



AGENDA OF THE REGULAR MEETING OF
THE PLANNING COMMISSION
CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
August 31, 2016
7:00 P.M.

CALL TO ORDER

APPROVE AGENDA

REGULAR AGENDA

- a. Reviewing City Code 605.043 while retracting/striking language in 607.360*
- b. Review and Discuss Ordinance Opting Out of Recently Passed Legislation Requiring Cities to Permit Temporary Family Health Care Dwelling Units*
- c. Review Birchwood Safety Committee Ordinance regarding Sex Offenders in Birchwood*
- d. Review and Discuss changes to Birchwood's definition of Impervious Surface*
- e. Considering adding a deadline for building permits to City Code (New Construction?)

ADJOURN

* Denotes items that have supporting documentation provided



MEMORANDUM

TO: Birchwood City Council
FROM: Mike Anderson, City Administrator
DATE: August 8, 2016
SUBJECT: Animal Ordinance

Ordinance Language 605.043

At the July Council Meeting a resident requested to allow all dogs in City Parks and Lake Tracts. The Council wanted to look at possible changes to the language to allow dogs in all City Parks. Attached is some language that would allow for this to happen. The Council can make changes to the wording if they choose to make it easier to understand.

If you have questions regarding this change please contact Mike Anderson at 651-426-3403 or

Mike.Anderson@CityofBirchwood.com

(3) License. No person shall keep, maintain Vietnamese pot-bellied pigs on property located within the City of Birchwood Village unless a license is obtained pursuant to the provisions stated herein. Application shall be made on a form provided by the city Clerk. The fee shall be established from time to time by resolution as set forth in Chapter 701.

(i) A license shall be issued for a period of two years

(ii) Upon completion of the application form, receipt of the license fee, and proof that the Vietnamese potbellied pig is free from pseudorabies, the City Clerk shall cause a license to be issued to the applicant.

(4) Inspection, The Animal Control Officer shall, at any reasonable time, be permitted upon the premises where Vietnamese pot-bellied pig(s) are kept for the purpose of making an inspection to determine compliance with this Chapter.

605.030. TAG AND COLLAR.

605.031. Upon complying with the provisions of 605.020 of this Code, there shall be issued to the applicant a numbered metallic tag stamped with the number and the year issued and labeled "LICENSED CITY OF BIRCHWOOD VILLAGE".

605.032. Every owner is required to see that the tag is securely fastened to the dog's choke chain, collar, or harness of durable material which must be worn by the dog at all times.

605.033. The fact that a dog is without a license attached to a collar shall be presumptive evidence that the dog is unlicensed.

605.040. RESTRAINT. The owner shall keep his dog under restraint at all times and shall not permit such dog to be at large off the premises or property of the owner.

605.041 ANIMALS AT LARGE. No animal shall be allowed to be at large in the City.

“Amended by Ordinance 1998-1; May 12, 1998.”

605.042. The owner of a dog which habitually chases vehicles or chases or threatens pedestrians shall keep his dog under restraint at all times.

605.043. No person in custody of any animal shall permit said animal to enter and remain in any public building or on the Public Lake Tract known as Kay Beach. Dogs in a public park or on any Public Lake Tract other than Kay Beach must be kept under restraint. ~~Service Dogs for disabled persons shall be exempted from this provision.~~

“AMENDED BY ORDINANCE 2010-12-14-E1; DECEMBER 14, 2010”

605.044. REMOVAL OF ANIMAL FECES. Any person having ownership, custody or control over an animal on any property within the City shall immediately remove, and dispose of in a sanitary manner, all animal feces produced by such animal. If such feces are not removed,

607.360. ~~No person being in custody of any animal shall permit said animal to enter and remain in any beach area, park, nature interpretive area, wildlife refuge, or park building, whether leashed or otherwise.~~

607.370. No person shall voluntarily enter the water of any lake without being garbed in a bathing suit sufficient to cover his or her person and equal to the standards generally adopted and accepted by the public.

607.380. WHITE BEAR CONSERVATION DISTRICT. No person shall violate any provision of any White Bear Lake Conservation District ordinance, rule, or regulation which provision applies to Lake Easement Tracts.

607.400. CAMPING.

607.410. No person shall establish or maintain any camp or other temporary lodging or sleeping place in any Open Space Site except by permit and then only in areas specifically designated for such use.

