



AGENDA OF THE
REGULAR MEETING OF THE PLANNING
COMMISSION
CITY OF BIRCHWOOD VILLAGE
207 BIRCHWOOD AVENUE
WASHINGTON COUNTY, MINNESOTA
MAY 1, 2012
7:00 P.M.

CALL TO ORDER

APPROVE AGENDA

1. Approve minutes of the February 28, 2012 Planning Commission meeting (see exhibit)
2. VARIANCE REQUEST> City of Birchwood Village: Variance from the 40 foot front yard area requirement for the purpose of placing a proposed warming house at Tighe-Schmitz Park (see exhibits)
 - a. PUBLIC HEARING
 - b. Commission deliberation and recommendation to the City Council
3. Proposed Ordinance 618 (Complaints) Review of draft and recommendation to the City Council (see exhibit)

ADJOURN

City of Birchwood Village Planning Commission

February 28, 2012 Meeting Minutes

Date: February 29, 2012
From: Doug Danks
To: Planning Commission Members
City of Birchwood Village City Council
Ben Eggan, City of White Bear Lake Building Official

Attendees: Len Pratt, Planning Commission
Randy Felt, Planning Commission
Doug Danks, Planning Commission
Ben Eggan, City of White Bear Lake Building Official

Item:

1. Pratt called the Planning Commission meeting to order at 7:27 pm. The purpose of the meeting is to review and comment on proposed changes to City of Birchwood Village Zoning Ordinances.
2. Felt moved and Pratt seconded to approve Planning Commission meeting minutes from August 2, 2011. Motion passed unanimously with one abstention from Danks.
3. Pratt thanked Eggan for attending meeting.
4. The Planning Commission reviewed the revised Ordinance 203. Felt moved and Pratt seconded to approve revised Ordinance 203 with the following conditions:
 - A. Reference all fees under Ordinance 701 and delete references to fees under Ordinance 203.
 - B. City council should conduct annual review of permit system fees to align with City of White Bear Lake.
 - C. Eggan noted that Minnesota State Building Code 1300.0160 requires that plan review fee be established by municipalities, except for minor work exemption such as roofing replacement. The current plan review fee language in Ordinances aligns with City of White Bear Lake. Planning Commission recommends maintaining current plan review fee language in Ordinances with exemption for minor work, publishing fee language with resolution and posting fee language on City of Birchwood Village website.

Motion passed unanimously.

5. The Planning Commission reviewed the revised Ordinance 205. Felt moved and Pratt seconded to approve revised Ordinance 205 as submitted. Motion passed unanimously.
6. The Planning Commission reviewed the revised language for Ordinances 301 and 306, along with the new Ordinance 305. Felt moved and Pratt seconded to approve the revisions to Ordinances 301 and 306, and add the new Ordinance 305 with the following conditions:

- A. Correct 305.170.1 to read "Interim Use Permit" in lieu of "Conditional Use Permit".
 - B. Planning Commission recommends adding language to 305.170.2 providing just cause before inspection of premises is undertaken. Possible just cause for inspection could include written complaint against property owner or violation of requirements and standards for home occupations under 305.160.
- 7. The Planning Commission reviewed the new Ordinance 618. Felt moved and Pratt seconded to approve new Ordinance 618 (and repeal of 615.040) as submitted. Motion passed unanimously.
 - 8. The Planning Commission reviewed the new Ordinance 619. Felt moved and Pratt seconded to approve new Ordinance 619 as submitted. Motion passed unanimously.
 - 9. The Planning Commission asks for clarification from the City Council on how enforcement of new ordinances will be addressed. Is enforcement assigned to a particular council member or city staff member? If not, are the enforcement duties shared on a volunteer or assigned basis, by council members or city staff? Is council action required to initiate an Investigation under Ordinances 305 and 316?
 - 10. Meeting adjourned 8:50 pm.

**CITY OF BIRCHWOOD VILLAGE
MEMORANDUM**

TO: Birchwood Village Planning Commission
FROM: Samantha Crosby, Staff Planner
DATE: April 18, 2012 for the May 1, 2012 Planning Commission Meeting
CASE NO.: 12-6-VB
APPLICANT: Birchwood Village Parks and Recreation Committee
LOCATION: 410 Lake Avenue (Tighe-Schmitz Park)

SITE CHARACTERISTICS

The subject site is a 2.63 acre city-park located on the south side of Lake Avenue. The park contains a full-size hockey rink, a smaller "pleasure" rink, a baseball diamond, a playground, a walking path and a small warming house.

REQUEST

John Lund on behalf of the Birchwood Village Parks and Recreation Committee is proposing to demolish the existing warming house structure and construct a new, slightly larger warming house in the same location. The existing warming house does not meet setback requirements. Consequently, the applicant is requesting a setback variance from the 40-foot front yard setback requirement for the new warming house. Specifically, a 40-foot variance to allow a new warming house to be 0 feet from the north lot line. It is anticipated that there will be a little bit of space between the warming house and the lot line, however, the lot line has yet to be located and the amount of space is therefore unknown. Consequently, the variance request is for the full 40-foot distance, as a safety measure.

PRACTICAL DIFFICULTY

There is more than one existing characteristic of the property that interferes with the ability to locate the structure further from the north lot line. The first is the established drainage pattern for the drainage of the rinks in the spring. There is a ditch which runs lengthwise along the east side of the hockey rink to direct the water to the south. The same ditch also serves the pleasure rink. Second, there is a hydrant which is used to flood the rinks, that is located about 36 feet from the south side of the existing warming house.

ANALYSIS

Staff and the applicant measured the 50-foot right-of-way at our best-guess in relation to the roadway edges, utility poles and other available indicators. It appears that the current structure might be set back about 10 feet from the north property line. The existing structure is 12 feet wide and the north end of the proposed building is only 12 feet wide as well. So in theory, the new structure could be placed exactly where the former structure sat, however a concrete slab and satellite toilet will be housed on the west side of the building. To insure that those features do not encroach upon the right-of-way, the new building should be setback a few feet more than the existing structure (as shown on the proposed site plan).

