licensed as a residential roofer, a residential remodeler, or a residential building contractor. Minnesota Statutes § 326B.805, subd. 1.

(d) Electrical work. Electricians must be licensed. Minnesota Statutes § 326B.33.

(e) Plumbing work. Plumbers must be licensed. Minnesota Statutes § 326B.46. That statute does not require a license to do plumbing work at one’s own residence unless a local ordinance prohibits it. The proposed amendments here would not prohibit it; nor does the existing code provision prohibit it.

(f) Fire suppression. The existing White Bear Lake code recognizes that a state license is required to perform this kind of work, so a similar provision is included here.

(g) House moving. The existing White Bear Lake code recognizes that a state license is required to perform this kind of work, so a similar provision is included here.

(h) Sewer or water installation. The existing White Bear Lake code recognizes that a state license is required to perform this kind of work, so a similar provision is included here. Although the requirements for licensing plumbers would also require a license to install sewer

and water, it is helpful to list it separately so there is no doubt that such work must be done by a state-certified person if such state certification is required.

2. Building Permit. This language is included to emphasize that the licensing requirements of part 1 are independent from the obligation to obtain all necessary building permits and that an important consideration in reviewing a building permit application is to ensure that the contractor either doesn't need a state license or is properly licensed by the state.

205.030 APPLICATION AND RENEWAL. This section is proposed to be repealed. Since the proposed amendments would eliminate any requirement to obtain a city license, there is no need to have a section establishing requirements for applying for a city license.

205.040. REVOCATION OR REFUSAL TO RENEW LICENSE. This section is proposed to be repealed. Again, since there will be no city licenses required or issued if the amendments are promulgated, there is no need for language regarding revocation of a license or refusal to issue one.

205.050. EXCEPTIONS FOR HOMEOWNERS. The title of this section is changed to recognize that homeowners are not required to be licensed to do work on their own homes or property. However, they do have to obtain all necessary building permits and perform the construction in accordance with code requirements.

The present language in this section has a part 2 that applies to manufacturers. It is unclear exactly what this provision is intended to cover and it is proposed to be eliminated. Since the only provision left applies to homeowners, it is appropriate to change the title.

205.060 LIABILITY. The concept here remains the same – that the City of Birchwood shall not be liable for any damages incurred by a homeowner caused by a contractor – but the language is modified since the City of Birchwood will no longer issue any licenses to persons to engage in construction work in the city.

205.070. PENALTIES. No changes are proposed for this section. Even though the City of Birchwood would no longer issue any city licenses to contractors, a person could still violate the ordinance by engaging in certain construction activities that required a state license, which the person did not hold. This provision, while still included, is really unnecessary since new chapter 619 sets forth the penalties for any violation of the city code.

205.080. SEPARABILITY. No changes are proposed for this section.

**CITY OF BIRCHWOOD VILLAGE
COUNTY OF WASHINGTON
STATE OF MINNESOTA**

Ordinance No. 2012- 03

AN ORDINANCE AMENDING CHAPTER 205 (CONTRACTOR'S LICENSES AND BONDING) TO UPDATE THE REQUIREMENTS AND MAKE THE PROVISIONS CONSISTENT WITH THOSE OF THE CITY OF WHITE BEAR LAKE SINCE WHITE BEAR LAKE ADMINISTERS THE ZONING AND PERMITTING REQUIREMENTS OF BIRCHWOOD

WHEREAS, the City of Birchwood Village has adopted chapter 205 establishing licensing requirements for persons who engage in construction work in the city; and

WHEREAS, the City of White Bear Lake has for several years administered the building and licensing requirements of the City of Birchwood Village; and

WHEREAS, the state of Minnesota has licensing requirements for persons who engage in certain construction activities; and

WHEREAS, the City of Birchwood Village has no commercial facilities and no areas zoned commercial within the city limits and does not need local licensing requirements for commercial contractors; and

WHEREAS, the City of Birchwood Village has determined that it is not necessary to require a city license for contractors who are not required to obtain a state license.

NOW, THEREFORE, the City Council of the City of Birchwood Village ordains that chapter 203 is hereby amended to read as follows:

205 CONTRACTOR LICENSING

205.010. PURPOSE. That it is deemed in the interest of the public and residents of the City of Birchwood Village that the work involved in building, altering, repairing, and constructing buildings or structures, and installing major appliances and service facilities including all carpentry work, landscaping, and utility work, be done only by individuals, firms, and corporations that have been properly licensed by the State of Minnesota unless a license from the state is not required.

205.020. CONTRACTORS LICENSE.

Item 1 is repealed and replaced with the following.

1. State License. No individual, firm, or corporation that is required to obtain a license from the State of Minnesota to engage in the following activities shall conduct such activities in the City of Birchwood Village without such a license from the State. The term license shall include license, certification, or other authorization designated by the State.

(a) Residential building

(b) Residential remodeling

(c) Residential roofing

(d) Electrical work

(e) Plumbing work

(f) Fire suppression

(g) House moving

(h) Sewer or water installation

2. Building Permit. No building permit of any kind shall be issued to any individual, firm, or corporation required to hold a state license unless the individual, firm, or corporation holds such a license under this ordinance except as hereinafter noted.

205.050. EXCEPTIONS FOR HOMEOWNERS.

Individual home owners shall not be required to obtain a contractor's license for work done by themselves upon or in connection with their own property as long as all applicable codes and ordinances are met and proper inspections obtained and proper permits acquired.

205.060. LIABILITY. This ordinance shall not be construed to affect the responsibility or liability of any party owning, operating, conducting, or installing the above described work for damages to persons or property caused by any defect therein nor shall the City of Birchwood Village be liable for any such damages caused by any person licensed or unlicensed.

205.070. PENALTIES. Any person, firm, or corporation who shall violate any of the provisions of this ordinance shall be guilty of a misdemeanor.

205.080. SEPARABILITY. If any portion of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases might be declared unconstitutional.

**STATE OF MINNESOTA
COUNTY OF WASHINGTON
CITY OF BIRCHWOOD VILLAGE**

Ordinance No. 2012-03

AN ORDINANCE AMENDING CHAPTER 205 (CONTRACTOR'S LICENSES AND BONDING) TO UPDATE THE REQUIREMENTS AND MAKE THE PROVISIONS CONSISTENT WITH THOSE OF THE CITY OF WHITE BEAR LAKE SINCE WHITE BEAR LAKE ADMINISTERS THE ZONING AND PERMITTING REQUIREMENTS OF BIRCHWOOD

WHEREAS, the City of Birchwood Village has adopted chapter 205 establishing licensing requirements for persons who engage in construction work in the city; and

WHEREAS, the City of White Bear Lake has for several years administered the building and licensing requirements of the City of Birchwood Village; and

WHEREAS, the state of Minnesota has licensing requirements for persons who engage in certain construction activities; and

WHEREAS, the City of Birchwood Village has no commercial facilities and no areas zoned commercial within the city limits and does not need local licensing requirements for commercial contractors; and

WHEREAS, the City of Birchwood Village has determined that it is not necessary to require a city license for contractors who are not required to obtain a state license.