607.420. No person shall camp for a period longer than that authorized by the permit.

607.430. All garbage or refuse of any kind shall be placed in receptacles provided for that purpose.

607.440. No person shall install permanent camp facilities or physically alter the camp site.

607.450. No person shall wash cooking and eating utensils, or clean fish except at locations designated for such use.

607.460. No person shall cut or gather wood on any Open Space Site for fuel other than that provided by the Department and stored for such use.

607.470. No person shall desert a camp site until the site is thoroughly cleaned.

607.480. No person or group of persons shall exclusively use a park shelter unless a specific permit has been granted by the Director for such use.

607.490. Permits for shelter use or camping shall be issued to adults only, and said adult shall be on the premises at all times during the duration of the permit.

607.500. DESTRUCTION AND LITTERING.

607.510. DEFACEMENT, DESTRUCTION OF PROPERTY AND RESOURCES.

MEMORANDUM

TO: Mike Anderson, City Administrator

FROM: H. Alan Kantrud, City Attorney

DATE: July 29, 2016

SUBJECT: Consider Approval of Ordinance Opting Out of Recently Passed Legislation Requiring Cities to Permit Temporary Family Health Care Dwelling Units

Introduction

In this year's legislative session a bill was passed that requires cities to allow, "temporary accessory dwelling units". The law exempts said applications for units that meet the definition from typical zoning authority and requires cities to approve them within 15 days. The law requires the dwellings to be permitted with only a doctor's note confirming a qualified condition on the part of the resident(s) and provides blanket exceptions to typical building, zoning, and fire regulations. While being debated, many Minnesota cities presented concerns and objections to allowing said structures for health, safety, and neighborhood concerns to the legislature through the League of Minnesota Cities. The end result was a law requiring cities and counties allow them; however, the law also provides that cities and counties may opt out of the law by local ordinance. The new law goes into effect on September 1, 2016. The attached opt out ordinance is attached for consideration.

Discussion

The requirement of approving this new form of housing in the City without regard to standard zoning procedures has many implications to the City and neighborhoods as it creates higher densities by allowing two dwelling units on lots zoned for only one dwelling unit. From a planning standpoint there are many concerns with the new law including:

- Not requiring a survey (as is required for many other permits and structures) so the actual location may not be correct
- There is no means to process or reject a temporary CUP
- The permit circumvents the public input process
- The permit is automatically extended with no option to revoke (arbitrary on its face)
- There is no reference to compliance with shoreland, floodplain or wetland requirements

There are several alternatives in Birchwood to house those needing temporary housing for health reasons. Those include: family member spare bedrooms, existing apartment-stock,, assisted living facilities, short term health care facilities, and various group homes.

There are provisions within the legislation that are in conflict with other statutes as well. Some of the information required for permits is private and as such there are HIPPA data handling (privacy) concerns. The legislation requires the City to review and enforce its provisions but does not provide the tools and finances to do so (unfunded mandate). Based on Birchwood's adopted policies, ordinances, and codes the provisions of this legislation are not consistent with the City's objectives. The legislation allows people to live in a structure that does not have to meet state building, plumbing, electrical code or building permit requirements.

This legislation may be well-intended but it does not adequately address concerns of the City. If the City does not adopt the opt out ordinance, starting September 1, 2016, people will be able to move in these temporary dwelling units (similar to a "Tiny House") onto lots that have an existing home with no way for the City to say, "no." By opting out of this law, the City protects its zoning authority while also reserving the right to review its own ordinances if there is a desire to provide for this type of housing. Once considered by the City in a thoughtful manner such a housing option may be in the best interests of the City but it will be on the City's terms and subject to much more review, process and authority.

Commission Review

The Planning Commission meeting will be reviewing the proposed ordinance.

Budget Impact

None

Recommendation

Staff recommends the approval of an Ordinance opting out of the State Law allowing temporary dwelling units until such further time as the Planning Commission identifies a need for them in Birchwood or a more well-thought-out Ordinance is presented that allows for citizen input and some modicum of oversight and discretion.

Attachment

1. Proposed Ordinance
2. League of Minnesota Cities' Summary of Temporary Family health Care Dwelling Statute

ORDINANCE NO. 2016-08-16

**AN ORDINANCE OPTING-OUT OF
THE REQUIREMENTS OF
MINNESOTA STATUTES, SECTION 462.3593**

WHEREAS, on May 12, 2016 Governor Dayton signed into law the creation and regulation of temporary family health care dwellings, codified at Minn. Stat. 462.3593, which permit and regulate temporary family health care dwellings;

WHEREAS, subdivision 9 of Minn. Stat. 462.3593 allows cities to "opt out" of those regulations;

THE CITY COUNCIL OF THE CITY OF BIRCHWOOD, MINNESOTA, ORDAINS:

SECTION 1. Section _____ of the Birchwood Code of Ordinances is hereby added as follows:

Sec. _____. OPT-OUT OF MINNESOTA STATUTES, SECTION 462.3593.