The existing structure is 192 square feet in size – 156 square foot warming room and 36 square feet of storage. The proposed warming room will be 192 square feet in size with 96 square feet of storage, a 144 square foot breezeway and approximately 322 square feet of concrete around the south and west sides of the building (mostly to serve the satellite toilet). The amount of new impervious surface generated by this project (roughly 562 square feet) is negligible in relation to the vast size of the lot. Consequently, stormwater infiltration features are not required. According to the Rice Creek Watershed District, discharge of roof runoff over adjacent pervious turf areas will provide sufficient treatment of stormwater. The Rice Creek Watershed District has simply asked that the City ensure that the nearby storm sewer inlet has adequate protection to prevent sediments from entering the system and discharging to White Bear Lake.

The majority of the roof run-off will end up on the west side of the building, between the building and the hockey rink. The ground in that area needs to be graded to insure proper drainage.

The proposed building design seems quite attractive. Being only one story tall, staff is confident the height of the building will comply with code. Any new lighting should be designed so that it is shielded to prevent the source from being visible from adjacent residential properties.

The park has limited on-site parking. Consequently, the majority of parking occurs on street. Birchwood does not have minimum parking requirements, nor is the warming room part of the warming house increasing by a significant amount. The existing asphalt slab directly to the north of the rink will be striped to create at least one handicap-accessible parking stall and an asphalt path from that stall to the warming house will be provided.

There are four arborvitaes (?) which will be lost to the sidewalk and there is one maple (?) which will likely need to be removed due to the warming house.

SUMMARY

The City has a high level of discretion when approving or denying a variance because the burden of proof is on the applicant to show that they meet the standards of the ordinance. Staff has reviewed the request and considers the request to be a reasonable request which

will not impair the health, safety or welfare of the residents of the City. Therefore staff supports the request and recommends approval.

RECOMMENDATION

Staff recommends approval of the variance as requested subject to the following conditions:

1. All application materials, maps, drawings and descriptive information submitted with this application shall become part of this permit.
2. The land alteration from the proposed project shall not cause adverse impacts upon or result in additional drainage onto abutting properties.
3. The applicant shall verify the property line and have the property pins exposed at the time of inspection. The new building may not encroach upon the City's right-of-way.
4. The applicant shall obtain a building permit for the work prior to beginning any grading or construction activity.

Prior to the issuance of a building permit, the property owner shall:

5. Sign the resolution and provide a copy to both the City Clerk and the Staff Planner.
6. Submit a grading plan, subject to review and approval by the City Engineer.
7. Insure that the nearby storm sewer inlet has adequate protection to prevent sediments from entering the system and discharging to White Bear Lake.

ATTACHMENTS

1. Draft Resolution of Approval
2. Location Map
3. Aerial Photograph
4. Site Plan
5. Building Elevations and Floor Plan

RESOLUTION NO. _____

**RESOLUTION APPROVING A VARIANCE FROM
THE CITY OF BIRCHWOOD VILLAGE ZONING CODE
FOR 401 LAKE AVENUE (TIGHE-SCHMITZ PARK)**

WHEREAS, a proposal (12-6-VB) has been submitted by John Lund on behalf of the Park and Recreation Committee for the City of Birchwood Village to the City Council requesting a variance from the City of Birchwood Village at the following site:

ADDRESS: 401 Lake Avenue

LEGAL DESCRIPTION: UNSUBDIVIDED BLOCK 5, LAKEWOOD PARK 3RD DIVISION, BIRCHWOOD VILLAGE (PID # 3003021130038)

THE APPLICANT SEEKS THE FOLLOWING RELIEF: A 40-foot variance from the 40-foot front (street side) setback per Code Section 302.020, Subd.2, in order to construct a 432 square foot warming house 0 feet from the north lot line.

WHEREAS, the Planning Commission has held a public hearing as required by the City Zoning Code on May 1, 2012;

WHEREAS, the park is an existing development with certain established characteristics which would be wasteful to redesign and relocate; and

WHEREAS, the proximity of the structure to the rink and the roadway is a desirable amenity to serve both the handicap and the general public; and

WHEREAS, the City Council has considered the advice and recommendations of the Planning Commission regarding the effect of the proposed conditional use permit upon the health, safety, and welfare of the community and its Comprehensive Plan, as well as any concerns related to compatibility of uses, traffic, property values, light, air, danger of fire, and risk to public safety in the surrounding areas; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Birchwood Village after reviewing the proposal, that the City Council accepts and adopts the following findings of the Planning Commission:

1. That granting the variance will be in harmony with the general purpose and intent of this Code.
2. That granting the variance will not impair an adequate supply of light and air to adjacent property, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, or welfare of the residents of the City.

- 3. Because the site is a long-established city park, special conditions or circumstances exist which are peculiar to the land involved, including the existing utilities and drainage features.
- 4. That non-conforming use of neighboring lands, structures, or buildings is not the sole grounds for issuance of the variances.

FURTHER, BE IT RESOLVED, that the City Council of the City of Birchwood Village hereby approves the requested variance subject to the following conditions:

- 1. All application materials, maps, drawings and descriptive information submitted with this application shall become part of this permit.
- 2. The land alteration from the proposed project shall not cause adverse impacts upon or result in additional drainage onto abutting properties.
- 3. The applicant shall verify the property line and have the property pins exposed at the time of inspection. The new building may not encroach upon the City's right-of-way.
- 4. The applicant shall obtain a building permit for the work prior to beginning any grading or construction activity.

Prior to the issuance of a building permit, the property owner shall:

- 5. Sign the resolution and provide a copy to both the City Clerk and the Staff Planner.
- 6. Submit a grading plan, subject to review and approval by the City Engineer.
- 7. Insure that the nearby storm sewer inlet has adequate protection to prevent sediments from entering the system and discharging to White Bear Lake.