NOW, THEREFORE, the City Council of the City of Birchwood Village ordains that chapter 203 is hereby amended to read as follows:

205 CONTRACTOR'S LICENSING ~~AND BONDING~~

205.010. PURPOSE. That it is deemed in the interest of the public and residents of the City of Birchwood Village that the work involved in building, altering, repairing, and constructing buildings or structures, and installing major appliances and service facilities including all carpentry work, landscaping, and utility work, be done only by individuals, firms, and corporations that have been properly licensed by the State of Minnesota unless a license from the state is not required.

205.020. CONTRACTORS LICENSE.

Item 1 is repealed and replaced with the following.

1. State License. No individual, firm, or corporation that is required to obtain a license from the State of Minnesota to engage in the following activities shall conduct such activities in the City of Birchwood Village without such a license from the State. The term license shall include license, certification, or other authorization designated by the State.

(a) Residential building

(b) Residential remodeling

(c) Residential roofing

(d) Electrical work

(e) Plumbing work

(f) Fire suppression

(g) House moving

(h) Sewer or water installation

2. Building Permit. No building permit of any kind shall be issued to any individual, firm, or corporation ~~unless they hold a valid contractor's license required to hold a state license unless the individual, firm, or corporation holds such a license under this ordinance except as hereinafter noted.~~

Formatted: Underline

~~205.030. APPLICATION AND RENEWAL.~~

~~1. Application for a contractor's license shall be made to the City Clerk and such contractor's license shall be approved upon proof of applicant's qualifications thereon.~~

~~2. No application for a contractor's license shall be accepted by the City Clerk unless:~~

~~a. The applicant files proof of public liability insurance in the limits of \$100,000.00 per person and \$300,000.00 per accident for bodily injury and \$25,000.00 for property damage, and a certificate of worker's compensation insurance as required by law and;~~

~~b. The applicant signs a statement agreeing to be strictly liable to any person injured by any work done by itself or any of its subcontractors which is defective or in violation of any applicable code or ordinance, and;~~

~~c. The applicant submits an application fee for said license to be set by the City Council.~~

~~3. An existing license shall be renewable annually on or before January 1 of each year upon payment of a renewal fee as set by the City Council.~~

~~205.040. REVOCATION OR REFUSAL TO RENEW LICENSE.~~

~~1. No contractor's license shall be revoked or refused except for cause shown, which shall include but not be limited to:~~

~~a. Work of any kind done in violation of any applicable code or ordinance by the licensee or any of its subcontractors, or~~

~~b. Refusal on the part of a licensee to correct any defective work performed by such licensee or any of its subcontractors, or~~

~~c. Refusal on the part of a licensee to pay for any damages incurred by any person as a result of defective work performed by such licensee or any of its subcontractors, or~~

~~d. Any other act or omission of the licensee or any of its subcontractors which is detrimental to the health, safety, or morals of the citizens of the City of Birchwood Village.~~

~~2. Before any license issued under this ordinance is revoked or refused renewal, the licensee shall be given a public hearing before the City Council to show cause why such license should not be revoked or refused renewal. Notice of the time, place and purpose of said hearing shall be given in writing to the licensee, mailed to the licensee's address as listed on its application for license or license renewal form. Notice shall be given at least ten (10) days before said hearing.~~

~~3. No contractor's license shall be revoked or refused renewal under this provision except by majority vote of the City Council.~~

~~205.050. EXCEPTIONS FOR HOMEOWNERS.~~

~~1. Individual home owners shall not be required to obtain a contractor's license for work done by themselves upon or in connection with their own property as long as all applicable codes and ordinances are met and proper inspections obtained and proper permits acquired.~~

~~2. Manufacturers shall not be required to obtain permits for work incorporated within equipment as a part of manufacturing except as may be provided by other ordinances.~~

~~205.060. LIABILITY. This ordinance shall not be construed to affect the responsibility or liability of any party owning, operating, conducting, or installing the above described work for damages to persons or property caused by any defect therein nor shall the City of Birchwood Village be held as assuming any liability by reason of the granting of licenses to persons, firms, or corporations engaged in such work. liable for any such damages caused by any person licensed or unlicensed.~~

205.070. PENALTIES. Any person, firm, or corporation who shall violate any of the provisions of this ordinance shall be guilty of a misdemeanor.

205.080. SEPARABILITY. If any portion of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases might be declared unconstitutional.

**STATE OF MINNESOTA
COUNTY OF WASHINGTON
CITY OF BIRCHWOOD VILLAGE**

RESOLUTION 2012-10

**A Resolution Approving Ordinance 2012-03 Amending Chapter 205
to Update Licensing Requirements for Contractors Doing Work in the City**

WHEREAS, the City of Birchwood Village is a political subdivision, organized and existing under the laws of the State of Minnesota; and

WHEREAS, the City has adopted chapter 205 setting forth certain requirements for construction within the city limits; and

WHEREAS, the City of White Bear Lake has for several years administered the building and licensing requirements of the City of Birchwood Village; and

WHEREAS, the state of Minnesota has licensing requirements for persons who engage in certain construction activities; and

WHEREAS, the City of Birchwood Village has no commercial facilities and no areas zoned commercial within the city limits and does not need local licensing requirements for commercial contractors; and

WHEREAS, the City of Birchwood Village has determined that it is not necessary to require a city license for contractors who are not required to obtain a state license; and

WHEREAS, the proposed amendments make the Birchwood requirements consistent with requirements in the City of White Bear Lake; and

WHEREAS, the Birchwood Planning Commission reviewed the draft ordinance amendments and recommended approval of the proposed amendments; and

WHEREAS, the City Council held a public hearing on April 10, 2012, and no person testified in opposition to the proposed amendments; and

WHEREAS, the amendments proposed for chapter 205 are reasonable and appropriate

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF BIRCHWOOD VILLAGE, MINNESOTA, AS FOLLOWS:**

1. That Chapter 205 of the City Code, entitled CONTRACTOR'S LICENSING AND BONDING, is amended as shown in the attached document to update the licensing requirements including elimination of a city license in certain instances

2. The effective date of these Ordinance amendments shall be upon publication as required by law.

Adopted by the City Council on this 10th day of April, 2012.

Approved:

Alan Mitchell, Mayor

Attest:

Dale Powers, City Clerk/Coordinator

**State of Minnesota
County of Washington
City of Birchwood Village
Resolution No. 2012-_____**

**A Resolution Approving Ordinance 2012-_____, An Ordinance Adopting City
Administrative Complaint Process, Chapter 618**

WHEREAS, the City of Birchwood Village is a political subdivision, organized and existing under the laws of the State of Minnesota; and

WHEREAS, the City believes it will be efficient, beneficial, and useful to adopt an administrative notice and hearing process to deal with alleged ordinance violations; and

WHEREAS, the City held a public hearing on April 10, 2012 to elicit comments from the public on the proposed ordinance; and

WHEREAS, no person testified in opposition to the proposed ordinance language, and

WHEREAS, the proposed Chapter 618 to adopt an administrative complaint process is reasonable and useful.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
BIRCHWOOD VILLAGE, MINNESOTA, AS FOLLOWS:**

1. That Ordinance 2012-_____ is hereby approved [as presented / as amended].
2. That Chapter 615 of the City Code, is amended to delete sections 615.040 and 615.050.
3. That the City Code is amended to add Chapter 618 as shown in Ordinance 2012-_____.
4. The effective date of these Ordinance amendments shall be upon their publication as required by law.
5. Because the terms of the Ordinance are lengthy, the City may publish the attached summary of the amendments as allowed by statute, and need not publish the entire chapter showing all the amendments. Summary publication has been approved by at least a 4/5 vote of the City Council.