Pursuant to authority granted by Minnesota Statutes, Section 462.3593, subdivision 9, the City of Birchwood opts-out of the requirements of Minnesota Statutes, Section 462.3593.

SECTION 2. This ordinance shall take effect after the approval by the City Council and publishing in the official newspaper.

The Birchwood City Council approved this Ordinance o August 17, 2016.

Mayor Wingfield

Attest:

Mike Anderson: City Clerk

Report to the City Council on August 17, 2016
City of Birchwood Village
Safety and Crime Prevention Committee

Committee Objective: The goal of the Safety and Crime Prevention Committee is to make Birchwood safe for all citizens, children and seniors in particular, and to proactively address crime and safety issues.

Committee Activities and Research:

- The committee has met many times over the course of the last six months with a focus on researching, discussing and drafting a Level III Sex Offender Ordinance.
- We met with our City Attorney Alan Kantrud and corresponded via e-mail and have received feedback on our work and answers to questions.
- We also met with and received information from Brian Collins, M.S. *Community Notification Program Director Risk Assessment/Community Notification Unit for the State of Minnesota.*
- Additionally, we are setting up a meeting with the Oakdale Chief of Police, Bill Sullivan to learn how Oakdale is handling this issue.
- Invited and attended the Mahtomedi City Council workshop on their ordinance July 19, 2016 to gain an update on their progress/findings.

The following goals guided our committee's work including:

- A goal to draft effective and defensible code.
- Examine and Enforce a Safety Buffer: A desire to create a Safety Buffer from Level III Sex Offender living in or near to parks, play areas, etc. where children congregate.
- Consistency: Any Residency Restriction Ordinance must be consistent with our current Safe Zone Ordinance.
- No Banishment: Develop ordinance that is defensible, banishing someone from a community is a form of punishment and, in the context of released offenders who have served their sentences, would constitute an illegal *ex post facto* punishment. *Doe v. Miller*, 405 F.3d 700, 719 (8th Cir. 2005) (citing *Smith v. Doe*, 538 U.S. 84 (2003) and *United States v. Ju Toy*, 198 U.S. 253 (1905)).
- Myths: Understand the Myths around Sex Offenders and base our ordinance/laws on reason not fear. We found, according to the Jacob Wetterling Resource Center: *There is a continuum of sex offenders, approximately half of them being adults with the other half juveniles. There is no "one size fits all", as often portrayed in the media. Sex offenders commit a wide range of offenses, sometimes once and sometimes many times. Most sexual offenses are coercive or enticing by nature while fewer are more violent or heinous in many respects. The vast majority of sexual crimes are first-time offenders and may be someone the victim cares about which is why the majority of sex crimes are never reported.*
- Although all convicted sex offenders are required to register, only those deemed to

have a high likelihood to re-offend are subject to widespread notification. Level 3 — The offender has a higher risk of re-offending.

- Risk Management: Understand there could be legal challenges, such as constitutionality and measure risks and effectiveness of our ordinances. Research city's insurance coverage and deductible and make recommendation to city council to understand whether additional coverage may be needed.
- Determine exceptions to Sex Offender ordinance such as:
 - Department of Correction owned home
 - Preexisting property ownership
 - Minor under the age of 18
 - Married to or living with Birchwood resident
- Other: Creating and adopting Residency Restrictions is only one step, if safety of children and vulnerable people is our priority, we need to continue our work. The adoption of this ordinance is one possible layer of protection. If prevention remains a concern, we need to consider engaging our community at school and elsewhere, speaking to parents and other adults entrusted to the care of children. Prevention requires an organic approach at the community level. We have been told the local school district and other community-based organizations would enthusiastically support prevention efforts and will work with us as partners in this effort to create a safe community for all.

The draft ordinance we are presenting to the council is a compromise. Birchwood residents range in their views from those who believe that no Sex Offender ordinance of any kind should be adopted to those who would prefer an ordinance with no exceptions for any reason. Over the course of meetings and many discussions our committee has drafted the ordinance with multiple exceptions with the above goals in mind.