The foregoing resolution, offered by Council Member _____ and supported by Council Member _____, was declared carried on the following vote:

Ayes:
Nays:
Absent:

Alan Mitchell, Mayor

ATTEST:

Dale Powers, City Clerk

Approval is contingent upon execution and return of this document to the City Clerk.

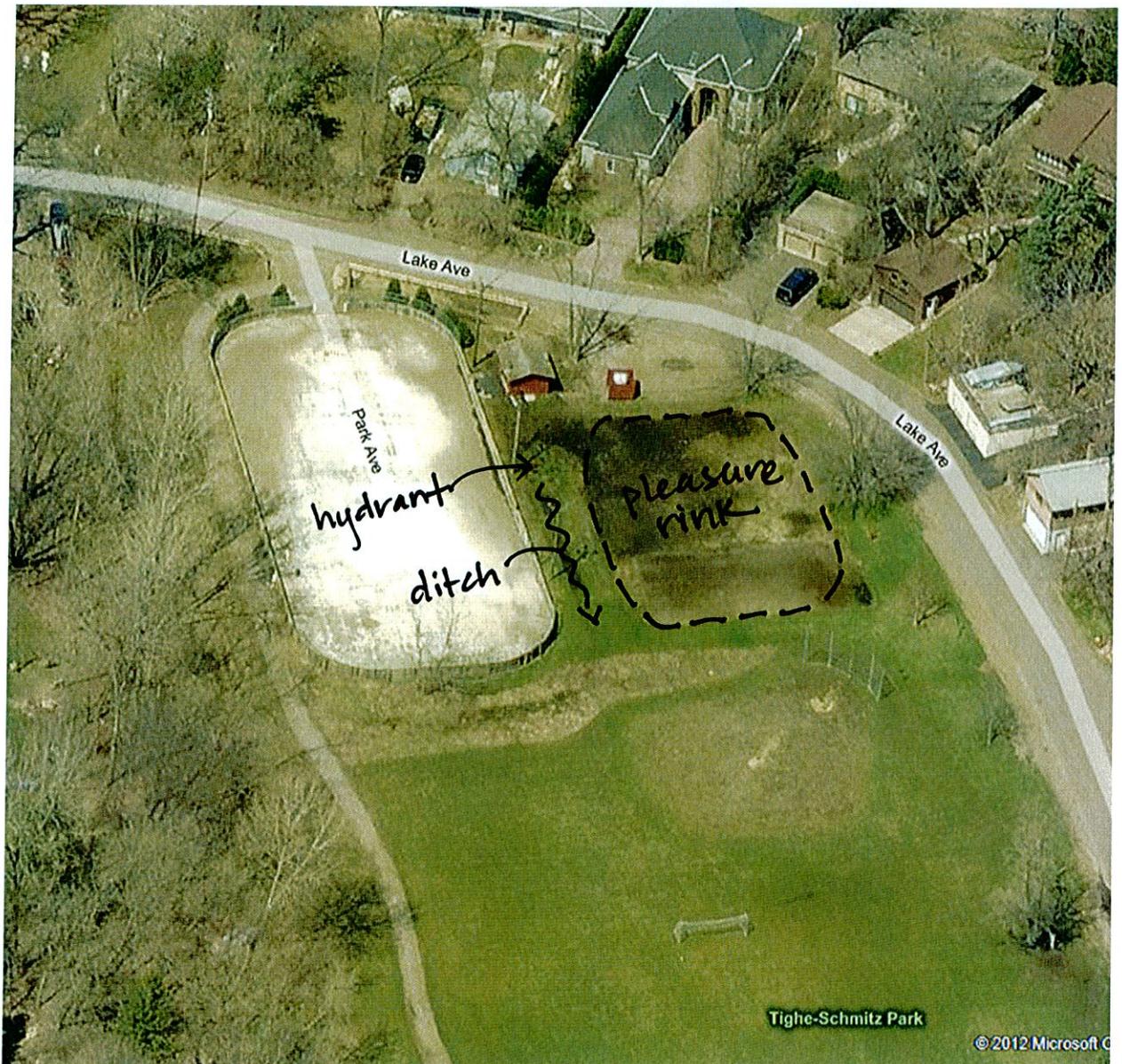
I have read and agree to the conditions of this resolution as outlined above.

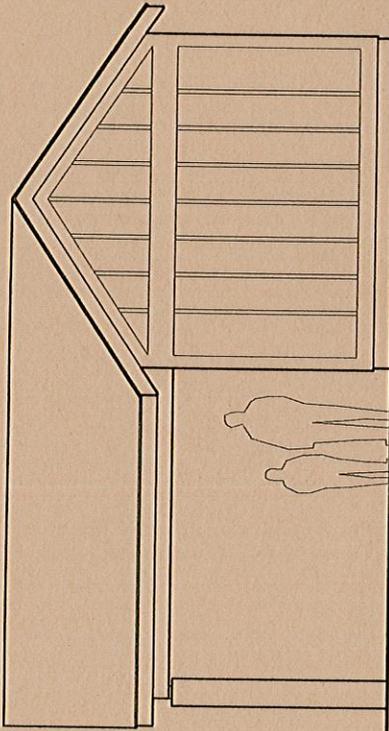
Applicant's Signature

Date

Printed Name

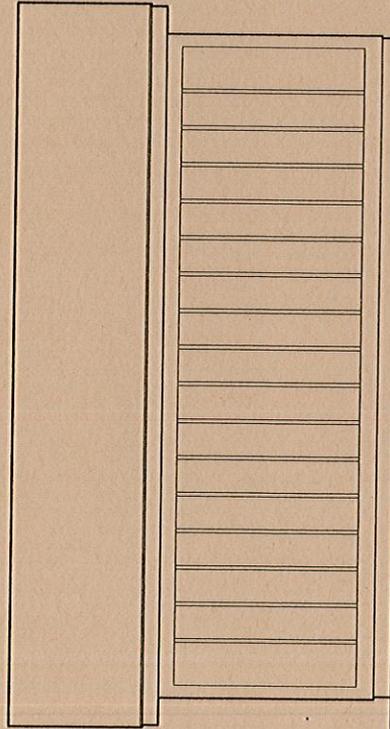
Title





1 SOUTH ELEVATION

1
A3.1



2 EAST ELEVATION

2
A3.1



Tighe-Schmitz Park
City of Birchwood Village, MN 55110

CLIENT:

City of Birchwood Village
207 Birchwood Avenue
City of Birchwood Village, MN 55082
(Contact: John Lund 651.338.1383)



ASSOCIATES

807 North 4th Street
Stillwater, MN 55082
Tel 651.430.2139

email@douglasdanksassociates.com

REV	DESCRIPTION	DATE
VARIANCE APPLICATION	SUBMITTAL	03/16/12

SCHEMATIC DESIGN

EXTERIOR
BUILDING
ELEVATIONS

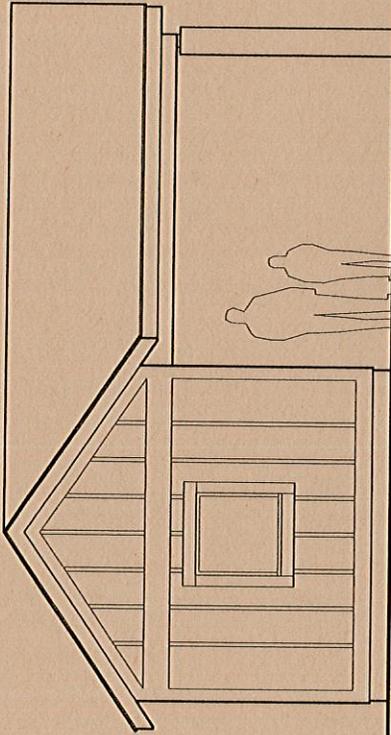
DATE: 03/16/12

SCALE: 1/4"=1'-0"

PROJECT: 078_091

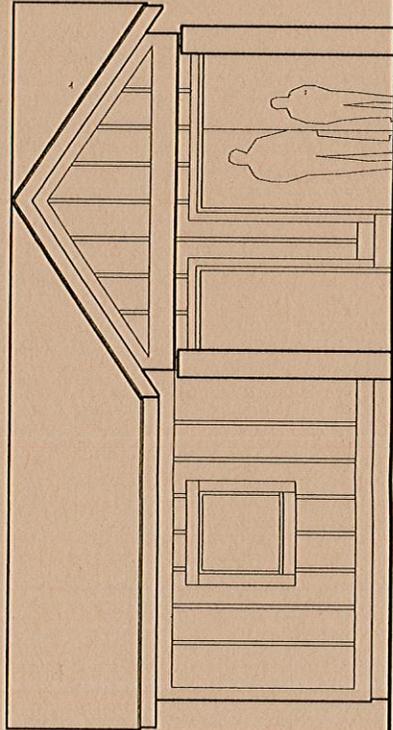
DRAWN: DDA





1 NORTH ELEVATION

A3.0



2 WEST ELEVATION

A3.0



Tighe-Schmiz Park
City of Birchwood Village, MN 55110

CLIENT:
City of Birchwood Village
207 Birchwood Avenue
City of Birchwood Village, MN 55082
(Contact: John Lund 651.338.1383)