Adopted by the City Council on this 10th day of April, 2012.

Approved:

Alan Mitchell, Mayor

Attest:

Cindie Reiter, Recording Secretary

**CITY OF BIRCHWOOD VILLAGE
COUNTY OF WASHINGTON
STATE OF MINNESOTA**

AN ORDINANCE ADOPTING CITY ADMINISTRATIVE COMPLAINT PROCESS, CHAPTER 618

THE COUNCIL OF THE CITY OF BIRCHWOOD VILLAGE ORDAINS:

- 1. That Sections 615.040 and 615.050 of the Municipal Code of the City of Birchwood Village are hereby deleted and removed in their entirety and replaced with the new Chapter 618 set forth below.**
- 2. That Chapter 618 (Administrative Complaints) of the Municipal Code of the City of Birchwood Village is hereby adopted as follows:**

618. ADMINISTRATIVE COMPLAINTS

618.010. GENERALLY. A violation of any provision of the Code of Ordinances of the City of Birchwood Village is hereby deemed an administrative offense which may be subject to any administrative notice of violation and civil penalties pursuant to this chapter. Each day a violation exists constitutes a separate offense. It is in the best interest of all residents of the City to try to resolve all problems regarding nuisances and other violations of the city code by polite personal contact between neighbors. It is recognized that such personal contact may not satisfactorily correct a particular situation or there may be reasons that a resident may not desire to use that approach. If a resident determines that polite personal contact will not resolve the problem, the following steps are to be followed.

618.020. COMPLAINT. Any person may file a complaint with the City on a form provided by the City. The complaint shall identify the specific ordinance provision that is allegedly being violated and the property at which the alleged violation is occurring. Anonymous complaints may be accepted at the discretion of City staff. The name of the complainant who complains about the use of real property will be classified as confidential data at all times pursuant to the provisions of Minnesota Statutes section 13.44. City staff or local law enforcement, on their own volition, may initiate an investigation into any suspected ordinance violation.

618.030. INVESTIGATION. Upon receipt of a written complaint, or upon their own volition, City staff shall conduct an investigation of the matter to determine if a violation exists. City staff shall summarize the results of the investigation in writing. The staff report shall be a public document but no confidential or non-public data shall be disclosed.

618.040. NOTICE OF VIOLATION. The City Clerk shall make a determination whether a violation has occurred. Upon determination that a violation exists, the City Clerk shall send via regular U.S. Mail a "Notice of Violation" to the alleged violator. Said notice shall set forth the nature, date and time of the violation, the name of the official issuing the notice, direct the alleged violator to comply with the ordinance provision or provisions that are being violated within a specific period of time, shall specify any actions to be undertaken, shall inform of the scheduled penalties if the violation is not remedied, and shall inform the alleged violator of his right to a public hearing in front of the city council and the procedures and deadline for requesting a hearing.

Upon written complaint from a Complainant, if the City Clerk determines after investigation that no violation exists, then the Clerk shall mail a "Notice of No Violation" to the Complainant advising of the lack of a violation, and shall inform the Complainant of his right to a public hearing in front of the city council and the procedures and deadline for requesting a hearing.

618.050. PUBLIC HEARING. Within 15 calendar days of the date of mailing of the Notice, the recipient may file a written request with the City Clerk requesting a public hearing on the matter. The alleged violator shall describe in the request the reasons why no violation has occurred or why no further action should be taken by the City. A complainant shall describe in the request the reasons why a violation has occurred or why further action should be taken by the City. The Clerk shall provide the investigation report, Notice of Violation/No Violation, and the alleged violator's or complainant's response to the City Council for review. The City Council shall conduct the public hearing within sixty (60) days of receipt of the request. The City Council may request the Planning Commission to review the matter and provide comments prior to the public hearing. Unless the Government Data Practices Act provides otherwise, the hearing held by the City Council shall be open to the public. Upon completion of the public hearing, the City Council shall prepare a written decision on the matter that includes the determination of the City Council and the rationale for its determination. The City Council shall have the authority to dismiss the matter, uphold the violation, and reduce or waive the penalties, or modify the proposed abatement action. The City Clerk shall mail a copy of the written decision to the interested parties via U.S. mail.

618.060. ABATEMENT. If the City Council concludes that a violation has occurred, the City Clerk shall send a "Notice of Abatement" to the alleged violator. Said notice shall direct the alleged violator to comply with the ordinance provision or provisions that are being violated within a specific period of time and may specify certain actions to be undertaken. If the alleged violator does not abate the violation within the specified period of time, the City may take action itself to remedy the violation or pursue any other enforcement action or remedy available to the City.

618.070. COSTS OF ABATEMENT BILLED TO PROPERTY OWNER. If the City elects to undertake abatement of a violation, after completion of the abatement action, the City shall send an invoice for the cost of the abatement to the responsible person for payment.

618.080. CERTIFICATION ON PROPERTY TAXES. If an invoice for payment of abatement costs is not paid on or before September 1 of any given year, and the violator is a property owner in the City of Birchwood, the City may extend such sum owed as a special tax or special assessment against the property upon which the violation occurred and to certify the same to

the County Auditor for collection in the same manner as taxes and special assessments are certified and collected, as otherwise allowed by law.

618.090 CIVIL PENALTIES. Any violation of an ordinance hereunder shall be subject to an administrative penalty of up to \$500.00, payable to the City.

EFFECTIVE DATE: This Ordinance shall be in full force and effect from and after its passage and approval and publication as required by law.