Redrafted on August 11, 2016 from the 6/27/16 presented ordinance:

This proposed the following safety committee members support ordinance:

Megan Malvey, 525 Lake Avenue
Andrew Jackola, 426 Birchwood Court
Bernie Kruse, 139 Wildwood Avenue
Bridget Sperl, 110 Birchwood Avenue
Jim Andersen, 2 Five Oaks Lane
Jessy Granec, 363 Lakewood Lane
Kathy Blegen-Huntley, 620 Birchwood Avenue
Terry Granec, 363 Lakewood Lane
Rachel Schuler, 22 Oakridge Drive

Findings and Intent:

It is the intent of this ordinance to serve the city's compelling interest to promote, protect and improve the health, safety and welfare of the community by restricting certain predatory offenders from establishing residency near locations where children regularly congregate in concentrated numbers.

This ordinance, in conjunction with Birchwood's Safe Zone Ordinance, aims to reduce opportunities for predatory behavior by those with the highest risk to re-offend, toward potential victims who access public spaces in Birchwood.

When an offender assigned to risk level III is released from confinement or a residential facility to reside in the community or changes residence while on supervised or conditional release, the agency responsible for the offender's supervision shall take into consideration the proximity of the offender's residence to that of other level III offenders and proximity to schools and, to the greatest extent feasible, shall mitigate the concentration of level III offenders and concentration of level III offenders near schools. Minn. Stat. § 244.052, subd. 4a (2015).

Birchwood does not have its own law enforcement agency, but instead relies on police protection from the Office of the Washington County Sheriff, which is located 12 miles away from Birchwood, in Stillwater. By establishing residency restrictions around its vulnerable locations, this ordinance will increase the distance between a Level III predatory offender's residence and locations with high concentrations of potential victims (e.g. children). The goal of increasing the distance, and thus time, between an offender's residence and a high concentration of potential victims, the restricted distance stated in this ordinance is established at 1,000 feet, which leaves approximately ten percent of the properties in Birchwood available for a Level III Predatory Offender to establish residence in the community. This residency restriction ordinance serves the simple goal of increasing the distance between the residence of a Level III Predatory Offender and locations where potential victims congregate to reduce the likelihood of any contact between offenders and potential victims, thereby reducing the likelihood of an assault. There is a gap in state legislation regarding this subject matter, leaving it to the responsibility of local governments to develop appropriate safeguards for their community.

Proposed/Draft Level III Sex Offender Ordinance:

1. Definitions: The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
 - a) "Designated predatory offender" means any person who has been categorized as a Level III predatory offender under Minnesota Statutes, section 244.052, a successor statute, or a similar statute from another state in which that person's risk assessment indicates a high risk of re-offense.
 - b) "Permanent residence" means a place where a person abides, lodges or resides for fourteen (14) or more consecutive days. A permanent residence includes the entire property upon which a dwelling sits, extending out to the property line.
 - c) "Temporary residence" means a place where a person abides, lodges or resides for a period of fourteen (14) or more days in the aggregate during any calendar year and which is not the person's permanent address, or a place where the person routinely abides, lodges, or resides for a period of four (4) or more consecutive or non-consecutive days in any month and which is not the person's permanent residence. A temporary residence includes the entire property upon which a dwelling sits, extending out to the property line.
 - d) "School" means any public or nonpublic elementary school, secondary school, high school or college.
 - e) "Licensed day care" means any in-home or other group child care center currently licensed by the State of Minnesota.
 - f) "Public Park" means the following Birchwood public parks and lake easements or beaches: Bloomquist Park/Field, Tighe-Schmitz Park, Wildwood Park, Nordling Park, Ash Beach, Birch Beach, Dellwood Beach, Elm Beach, and Kay Beach.
 - g) "Prohibited zone" means the area(s) that include one or more permanent residence(s) or temporary residence(s) that is/are 1000-feet or less from any school, licensed day care, or public park. The measurements shall be taken as the shortest possible distance between an outermost property lines of a permanent or temporary residence to an outermost property line of the nearest school, licensed day care or public park.
2. Regulations on Designated Predatory Offenders
 - a) It shall be unlawful for any designated predatory offender to establish a permanent or temporary residence entirely within or touching upon a prohibited zone.
 - b) The city clerk shall maintain a map showing locations within prohibited zones, as defined by this ordinance. The map shall serve as a guide as to whether or not a residence is within a prohibited zone.
3. A designated predatory offender does not violate this ordinance if any of the following apply:
 - a) The person established permanent residence within a prohibited zone prior to the adoption of this ordinance, and she/he has reported and registered the residence pursuant to Minnesota Statutes, sections 243.166 and 243.167 or a successor statute.
 - b) The person is a minor and the permanent or temporary residence is also the permanent residence of the person's custodial guardian(s).