ASSOCIATES
807 North 4th Street
Stillwater, MN 55082
Tel 651.430.2139

email@douglasdankeassociates.com

REV	DESCRIPTION	DATE
VARIANCE APPLICATION SUBMITTAL		03/16/12

SCHEMATIC DESIGN

EXTERIOR BUILDING ELEVATIONS

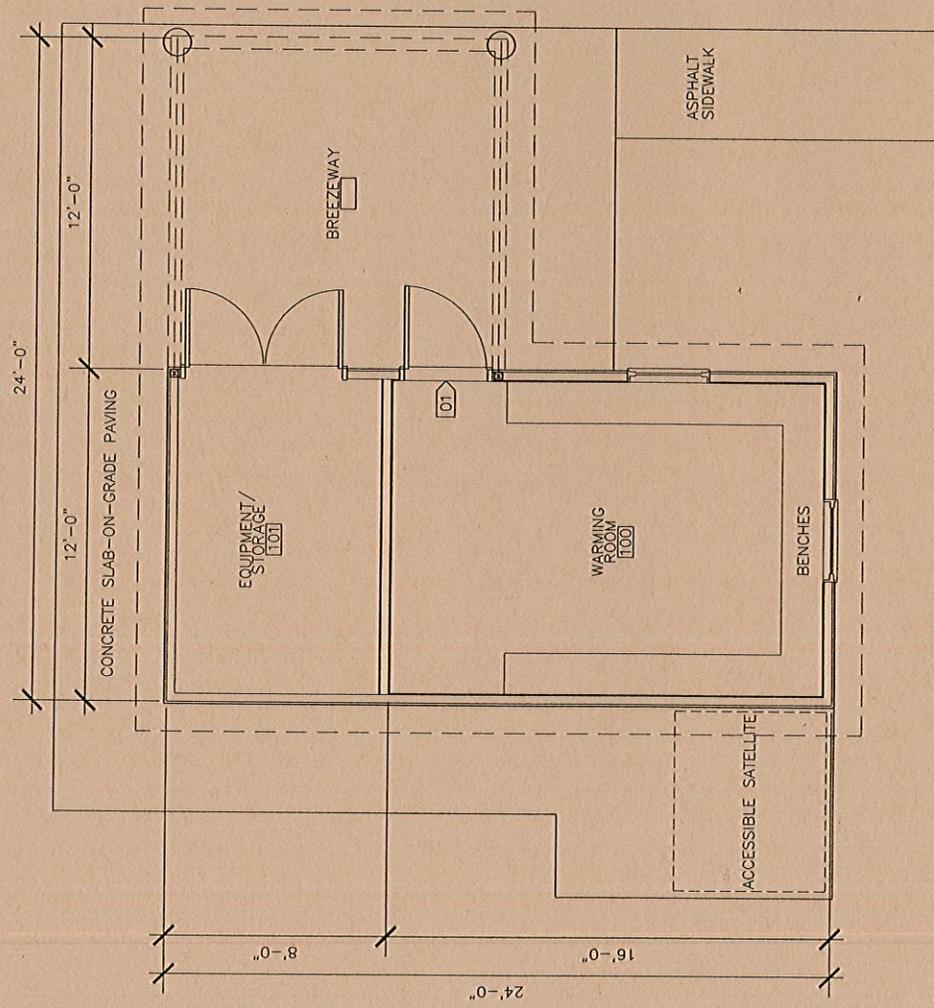
DATE: 03/16/12

SCALE: 1/4"=1'-0"

PROJECT: 078_091

DRAWN: DDA





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Tighe-Schmitz Park
 City of Birchwood Village, MN 55110

CLIENT:
 City of Birchwood Village
 207 Birchwood Avenue
 City of Birchwood Village, MN 55082
 (Contact: John Lund 651.338.1383)

Douglas Danks
 ASSOCIATES
 807 North 4th Street
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 Tel 651.430.2139

email@douglasdanksassociates.com

REV	DESCRIPTION	DATE
VARIANCE APPLICATION	SUBMITTAL	03/16/12

SCHEMATIC DESIGN



FLOOR PLAN

DATE: 03/16/12

SCALE: 1/4" = 1'-0"

PROJECT: 078 091

DRAWN: DDA

• • • • •

[01] ACCESSIBLE ENTRANCE, PROVIDE ACCESSIBLE LEVER HANDLE AND THRESHOLD WITH AUTOMATIC DOOR CLOSER

XFINITY Connect

birchwoodvillage@comcast.net

± Font Size -

RE: Birchwood Chap 618- Admin Complaints

From : Jane Harper <Jane.Harper@co.washington.mn.us> Wed, Apr 25, 2012 03:27 PM
Subject : RE: Birchwood Chap 618- Admin Complaints  1 attachment
To : 'Kevin Sandstrom'
<KSandstrom@eckbergammers.com>, Anthony E
Sampair <ASampair@CBBURNET.COM>,
'JaneMHarper' <janemharper@comcast.net>
Cc : birchwoodvillage <birchwoodvillage@comcast.net>

Kevin,

Thanks for taking the time to make these revisions. I think we need to provide this revised version to the Planning Commission.

I provided some thoughts and a couple additional changes. I may have had other thoughts about how to revise the ordinance but my materials are at home.

Here is the general approach we have used in the past that I think should continue:

Complaint is filed.

Complaint is investigated (in the past by a city council member, proposed in the future to be city clerk)

Initial attempt to resolve the issue by working directly with the alleged violator before escalating to a higher level

Staff sends Notice of Violation (in the past at the direction of the cc, proposed in the future to give authority to clerk)

Alleged violator can have a hearing with the cc

CC makes a final determination and issues an order to comply with code

If not resolved, the cc asks the police to issue a citation and/or imposes a fine

With the addition of one section regarding the clerks initial attempts to resolve the issue before issuing a Notice of Violation, I think this ordinance does a good job laying out this process. I do not think we need to go the route of the larger cities of Minneapolis and Roseville and engage a hearing examiner to do the fact finding. I imagine the city always has the right to do that whether it is spelled out precisely in the code. The nature of the complaints in the city generally do not warrant that level of bureaucracy.

It will be interesting to see what the Planning Commission has to say.

Jane

From: Kevin Sandstrom [mailto:KSandstrom@eckbergglammers.com]
Sent: Wednesday, April 25, 2012 7:33 AM
To: Anthony E Sampair; 'JaneMHarper'; Jane Harper
Cc: birchwoodvillage
Subject: Birchwood Chap 618- Admin Complaints

Tony and Jane,

Based upon your comments from a couple of weeks ago after the last city council meeting, I have come up with the attached proposed changes to the version of Chap. 618 that we have been working on. My latest changes are in redline format for ease of viewing.

I tried to keep the changes simple. I felt that the easiest way to alleviate some of the concerns raised by the Mayor was to make monetary penalties discretionary ("may" rather than "shall"), that ongoing violations over separate days "may" be considered separate violations, and most importantly, I've added section 618.055, which states that no matter what, even if no public hearing is requested, the matter will always ultimately come before the city council for review and potential modification of the abatement remedies and penalties that are being imposed.

Let me know your thoughts on these changes. If they are acceptable, I would suggest we create a "clean" version of this document with my latest changes incorporated, and have Dale provide this version to the planning commission members for review next week.

Kevin S. Sandstrom, Attorney
Eckberg, Lammers, Briggs, Wolff & Vierling, PLLP
www.eckbergglammers.com

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Stillwater, MN 55082
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Gen. Phone: 651-439-2878
Fax: 651-439-2923

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 **Chap 618- Administrative Complaint Ordinance (KSS revised 4-25-12).doc**
63 KB

Field Code Changed

**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~~ may be considered 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 through polite respectful interaction and communication. ~~personal contact between neighbors. It is recognized that~~ If such personal contact does may not satisfactorily correct a particular situation or ~~there may be reasons that a resident does 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 may be followed.

Comment [jmh1]: AI is proposing that the penalties be in a separate Chapter 619.

Comment [jmh2]: I would be fine with removing this sentence entirely unless you think we need it for added teeth.

Comment [jmh3]: This assumes that all complaints are between neighbors. Many times they are not.

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.

Comment [jmh4]: It is unreasonable for the complainant to do this. For example, if a resident complains about light shining in there yard, I don't think they should have to figure out what specific ordinance is in violation. I think that should be part of the staff investigation of the complaint.