Adopted by the City of Birchwood Village City Council

This 10th Day of April, 2012

Attest: _____ Mayor
Alan Mitchell

Attest: _____, Recording Secretary
Cindie Reiter

SUMMARY OF ORDINANCE 2012-_____

On April 10, 2012, the Birchwood City Council enacted Ordinance 2012-_____, entitled "An Ordinance Adopting City Administrative Complaint Process, Chapter, 618". The terms of the Ordinance are lengthy, and the City Council has approved summary publication of the Ordinance. The terms of the ordinance are summarized as follows:

- Section 618.010 (Generally) provides the general purpose of the new administrative complaint process.
- Section 618.020 (Complaint) provides the process by which an administrative review is commenced by the filing of a written complaint to the City.
- Section 618.030 (Investigation) provides that city staff shall investigate all written complaints and draft a written report.
- Section 618.040 (Notice of Violation) provides that the City Clerk shall determine whether an ordinance violation has occurred and issue by mail either a Notice of Violation or a Notice of No Violation.
- Section 618.050 (Public Hearing) provides that if either the complaining party or the alleged violator disagrees with the City Clerk's decision, then that party may file a timely written request to the City for the matter to be heard and decided by the City Council. It further provides the process by which the hearing will occur and the City Council will issue its decision.
- Section 618.060 (Abatement) provides that if a violator does not remedy the violation, then the city may take steps to abate the condition.
- Section 618.070 (Costs of Abatement Billed to Property Owner) provides that if the City is required to abate the condition, then a bill will be provided to the property owner.
- Section 618.080 (Certification on Property Taxes) provides that if the property owner does not pay the cost of abatement, then the cost may be assessed against the property as an additional special tax.
- Section 618.080 (Civil Penalties) provides for monetary penalties for an established violation.
- The Ordinance is effective upon publication of this summary.
- A full copy of Ordinance 2012-_____, is available for inspection at City Hall during regular office hours, and will be provided by mail upon written request.

EXPLANATION OF PENALTIES AND ENFORCEMENT ORDINANCE

CHAPTER 619

I. INTRODUCTION

Scattered throughout the city code are provisions describing the enforcement options and penalties available when the city code is violated. See sections 607.910, 610.060, 614.080, and 615.040, for example.

Generally, the City has the authority to go to court and seek criminal misdemeanor penalties on a violator and to seek civil judicial remedies such as an injunction. This new chapter 619 is designed to put all these penalty and enforcement provisions in one place and to clarify that regardless of the code provision that is being violated, these penalties and remedies are available to the City.

II. Section 619.010 – MISDEMEANOR

Violation of the Birchwood City Code is a misdemeanor. Misdemeanors are punishable by up to 90 days in jail and a \$1000 fine. Minnesota Statutes §§ 609.03 and 609.033. If the state were to provide in statute that a particular crime was more serious than a misdemeanor, the person could be charged with the more serious offense.

III. Section 619.020 – INJUNCTION

This section is a recognition that the City of Birchwood could elect to go to court to seek a court order enjoining certain conduct that violates the city code. The City, of course, would have to prove that it was entitled to the injunction, either a temporary one or a permanent one, under applicable law in a court of law.

IV. Section 619.030 – CITY INVESTIGATION

The City does not need to wait for a complaint to be filed under chapter 618 to decide to conduct an investigation into an alleged violation. A matter could come to the attention of the city staff or Council without a complainant first coming forward. The Council could decide to ask the staff or the Parks Committee or the Planning Commission to conduct an investigation on its own initiative.

The Council cannot take any administrative action, such as issuing a Notice of Violation or an abatement order, without first providing the alleged violator with an opportunity to be heard. The person could elect to request a hearing before the Planning Commission under section 618.050.

V. Section 619.040 – CITY OPTIONS

The fact that the City cannot take administrative action without first notifying the person and providing an opportunity for hearing does not mean the City could not elect to go directly to court. In more serious situations, the City could decide to go directly to court, and that is what this section makes clear.

VI. Section 619.050 - COLLECTION

This section is similar to section 618.080 in intent. It makes clear that if a person owes the City money relating to an enforcement action, the City may exercise any available remedies to collect the money owed. If the person is a property owner in the city, the City may certify the amount owed to the County Auditor for collection in the same manner as property taxes and special assessments.

**CITY OF BIRCHWOOD VILLAGE
COUNTY OF WASHINGTON
STATE OF MINNESOTA**

Resolution No. 2011-13

A Resolution Approving Ordinance 2011-06 Adopting Chapter 619 to Set Forth the Penalties and Enforcement Options Available to the City for Code Violations

WHEREAS, the City of Birchwood Village is a political subdivision, organized and existing under the laws of the State of Minnesota; and

WHEREAS, the City of Birchwood Village has adopted a city code establishing various requirements regulating conduct within the city limits; and

WHEREAS, provisions regarding enforcement of the city code are found throughout the code; and

WHEREAS, it is appropriate to set forth in one place in the city code those penalties that attach to violation and the enforcement options available to the City.

WHEREAS, the Birchwood Planning Commission reviewed the draft ordinance and recommended approval of the proposed ordinance; and

WHEREAS, the City Council held a public hearing on April 10, 2012, and no person testified in opposition to the proposed ordinance; and

WHEREAS, the provisions of chapter 619 are reasonable and appropriate

NOW, THEREFORE, the City Council of the City of Birchwood Village ordains that chapter 619 (PENALTIES AND ENFORCEMENT) is hereby adopted to read as follows:

1. That Chapter 619 of the City Code, entitled PENALTIES AND ENFORCEMENT, is adopted as shown in the attached document.
2. The effective date of Chapter 619 shall be upon publication as required by law.

Adopted by the City Council on this 10th day of April, 2012.

Approved:

Alan Mitchell, Mayor

Attest:

Dale Powers, City Clerk/Coordinator

**CITY OF BIRCHWOOD VILLAGE
COUNTY OF WASHINGTON
STATE OF MINNESOTA**

Ordinance No. 2011-06

**AN ORDINANCE ADOPTING CHAPTER 619 (PENALTIES AND ENFORCEMENT)
DESCRIBING THE PENALTIES THAT MAY ATTACH AND THE ENFORCEMENT
OPTIONS AVAILABLE TO THE CITY FOR CODE VIOLATIONS**

WHEREAS, the City of Birchwood Village has adopted a city code establishing various requirements regulating conduct within the city limits: and

WHEREAS, provisions regarding enforcement of the city code and the penalties for violation are found throughout the code; and

WHEREAS, it is appropriate to set forth in one place in the city code those penalties that attach to violation and the enforcement options available to the City.

NOW, THEREFORE, the City Council of the City of Birchwood Village ordains that chapter 619 (PENALTIES AND ENFORCEMENT) is hereby adopted to read as follows:

619.010. MISDEMEANOR. Any person who violates any provision of the City of Birchwood Code shall be guilty of a misdemeanor, unless state law provides for a different criminal penalty.

619.020. INJUNCTION. The City of Birchwood may seek to enjoin any conduct that is in violation of the City of Birchwood Code.

619.030. CITY INVESTIGATION. Whether or not a complaint has been filed under chapter 618, the City Council may elect to conduct an investigation into any alleged violation of the City Code. The Council may ask the Planning Commission or the Parks and Natural Resources Committee or other city employee to investigate an alleged violation and report back to the Council. After investigation, the Council may ask the alleged violator to implement certain actions or to refrain from certain conduct. The Council shall not take any action without providing the alleged violator notice of the matter and providing the person an opportunity to be heard before the Council. The alleged violator may request that the City hold a public hearing on the matter pursuant to section 618.050 of the Code.

619.030. CITY OPTIONS. The City may at any time elect to commence civil or criminal action against a person who is alleged to have violated any provision of the City Code, regardless of whether an investigation has been conducted or a hearing has been requested and held.