- c) The school or licensed day care within 1,000 feet of the persons' permanent or temporary residence was opened after the person established permanent residence and reported and registered the residence pursuant to Minnesota Statutes, sections 243.166 and 243.167 or a successor statute.
 - d) The residence is a property owned or leased by the Minnesota Department of Corrections in operation prior to adoption of this chapter.
- 4. Penalty and Enforcement
 - a) A violation of this ordinance shall be a misdemeanor. In addition, the City may enforce this Ordinance by injunction and other appropriate remedy in any court of competent jurisdiction.
- 5. Renting Properties and Penalties:
 - a) It is unlawful to let or rent any place, structure, or part thereof, trailer, or other conveyance, with knowledge that it will be used as a permanent or temporary residence by any person prohibited from establishing a permanent residence or temporary residence pursuant to this Chapter if such place, structure or part thereof, trailer, or other conveyance is located within a prohibited zone described in this chapter.
 - b) A property owner's failure to comply with the provisions of this ordinance shall constitute a violation of this ordinance.
 - c) If a property owner discovers or is informed that a tenant is a designated offender after signing a lease or otherwise agreeing to let the offender reside on the property, the owner or property manager shall evict the offender.



MEMORANDUM

TO: Birchwood City Council
FROM: Mike Anderson, City Administrator
DATE: August 4, 2016
SUBJECT: Impervious Surface

Impervious Surface Information

The City Council is looking at possibly changing requirements for the Cities impervious surface calculations. Currently the code allows lots to have a 25% hardcover. Anything more would require an approved variance from the City Council.

Surrounding community's impervious surface information is as follows:

White Bear Lake: Lots smaller than 10,000 square feet allow 35% or no more than 42% with variance approval. For lots more than 10,000 square feet, no more than 25% and 33% with variance approval.

Impervious Surface definition: An artificial or natural surface through which water, air, or roots cannot penetrate.

White Bear Township: Nothing shall exceed 25% of the lot area. **Impervious Surface Definition:** Surfaces like driveways, sidewalks, and streets prevent stormwater from naturally soaking into the ground.

Mahtomedi: Nothing shall exceed 25% at the time of the adopted ordinance. Such maximum coverage may be calculated on an average lot coverage basis within the shoreland of each protected water; but if averaged, impervious surface shall not exceed sixty-five percent (65%) of any one lot.

Impervious Surface Definition: An area that releases as runoff, all or large portion of, the precipitation that falls on it, except for frozen soil. Roofs, sidewalks, driveways, parking lots, patios, and streets are examples of areas that are typically impervious

Dellwood: Nothing shall exceed 25%.

Impervious Surface Definition: Hard cover by roof tops, roads, parking areas, driveways, and/or other land alteration of a similar nature, rendering the land in such a condition that precipitation runs off rapidly with no or little infiltration.

RCWD: Does not contain an allowed impervious surface percentage. In addition to the permit triggers for Rule C: Storm water Management Plan, subdivision of an area exceeding one acre also triggers the need for a permit/storm water management plan

DNR: Strive to keep it at or under 25%. Variances are required for development seeking more than 25%.

Birchwood: 302.050: Impervious Surface coverage of lots must not exceed twenty-five (25%) percent of the lot area.

Birchwood definition: A ground surface covered or compacted with material so as to substantially retard the entry of water into the soil, and to cause water to remain on the surface or to run off the surface in greater quantities or at an increased rate of flow than would occur if there was a natural soil surface.

Impervious surfaces shall include improvements utilizing concrete, asphalt, gravel, or other non-porous materials. Examples of impervious surfaces include, but are not limited to, roads, driveways, parking areas, sidewalks, patios, rooftops, and covered decks. Examples of impervious surfaces resulting from compacting are unpaved or ungraveled driveways and parking areas.

EXCEPTIONS: Open decks and walkways with open joints at least ¼ inch wide per 8 inch wide board, and areas beneath overhangs less than 2 feet wide, if bare or vegetated soil is beneath the decks or walkways or overhangs, shall not be considered impervious surfaces.