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.

Comment [jmh5]: I think a section should be added regarding the staff attempting to work with the alleged violator to correct the violation before a notice of violation is sent. I would hope that most violations could be resolved in this manner and would not result in a notice of violation.

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 prepare and 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, and 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 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.

618.055. COUNCIL APPROVAL. Regardless of whether or not party requests a public hearing relating to the City Clerk's issuance of a Notice of Violation or Notice of No Violation, the matter shall be reviewed by the City Council for a final authorization of the City Clerk's determination, including review and potential modification of any abatement actions or penalties issued by the City Clerk.

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 violation is related to a property, 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.

Comment [jmh6]: What if the violation is not against a property, e.g. expired license plate, a noisy party, illegal parking, etc.

618.090 CIVIL PENALTIES. Any violation of an ordinance hereunder ~~shall~~may 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 _____ of _____,
(Day) (Month) (Year)

Attest: _____ Mayor
Alan Mitchell

Attest: _____, City Clerk
Dale Powers

**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 may be considered 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 through respectful interaction and communication. If such personal contact does not satisfactorily correct a particular situation or a resident does not desire to use that approach the following steps may 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 prepare and

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, any actions to be undertaken, and 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 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, 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.

618.055. COUNCIL APPROVAL. Regardless of whether or not party requests a public hearing relating to the City Clerk's issuance of a Notice of Violation or Notice of No Violation, the matter shall be reviewed by the City Council for a final authorization of the City Clerk's determination, including review and potential modification of any abatement actions or penalties issued by the City Clerk.

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 violation is related to a property, 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 may 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 _____ of _____, _____
(Day) (Month) (Year)

Attest: _____ Mayor
Alan Mitchell

Attest: _____, City Clerk
Dale Powers

XFINITY Connect

bwclerk@comcast.net

± Font Size -

Complaint Ordinance chapter 618

From : almbirchwood@comcast.net

Mon, Apr 23, 2012 08:37 PM

Subject : Complaint Ordinance chapter 618 3 attachments**To :** Dale Powers <bwclerk@comcast.net>**Cc :** Kevin Sandstrom
<KSandstrom@eckbergglammers.com>

Dale, the City Council decided at its March meeting that Tony Sampair and Jane Harper would put together another version of chapter 618 (Complaints) to amend the version I had developed a few months ago. Tony's and Jane's version only became available when we got our packets for the April meeting, and their version provides for the imposition of administrative fines for city code violations. At the April Council meeting, the Council decided to ask the Planning Commission to take a look at the Complaint Ordinance that Tony and Jane put together and report back to the Council.

I would like for you to provide the Planning Commission with a copy of this email and the attachments I've included, along with other documents you provide them for their review of this matter. You can also provide the other Council members with my email and the attachments. I have copied Kevin Sandstrom on this email because I think there are some legal issues that need attention as well.

Here are some major questions regarding adopting an ordinance with administrative fines that I would like the Planning Commission to consider.

1. Authority. I don't know if a statutory city even has authority to set administrative fines for city code violations. There is a statute authorizing cities to do that for certain motor vehicle violations. Minn. Stat. sec. 169.999. You might want to include that statute in the packet of material for the Planning Commission. Also, the League of Minnesota Cities has identified the question of a city's authority to set administrative fines as one the Legislature might want to address. The first document I've attached is a Policy Statement by the League on the need for the Legislature to clarify this issue. Apparently, some cities have adopted ordinances allowing for the imposition of administrative fines, but I don't think the Minnesota courts (at least not appellate courts) have ruled on this issue. Minneapolis (a charter city) and Roseville (a statutory city like Birchwood) are two cities that have such ordinances, and I have attached two documents containing their ordinances. Each of those cities' codes can be found on the web.

2. What Code Violations. Assuming Birchwood has authority to set administrative fines, I would like the Planning Commission to consider what code violations might be appropriate for administrative fines. Minneapolis and Roseville identify certain code violations that are subject to administrative fines.

3. Who Imposes. Minneapolis and Roseville identify certain staff positions that are authorized to issue administrative citations. Who would be authorized to impose administrative fines if Birchwood were to go that route?

4. Amount of Fines. What amount should an administrative fine be if an ordinance were adopted to authorize such an approach? The Minneapolis schedule of fines and the Roseville schedule are included in the documents with each city's ordinance.

5. Appeal Process. Any city adopting an ordinance imposing administrative fines must have some kind of appeal process so any person receiving an administrative citation imposing a fine could have an opportunity to be heard. Minn. Stat. sec. 169.999 sets forth a requirement to have an independent hearing examiner hear an appeal for administrative citations for certain motor vehicle violations. The Minneapolis code provision also sets up such a process. Roseville provides that the City Manager shall act as the hearing examiner.

6. How to Collect. If Birchwood were to authorize the imposition of administrative fines, it would need to be addressed how those fines would be collected if a violator did not pay.

There are likely other questions that need attention, too, and the Planning Commission will have some of its own questions, I'm sure. Let me and the other Council members know when the Planning Commission is planning to meet and consider this matter. Thank you. Al



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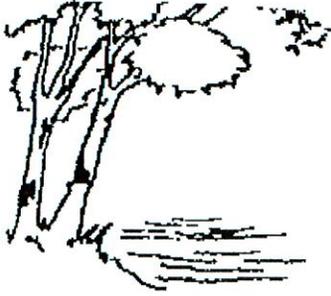
Minneapolis Administrative Enforcement.docx

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Roseville, Minn Ordinance on Admin Fines.docx

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CITY OF BIRCHWOOD VILLAGE
207 Birchwood Avenue
Birchwood Village, MN 55110
651-426-3403 tel
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birchwoodvillage@comcast.net

MEMORANDUM

DATE: April 25, 2012
TO: Planning Commission
FROM: City Clerk-Coordinator Dale Powers
RE: "Moving Toward a More Effective Code Enforcement Strategy"

Given that one of the agenda items for the May 1st PC meeting addresses complaint processes, I am taking the liberty of including in the agenda packet a paper on code enforcement I submitted to the American Institute of Certified Planners (AICP). AICP published my work in its latest issue.