619.40. COLLECTION. The City may, after obtaining a court order directing the violator to pay a fine, fees, costs, disbursements, attorneys fees or any other monies to the City, seek to recover such monies through any method available to the City. If the violator is a property

owner in the City of Birchwood, the City may extend such sum owed as a special tax against the property upon which the violation occurred and to certify the same to the County Auditor for collection in the same manner as taxes and special assessments are certified and collected, as otherwise allowed by law.

Date: April 2, 2012

To: City Council

From: Jane Harper, Deputy Mayor

RE: Set Public Hearing for Amendments to Codes 611 and 611A, Adoption of New Code for Park Special Revenue Fund, Recodify Chapter 612 and Codify the Adopted Fund Balance Policy

Attached please find the following codes:

Chapter 611 Public Works Reserve Fund and Chapter 611A Capital Improvements Fund. Attached are two versions of these ordinances, one that shows the proposed changes and one clean copy without the track changes highlighted. These two ordinances were put in place when the city used a 'check book' accounting system and it was the only way to keep track of the funds. Today, the city uses the City and Town Accounting System (CTAS) that allows for funds to be segregated and controlled within the accounting system. The revisions contain no substantive changes to the content; they clean up what are two very confusing ordinances that cross reference and comingle authorities. The proposed revisions are consistent with current practice.

- Old Chapter 611 proposed to become new Chapter 810. Public Works Reserve Fund. This ordinance establishes the Public Works Reserve Fund for any funds that are designated, either legally or by the city's own choosing, to be used for a particular capital improvement project. The only designated funds the city has at this time are funds for the redevelopment of Hall/Cedar that were given to the city by Washington County when it turned back the road to the city; they are governed by the 'turn back' agreement that requires the funds to be segregated from other city funds. An example of funds that might be added in the future would be if the city chose to levy funds or assess residents for a road improvement project and the funds were collected in advance of the project; those funds would be held in the Public Works Reserve Fund. If, at a later date the city decided not to do the road improvement it would need to follow the ordinance to redesignate the funds to another purpose.
- Old Chapter 611A proposed to become new Chapter 820. The Capital Projects Fund. This ordinance established the Capital Projects Fund that holds money that is for yet unspecified capital improvements. The city occasionally dips into this fund to pay for projects that meet the definition of capital improvement (e.g. city hall improvements). There are no legal constraints on these funds; the city council could choose to move the funds back into the General Fund or use them for another purpose. However, by holding funds in this account the council is acting intentionally to set aside funds for future capital needs. An example of funds that might be held in this account would be if the city decided to save

money over several years to remodel city hall to make it more handicapped accessible.

Chapter 830. Park Special Revenue Fund. This is a new ordinance that codifies a motion passed by the City Council in December 2008. The proposed code is attached.

I am proposing that the city use the 800 series of the code for codes related to funding and finance. The following two codes are proposed to be renumbered into the 800 series.

Chapter 612. Public Improvements Financing and Assessment Ordinance. I would propose that this code be renumbered to 840. I am not proposing any other changes at this time. The city might want to review the content of this code before undertaking any major work on Hall/Cedar Avenue.

Fund Balance Policy. I propose that this policy be adopted as Chapter 800. No other changes are recommended.

~~644~~8010. PUBLIC WORKS RESERVE FUND

~~8010644~~.010. Pursuant to M.S.A. 471.57 the City of Birchwood Villages there is established a fund to be known as the “Public Works Reserve Fund: for the purpose of accounting for designated funds. It is the desire of the City Council to segregate designated and non-designated money into their respective proper accounts. The non-designated funds shall be held in the Capital Improvement Fund as authorized in Chapter 810 of the city code.”

~~8010644~~.020. FUNDING OF PUBLIC WORKS FUND. There shall be accumulated in such “Public Works Reserve Fund”:

1. The proceeds of any taxes levied for its support.
2. Fund earnings.
3. Such other revenues as may be directed by the City Council to be placed in the fund and are not required by statute to be paid into some other fund or used for purposes other than those provided in ~~644~~800.30.
4. Any funds that are required to be legally restricted for specific purposes.

~~8010644~~.030. USES OF THE FUND. The “Public Works Reserve Funds” shall be used for the following capital improvements:

- A. Specific capital improvements or type of capital improvement designated by the ordinance establishing the fund.
- B. If not so designated, the “Public Works Reserve Fund” shall be used only for capital improvements of a type for which the City of Birchwood Village is authorized to issue bonds.
- C. City Council may, at the time it places any current revenue in the Public Works Reserve Fund, designate such current revenue or portion thereof for use on a specific project or type of improvement and such designation shall have the same effect as the establishment of a separate public works reserve fund for such purpose.
- D. The City Council may submit to the voters the question of using all or part of any designated funds for some other purpose than for which the funds have been designated. If a majority of votes cast on the question is in favor of such diversion, the stipulated portion of the fund may be used for the newly approved purpose.

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~~8010644~~.040. CAPITAL IMPROVEMENT DEFINED. A capital improvement is any purchase, repair, maintenance or replacement of equipment, land or facilities having a value of five

thousand dollars (\$5,000.00) or more and a projected useful life of five or more years. These projects are medium and large in size and are not part of operating capital.

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801064.050. The City Council shall provide for the temporary investment of money belonging to the Public Works Reserve Fund in obligations in which investment of municipal funds is authorized by M.S.A. 475.66 as amended by Laws 1965, Ch. 300.

8010.060. HALL/CEDAR AVENUE PUBLIC WORKS RESERVE FUND.

A. In 1996, the City Council deposited into the Public Works Reserve Fund thirty one thousand eight hundred dollars (\$31,800) for the purpose of funding the first major repairs to Hall/Cedar Avenue (then known as County State Aid Highway 29). These funds were received from Washington County after the turn-back of the jurisdiction of County State Aid Highway 29 to the City.

B. As the city has in place a Public Improvement Financing and Assessment Ordinance (see Chapter 830), the city could finance all or a part of the costs of the Hall/Cedar Avenue improvements through an assessment. The city may use the money within the Public Works Reserve Fund to finance the costs of those improvements until the assessments have been paid off.

C. It is the intention of the city that money paid back to the city by way of assessments or other means are no longer considered designated funds, and may either be re-designated and placed back into the Public Works Reserve Fund, or may be left non-designated and placed into the Capital Projects Fund or such other account as the City Council deems necessary and proper.

8120611A. CAPITAL PROJECTS FUND

8120611A.10. PURPOSE. ~~The City of Birchwood Village establishes a Capital Projects Fund for the purpose of funding capital improvements of the city. Currently has a fund which was established pursuant to Minnesota Statutes 471.57, said fund is known as the Public Works Reserve Fund. The Public Works Reserve Fund was created to provide funding for capital improvements within the City of the type for which the City would be authorized to issue general obligation bonds.~~

~~Some of the money in the Public Works Reserve Fund is designated for specific purposes, and thereby cannot be used for other capital projects without first obtaining permission of the electorate of the City. It is the desire of the City Council to segregate designated and non-designated money into their respective proper accounts. The designated money will remain in the Public Works Reserve Fund. Non-designated funds will be held in the transferred to a new account to be known as the Capital Projects Fund. The designated funds will be held in separate funds as authorized in Chapter 800 of the city code.~~

8120611A.20. CAPITAL IMPROVEMENT PROJECTS DEFINED. ~~A capital improvement is any purchase, repair, maintenance or replacement of equipment, land or facilities having Any a value project, approved by the City Council, that involves the expenditure of five One Thousand Dollars (\$15,000.00) or more, or that involves the purchase, repair, maintenance or replacement of anything with or a projected useful life of five (5) one (1) year or more years is a capital project. These projects are medium and large in size and are not part of operating capital.~~

8120611A.30. LIMITATION OF USES OF THE FUNDS. ~~The funds which have been placed within the Capital Projects Fund shall be used, at the discretion of the City Council, for capital improvement projects. The City Council shall also, at its discretion, be authorized to transfer money out of the Capital Projects Fund to such other City fund or funds as the City Council deems necessary and proper.~~

611A.40. DELINEATION OF EXISTING FUNDS. ~~As of October 30, 1996, City records show that the Public Works Reserve Fund has a balance of One Hundred Three Thousand Three Hundred Forty Seven Dollars (\$103,347.00). A check of records indicates that of the money in the Public Works Reserve Fund, Thirty One Thousand Eight Hundred Dollars (\$31,800.00) are designated funds. These funds were received from Washington County after the turn-back of County State Aid Highway 29 with the stipulated designation that it be used for the first major repair on that road. So far, none of that money has been used. Accordingly City Staff is hereby ordered and directed to establish a Capital Projects Fund pursuant to the terms and conditions of this Ordinance. Said Fund is to be established with all of the proceeds of the Public Works Reserve Fund with the exception of Thirty One Thousand Eight Hundred Dollars (\$31,800.00), which shall remain in the Public Works Reserve Fund.~~

8120611.450. FUTURE FUNDING OF CAPITAL PROJECTS FUND.

There shall be accumulated in such Capital Projects Fund:

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1. The proceeds of any taxes levied for its support.

2. Fund earnings.

3. Such other revenues as may be directed by the City Council to be placed in the fund and are not required by statute to be paid into some other fund or used for some other purposes.

1. ~~The City Council may place additional funds within the Capital Projects Fund from time to time as the City, in its sole discretion, deems necessary and proper.~~

2. ~~The City may, in the future, conduct improvements to the former County State Aid Highway 29. As the City has in place a Public Improvement Financing and Assessment Ordinance (see Chapter 612), it is likely that the City would also assess all or a part of the costs of said improvements. Nonetheless, the City may use the money within the public Works Reserve Fund in order to finance the costs of those improvements until the assessments have been paid off. It is the intention of the City that money paid back to the City by way of assessments or other means are no longer considered designated funds, and may either be re-designated and placed back into the Public Works Reserve Fund, or may be left non-designated and placed into either the Capital Projects Fund or such other account as the City Council deems necessary and proper.~~

81206HA.650. CONSTITUTIONALITY. If any portion of this Ordinance is for any reason held invalid or unconstitutional, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

81206HA.760. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage and publication according to law.

~~WHEREUPON, this Ordinance was declared passed and adopted by the City Council of the City of Birchwood Village, Washington County, Minnesota, this 11th day of March, 1997.~~

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810. PUBLIC WORKS RESERVE FUND

810.010. Pursuant to M.S.A. 471.57 the City of Birchwood Village establishes a fund to be known as the "Public Works Reserve Fund: for the purpose of accounting for designated funds. It is the desire of the City Council to segregate designated and non-designated money into their respective proper accounts. The non-designated funds shall be held in the Capital Improvement Fund as authorized in Chapter 810 of the city code.

810.020. FUNDING OF PUBLIC WORKS FUND. There shall be accumulated in such "Public Works Reserve Fund":

1. The proceeds of any taxes levied for its support.
2. Fund earnings.
3. Such other revenues as may be directed by the City Council to be placed in the fund and are not required by statute to be paid into some other fund or used for purposes other than those provided in 800.30.
4. Any funds that are required to be legally restricted for specific purposes.

810.030. USES OF THE FUND. The "Public Works Reserve Funds" shall be used for the following capital improvements:

- A. Specific capital improvements or type of capital improvement designated by the ordinance establishing the fund.
- B. If not so designated, the "Public Works Reserve Fund" shall be used only for capital improvements of a type for which the City of Birchwood Village is authorized to issue bonds.
- C. City Council may, at the time it places any current revenue in the Public Works Reserve Fund, designate such current revenue or portion thereof for use on a specific project or type of improvement and such designation shall have the same effect as the establishment of a separate public works reserve fund for such purpose.
- D. The City Council may submit to the voters the question of using all or part of any designated funds for some other purpose than for which the funds have been designated. If a majority of votes cast on the question is in favor of such diversion, the stipulated portion of the fund may be used for the newly approved purpose.

810.040. CAPITAL IMPROVEMENT DEFINED. A capital improvement is any purchase, repair, maintenance or replacement of equipment, land or facilities having a value of five

thousand dollars (\$5,000.00) or more and a projected useful life of five or more years. These projects are medium and large in size and are not part of operating capital.

810.050. The City Council shall provide for the temporary investment of money belonging to the Public Works Reserve Fund in obligations in which investment of municipal funds is authorized by M.S.A. 475.66 as amended by Laws 1965, Ch. 300.

810.060. HALL/CEDAR AVENUE PUBLIC WORKS RESERVE FUND.

A. In 1996, the City Council deposited into the Public Works Reserve Fund thirty one thousand eight hundred dollars (\$31,800) for the purpose of funding the first major repairs to Hall/Cedar Avenue (then known as County State Aid Highway 29). These funds were received from Washington County after the turn-back of the jurisdiction of County State Aid Highway 29 to the City.

B. As the city has in place a Public Improvement Financing and Assessment Ordinance (see Chapter 830), the city could finance all or a part of the costs of the Hall/Cedar Avenue improvements through an assessment. The city may use the money within the Public Works Reserve Fund to finance the costs of those improvements until the assessments have been paid off.

C. It is the intention of the city that money paid back to the city by way of assessments or other means are no longer considered designated funds, and may either be re-designated and placed back into the Public Works Reserve Fund, or may be left non-designated and placed into the Capital Projects Fund or such other account as the City Council deems necessary and proper.

820 CAPITAL PROJECTS FUND

820.10. PURPOSE. The City of Birchwood Village establishes a Capital Projects Fund for the purpose of funding capital improvements of the city.

It is the desire of the City Council to segregate designated and non-designated money into their respective proper accounts. The non-designated funds will be held in the Capital Projects Fund. The designated funds will be held in separate funds as authorized in Chapter 800 of the city code.

820.20. CAPITAL IMPROVEMENT DEFINED. A capital improvement is any purchase, repair, maintenance or replacement of equipment, land or facilities having a value of five thousand dollars (\$5,000.00) or more, or e or a projected useful life of five (5) or more years. These projects are medium and large in size and are not part of operating capital.