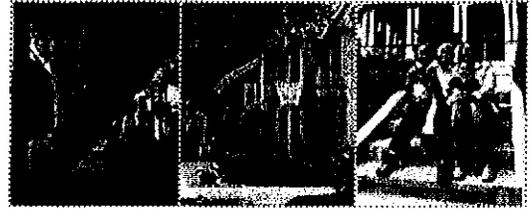
For verification purposes only, I am also including the Table of Contents of the latest issue of AICP Practicing Planner that includes my paper.

PC Chair Len Pratt has requested my attendance at this meeting, and I will do what I can to make it.

Practicing Planner



The American Planning Association's
Professional Institute
**American Institute
of Certified Planners**



Practicing Planner

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by Dale Richard Powers, AICP

Traditional enforcement of zoning and property maintenance codes may be ineffective; a different strategy is needed for approaching enforcement functions. Read Planning Essentials.

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Moving Toward a More Effective Code Enforcement Strategy

by Dale Richard Powers, AICP

Enforcement of city zoning and property maintenance ordinances is seen as one of the most difficult and least desired of municipal job functions. City staff members are trained to operate in shades of gray, which are almost nonexistent in traditional ordinance enforcement processes. Avoiding conflict whenever possible is seen as a path to job security, while stringent enforcement often is viewed as a way to jeopardize employment. Finally, the prospect of constant berating by property owners is never a fun thing.

Given the downturn in the economy, cities are prioritizing enforcement of zoning and property maintenance ordinances as a way to maintain livability and property values. It is incumbent on cities to develop a strategy for approaching enforcement that alleviates employee burnout, minimizes animosity between the property owner and the enforcement agent, decreases compliance costs for the city, and enhances the opinion of city staff in the enforcement process.

Having performed enforcement actions as a central part of my administrative and planning career, I can say that I thoroughly enjoy the task. By approaching the enforcement process tangentially, rather than head on, I stumbled upon a system that makes enforcement enjoyable.

This article describes how most cities traditionally have set up their enforcement programs and comments on why that system creates an unnecessary adversarial relationship between the enforcement agent and the property owner. The article also describes the core principles of this system along with its philosophical and psychological underpinnings. I conclude with a description of the steps of a more effective code enforcement strategy.

THE TRADITIONAL ZONING AND PROPERTY MAINTENANCE ENFORCEMENT APPROACH

In most cities, the traditional approach to code enforcement starts with the discovery of a potential violation. For smaller cities that use reactive enforcement, the process starts with a complaint, which the staff investigates to determine whether a violation exists. For larger cities that use proactive enforcement, the process starts with the discovery of a potential violation. In both cases, evidence is obtained and a file is opened.

Once a determination has been made that a violation exists, a "notice of violation" is sent to the property owner. In a somewhat ominous tone, the property owner is placed on alert that the property is in violation of one or more sections of the city code and is given a certain number of days to bring the property into compliance or to ask for an evidentiary hearing before a hearing examiner. The intention behind the ominous tone of the notice of violation is to convey to the property owner the seriousness of the situation. Typically, the notice of violation states that failure to comply within the stated time period may result in either civil or criminal action on the judicial level or summary abatement action (for larger cities). Failure to pay the fine in a timely manner will result in the city certifying the cost to the county as a special assessment payable next year on the property tax.

ISSUES WITH THE TRADITIONAL APPROACH

There are two issues with the traditional approach to code enforcement that lower its effectiveness, efficiency, and efficacy: staffing and process.

Staffing

I've witnessed any number of situations where the enforcement process spirals out of proportion to the violation. In virtually each case, it could have been handled more diplomatically. A large part of the issue is the nature of the enforcement agent.

Cities have used building inspectors for enforcement primarily for two reasons. The first is that they are out in the community as a part of their primary job, and code enforcement can be integrated into their inspection rounds. The second is that inspectors are accustomed to the inspection process, and these cities have determined that "inspection is inspection."

The issue here is that, well, inspection is not inspection. Enforcing a building code is, by its very nature, black and white. The footings either meet the code or they don't. The wiring either meets the code or it doesn't. The same goes for plumbing, windows, etc. In each situation, there is little if any leeway for the inspector to allow for any of these items to not pass the building code and still issue a certificate of occupancy. Zoning ordinance enforcement, on the other hand, operates within a sphere of gray. Compliance terms can be negotiated for all but the most egregious health and safety violations. The interpersonal communication and negotiation skills required of a successful zoning enforcement agent are not required (or even desired) for building inspectors.

Another factor is that, in most cases, the person on the other end of a building code issue is not the property owner but a contractor. Because the contractor is licensed by the state and represents himself as knowledgeable about the state building code, it is much easier for the building inspector to assume a less genial (and more authoritarian) stance when pointing out violations of the building code.

An important factor distinguishing building codes from zoning and property codes is that in virtually every case, zoning ordinances are creatures of the local government. Cities adopt zoning and property maintenance ordinances with a mental image of how they would work "on the ground," only to find out later that enforcement reveals that mental image to be flawed. I've had more than one elected official comment that zoning ordinance enforcement should not involve "using a bazooka to kill an ant," yet that can be the perception of property owners when dealing with building inspectors accustomed to a black-and-white approach to enforcement.

In smaller cities, enforcement may fall on the city clerk or even an elected official. In many rural areas, the city clerk simply is not trained for this function. To the best of my knowledge, there are no training programs offered in zoning and property maintenance enforcement for city clerks. The city clerk, therefore, is left sending out form letters to property owners stating their property is in violation, placing the clerk unnecessarily in the crossfire between a complainant and the property owner. Elected officials are policymakers, not administrators. Allowing a mayor or council member to investigate a complaint is not only unfair to that official, it is also unfair to

the property owner if he/she is in the unfortunate position of not knowing the elected official — or worse, being a political foe. This increases the possibility of an arbitrary and capricious claim against the city, if it is alleged that the mayor or council member lets one violation slide for a friend while rigorously enforcing compliance against someone who supported an opponent in the last election.