820.30. USES OF THE FUNDS. The funds which have been placed within the Capital Projects Fund shall be used, at the discretion of the City Council, for capital improvements. The City Council shall also, at its discretion, be authorized to transfer money out of the Capital Projects Fund to such other city fund or funds as the City Council deems necessary and proper.

820.40. FUNDING OF CAPITAL PROJECTS FUND.

There shall be accumulated in such Capital Projects Fund:

1. The proceeds of any taxes levied for its support.
2. Fund earnings.
3. Such other revenues as may be directed by the City Council to be placed in the fund and are not required by statute to be paid into some other fund or used for some other purposes.

820.50. CONSTITUTIONALITY. If any portion of this Ordinance is for any reason held invalid or unconstitutional, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

820.60. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage and publication according to law.

830 PARK SPECIAL REVENUE FUND

830.010. PURPOSE. Pursuant to M.S. ##### the City of Birchwood Village establishes a Parks Special Revenue Fund for the purpose of providing funding for improvements to the city parks and park facilities.

830.020. REVENUES. There shall be accumulated in such "Park Special Revenue Fund" the following revenues:

1. The dock fees
2. The boat slip permit fees
3. Boat lift storage permit
4. Such other revenues as may be directed by the City Council to be placed in the fund.

830.030. DEFINITIONS.

830.031. PARK IMPROVEMENTS. Park improvements include acquisition, development, maintenance, and enhancements of city park lands and facilities.

830.032. CITY PARK SYSTEM. The city park system includes the following:

1. Four dedicated municipal parks (Tighe-Schmidt, Bloomquist Field, Wildwood Avenue Boulevard and Nordling Park);
2. Six lake easements providing access to White Bear Lake (Kay, Dellwood, Elm, Birch, Ash and Kurt Feistner Memorial Preserve);
3. Several undeveloped areas of open space (Lakewood Rearrangement, Out Lot A, Hall's Marsh, and Birchwood City Hall);
4. Existing trails (Ash and Grotto Street walkways); and
5. Unimproved street right-of-ways which offer potential pedestrian trails (Birch, Ash, Grotto, Highwood).

830.040. USE OF FUNDS.

830.041. The funds which have been placed within the Park Special Revenue Fund shall be used, at the discretion of the City Council, for park improvement projects within the city park system in accordance with the definitions in section 618.030 and for the following purposes:

1. Acquisition of land or physical structures for use in the city park system.
2. Development of facilities within the city park system including such things as recreational facilities; access roads; parking lots; boundary fencing, signage; utilities; and restrooms.

3. Maintenance of existing facilities including such things as preventing the deterioration of existing structures; removal of structures not useful to park function, dangerous land forms, or attractive nuisances; and stabilizing or rehabilitating natural resources.
4. Enhancements of existing facilities including capital expenditures that increase the value, improve the usability, and extend the useful life of a facility.

830.042. The City Council may designate the fund proceeds or any portion thereof for use on a specific project or type of improvement and such designation shall have the same effect as the establishment of a separate fund for such purpose.

830.043. The funds in the Park Special Revenue Fund shall not be used to purchase equipment for or fund the general operating costs of the city park system. General operating costs include such things as utility bills, routine grounds maintenance such as lawn mowing, snow removal, wages and benefits of park employees, etc.

830.044. The City Council shall, at its discretion, be authorized to transfer money out of the Park Special Revenue Fund to such other city fund of funds as it deems necessary and proper.

830.050. INVESTMENT OF FUNDS. The City Council shall provide for the temporary investment of funds belonging to the Park Special Revenue Fund in obligations in which investment of municipal funds is authorized by Minnesota Laws and Statutes.

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XFINITY Connect

bwclerk@comcast.net

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Re: Parks Maintenance Costs

From : j lund 612 <j.lund.612@comcast.net>

Tue, Apr 03, 2012 02:07 AM

Subject : Re: Parks Maintenance Costs**To :** bwclerk@comcast.net

Hi The trees at the tennis court / The lake track cleanup / A tree trimming at tigde S / The Park fund to be able to use it as we the parks need to with out going to the council for approval . The parks would go threw you the clerk for approval of spending park fund money on park improvement.
The raingarden cleanup.
The new steps will have come out of park fund money or gen fund.

From: bwclerk@comcast.net**To:** "j lund 612" <j.lund.612@comcast.net>**Sent:** Monday, April 2, 2012 11:50:15 AM**Subject:** Parks Maintenance Costs

John, can you send me an e-mail on what the particulars are on this agenda item? Mayor Mitchell wants something in the packet. If you can't, I understand.
Thanks!

CITY OF BIRCHWOOD VILLAGE

Dale Richard Powers, MA, AICP
City Clerk/Coordinator
207 Birchwood Avenue
Birchwood Village, MN 55110
651-426-3403 tel
651-426-7747 fax
320-493-8930 cell

11A

ELFERING & ASSOCIATES



Memo

TO: Honorable Mayor and City Council Members
FROM: Kristie Elfering, City Engineer
DATE: April 2, 2012
RE: Sanitary Sewer System Maintenance

As Council is aware the City experienced issues with the Wildwood Lift Station last July. White Bear Lake Public Works staff determined at that time that gravel was entering the sanitary sewer system resulting in damage to the pumps. As part of the discussions regarding this maintenance work the City identified several sanitary sewer system projects for 2012.

One project discussed was televising the remaining sanitary sewer mains within the City that have not been rehabilitated. As part of the No Fault Sewer Back-up Insurance that the City receives through the Minnesota League of Cities a sewer maintenance program was developed. That plan outlines televising any older sewer segments every five years to determine if the condition has changed. The last major televising within the City took place in 2007. The remaining sections that are scheduled to be televised in 2012 include the cul-de-sacs on Oakridge Drive, Birchwood Courts, White Pine Lane, and Jay Street. It is possible that the condition has changed on a segment within these areas that is resulting in material entering the system. The estimated cost for a Contractor to televise the remaining segments is \$4,200. We are requesting that the Council determine if they would like televising quotes brought back to a future Council meeting.

A second project discussed was sealing the sanitary sewer manhole casting rings. Over time the grout between the rings deteriorates creating gaps that allow material and groundwater to infiltrate the sanitary sewer manholes. Half of the manholes within the City have been addressed leaving the second half in potential need for maintenance. Council did discuss the option of completing the televising first before moving on to this project. If Council would like to change that directive we would also like direction at this time.

The third project is the replacement of the pumps at the Birchwood Lane lift station. We would like the Council's authority to discuss the pump replacement with the White Bear Public Works staff to determine if the replacement is warranted at this time. A report would be brought back to a future Council meeting.

If you have any questions please feel free to contact me at (763) 780-0450 ext. 2. I will also be in attendance at the April 10th, 2012 Council meeting.

Minnesota Department of Natural Resources

Fisheries Division: Aquatic Plant Management
1200 Warner Road St. Paul, MN 55106
Telephone: 651-259-5807
Fax: 651-772-7974



March 21, 2012

Dear Lake Resident:

With abnormally low water levels exposing lakebed on many state lakes, the Minnesota DNR is reminding riparian property owners that what looks like “dry land” still may be subject to rules regulating what can and cannot be done on shoreland and in public waters.

The DNR has been receiving numerous reports of people cutting, raking or otherwise disturbing aquatic plants in areas recently exposed by receding water levels. If these areas are below what’s known as the Ordinary High Water level (OHW), any disturbance or removal of vegetation usually requires a DNR permit, and some activities are prohibited (MS 84.091; MS 103G.615; MR 6280).

The ordinary high water level is an elevation indicating the highest water level that has been maintained for a sufficient period of time to leave evidence on the landscape; generally speaking, it’s where natural vegetation changes from predominantly aquatic to predominantly terrestrial. For many lakes, the OHW is a set elevation that has been established by collecting data over several decades. On some lakes with a very shallow shelf, the current water level could be 100’ or more waterward of the OHW, leaving a large expanse of exposed lakebed. This lakebed continues to be below the OHW even when it has been exposed due to low rainfall. An aquatic plant management (APM) permit is required for control of emergent aquatic plants (bulrush, cattail, rushes, etc.) in public water basins including aquatic plants that are growing on the dry lake beds (MR 6280.0250). Removal of emergent aquatic plants without a permit is a misdemeanor violation and can result in a fine and restoration order (MS 103G.615). A list of the common emergent plants can be found on the Restore Your Shore native plant encyclopedia. Search “aquatic” habitat to bring up a list of the common floating leaf and emergent aquatic plants. <http://webapps8.dnr.state.mn.us/restoreyourshore>

Emergent aquatic plants are extremely valuable to the lake, fish, and wildlife. Emergent aquatic plants protect shorelines from erosion and wave action, stabilize bottom sediments, improve water quality by intercepting phosphorus before it reaches the water, provide valuable habitat to fish and wildlife, and protect nests from wave and wake action. Fluctuating water levels are a natural and important part of lake ecology and several emergent aquatic plants, such as bulrush, rely on periods of low water to germinate and re-establish depleted stands. Wildlife managers use periodic drawdown as a management tool to promote growth of emergent aquatic plants and improve waterfowl and wildlife habitat. Removal of emergent vegetation is a form of habitat destruction and can have negative effects on fish, wildlife, and the lake.



If you would like to apply for a permit to control aquatic plants, permit applications can be found online: <http://www.dnr.state.mn.us/shorelandmgmt/apg/regulations.html>.

Other activities below the OHW also may require a permit, including grading or blading, filling with sand or gravel or construction of boulder or other retaining walls. Control of upland vegetation growing in the exposed lakebed is not regulated by DNR. To minimize impacts to the lakebed, raking or dragging a device for control of **upland** vegetation should be limited to a width necessary for access to a dock. Remaining upland plants will die when higher water levels return.

The DNR also has received reports of people operating off-highway vehicles on exposed lake beds. It is illegal to operate off-highway vehicles on unfrozen public waters (MS 84.773). Off-highway vehicles include: off-highway motorcycles (MS 84.787); all terrain vehicles (MS 84.92); off-road vehicles (MS 84.797); and recreational vehicles capable of cross country travel on natural terrain without the benefit of a road (this includes motor vehicles licensed for highway operation which are being used for off-road recreational purposes, MS 84.90). Further, it is illegal to operate an off-highway vehicle in wetlands or public waters in a manner that carelessly upsets the natural and ecological balance of a wetland or public water and/or exceeds de minimis limits on wetland destruction. Violations can be misdemeanors or gross misdemeanors and lead to civil citation, fines, restitution, and/or forfeiture of the vehicle (MS 84.774-775). The DNR encourages anyone operating an off-highway vehicle to review the laws prior to recreation.

FOR MORE INFORMATION

For more information on the Aquatic Plant Management Program contact Sean Sisler 651-259-5807. For more information on filling, sand blankets, excavating, or other physical alteration of the lakebed contact the Area Hydrologist Molly Shodeen 651-259-5802. For more information on regulations on off-highway vehicles contact the DNR Information Center at 651-296-6157 or toll free 1-888-MINNDNR (646-6367).

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Sisler", with a long horizontal flourish extending to the right.

Sean Sisler

Aquatic plant Management Specialist

Media contacts: Steve Enger, DNR aquatic plant management supervisor; 651-259-5092;
Sean Sisler, aquatic plant management specialist, 651-259-5807

Exposed lake bed is subject to shoreland rules

With abnormally low water levels exposing lakebed on many state lakes, the Minnesota DNR is reminding riparian property owners that what looks like “dry land” still may be subject to rules regulating what can and cannot be done on shoreland and in public waters.

The DNR has been receiving numerous reports of people cutting, raking or otherwise disturbing aquatic plants in areas recently exposed by receding water levels. If these areas are below what’s known as the Ordinary High Water level (OHW), any disturbance or removal of vegetation usually requires a DNR permit, and some activities are prohibited.

The ordinary high water level is an elevation indicating the highest water level that has been maintained for a sufficient period of time to leave evidence on the landscape; generally speaking, it’s where natural vegetation changes from predominantly aquatic to predominantly terrestrial. For many lakes, the OHW is a set elevation that has been established by collecting data over several decades. The lakebed continues to be below the OHW even when it has been exposed due to low rainfall.

While fluctuating water levels can pose an inconvenience for riparian property owners, they’re a natural and important part of lake ecology. Some emergent aquatic plants, such as bulrush, need periods of low water to germinate and re-establish depleted stands. Wildlife managers use periodic drawdown as a management tool to promote growth of emergent aquatic plants and improve waterfowl and wildlife habitat.

Emergent aquatic plants are protected by state law because they’re extremely valuable to the health of lakes, fish, and wildlife. Such plants protect shorelines from erosion, stabilize bottom sediments, improve water quality by intercepting phosphorus before it reaches the water, provide valuable habitat for fish and wildlife, and protect nests from wave and wake action.

“Removal of emergent vegetation is a form of habitat destruction and it can have negative effects on fish, wildlife, and water quality,” says DNR aquatic plant management specialist Sean Sisler. “It also could be illegal.”

An aquatic plant management (APM) permit is required for control of emergent aquatic plants (bulrush, cattail, rushes, etc.) in public water basins, including aquatic plants that are growing on dry lake beds. Removal of emergent aquatic plants without a permit is a misdemeanor violation and can result in a fine and restoration order. Permit applications can be found online at <http://www.dnr.state.mn.us/shorelandmgmt/apg/regulations.html>.

Other activities undertaken below the OHW, such as grading or blading, filling with sand or gravel, and construction of boulder or other retaining walls, also are regulated and may require a DNR permit. Control of upland vegetation (e.g. tree saplings) growing in the exposed lakebed is not regulated by DNR. To minimize impacts to the lakebed of public waters, raking or dragging a device for control of upland vegetation should be limited to a width necessary for access to a dock. Remaining upland plants will die when higher water levels return.

The DNR also has received reports of people operating off-highway vehicles on exposed lake beds. It is illegal to operate off-highway vehicles on unfrozen public waters, or in a manner that causes wetland destruction.

- END -