Ever since the economic downturn, planners — with little development to review and after exhausting all potential avenues for comprehensive plan amendments — have have been increasingly thrust into the role of enforcement agents. It is a role that, given the traditional method of enforcement, they are not equipped to perform. Planners eschew confrontation and strive for common ground — two aspects not typically found in enforcement. This creates a high level of burnout among planning staff, lessening morale and fostering ineffectiveness in bringing about compliance with the ordinance. Although most of them don't know it, the very personality traits that make them excellent planners also can be used to make the enforcement process more closely align with the policy goals behind the city's enforcement program. This skill set — if used properly — can be integrated into a zoning enforcement program that makes the task fun.

PROCESS

Virtually every code enforcement action, it seems, is in written form. The original complaint is in writing or reduced to writing, the notice of violation is in writing, the summary abatement action is in writing and, of course, the invoice to the property owner for the costs of compliance action is in writing. Very little personal interaction with the complainant or the property owner is present. In a time when the public has a jaded view of government employees — especially the notion that staff treats individual citizens as numbers to be processed instead of human beings— this over-reliance on written correspondence (especially at the early stages of the enforcement process) rarely reflects positively on city staff. Nuance is lost at this stage of the process, and nuance is what specifically differentiates zoning and property maintenance code enforcement from building code enforcement.

There are two kinds of nuance involved in the enforcement process. The first is circumstantial and involves the particular plight of the property owner that resulted in the noncompliant state of the property. Circumstantial nuance plays a part in determining the veracity of the property owner and whether his word is to be trusted. The second kind of nuance deals with voice inflection, modulation, and body language, and will be discussed later in this article.

"BUILDING A BETTER MOUSETRAP": CORE PRINCIPLES

In reconstructing the enforcement process, several core principles should be incorporated. They are: (a) the initial interaction should always be oral; (b) separation of the animate and inanimate objects in the process; (c) people inherently prefer to clean up their own mess; and (d) in negotiating terms of compliance, the person who speaks first always loses. These core principles are discussed below, along with how they relate to the practice of enforcement.

The Initial Interaction Should Always Be Oral

Although the current trend is toward written communications such as e-mail and texting, people still prefer to communicate in the oral form. City governments are recognizing this by creating more opportunities for the public to interact through community festivals and regular organized gatherings. However, in the professional sphere this creates pressure points for planning staff members who are uncomfortable practicing their profession with a live body on the other side. Their position is that the written word is less likely to be challenged by supervisors and elected officials, and it eliminates the "he said, she said" arguments that place the planner in an untenable position. While this may be an admirable quality in some planning applications, in the world of zoning and property maintenance code enforcement it can turn an easily resolvable matter into a major court battle.

As mentioned before, nuance is lost with the written word. For example, take the phrase "I really love watching NASCAR," Reading that phrase, one would surmise that the writer is a fan of stock car racing. However, when placed in context with a conversation about favorite sports, that phrase could just as easily be spoken sarcastically so as to mean the exact opposite.

Another factor in introducing and recognizing nuance is the various form of interpersonal communication. According to a study by noted management guru W. Edwards Deming, 10 percent of what we communicate is through the words we say; 20 percent is through voice inflection, tone, and modulation; and 70 percent is through body language. By using written correspondence to communicate with violators, the enforcement agent is using only 10 percent of his or her communications capability. Telephone calls are better, but still use only 30 percent of communications capability. A personal visit allows the enforcement agent to utilize the full range of communication options in addressing the violation and bringing about compliance.

Separation of the Animate and Inanimate Objects in the Process

There is a tendency of some planners to personalize the code, making it appear as if the property owner is effectively violating the planner's rules. This is exactly the wrong way to approach any kind of enforcement action. Personalizing the code not only results in substandard enforcement results, it also may cause the matter to go to court on an arbitrary and capricious claim.

In an enforcement action, there are animate objects and inanimate objects. The animate objects are the planner and the property owner; the inanimate objects are the condition of the property and the ordinance. It is incumbent on the planner to effect that separation in order to come up with a "win-win" resolution to the issue at hand. Fortunately, planners are trained to gravitate toward "win-win" outcomes. With that approach, the discussion becomes one between two people who need to resolve a problem. This approach is more conducive to a positive resolution to the issue.

To illustrate, recall the last time you shopped for a car. The conversation involved animate and inanimate objects. The animate objects were you and the car salesman. The inanimate objects were the car and the amount of money you were prepared to spend. In most situations, these arms-length negotiations result in you buying the car you wanted at a fair price to the dealer. Now, imagine a situation where you find the car you're looking for, but it is for sale by a private party and is overpriced. Perhaps the owner of the car has some fond memories with that car and

values the vehicle for more than its transportation utility. While you can understand and appreciate why that car means so much to the seller, you're still not going to pay more than the blue book value of the car. The seller made his car an animate object, and by doing so priced himself out of the market.

People Inherently Prefer to Clean Up Their Own Mess

Imagine you are at a social event and accidentally knock over someone's beverage. Almost by instinct, we are conditioned to immediately accept responsibility, apologize profusely for the accident, and look for a towel to clean up the mess. As humans, we are acculturated to atone for our mistakes.

It has been my experience that the vast majority of residential code violators simply are unaware that their property is in a state of noncompliance. After being told of the discrepancy, nearly all have been eager to atone for their transgressions with the courtesy of time.

Silence Is Golden

Let's go back to the car dealer. You're purchasing a fairly recent used car and found one to your liking priced at \$24,900. The sales representative comes out to the lot, introduces herself, and sells you on the car you're hovering over. You've done your homework on what that kind of vehicle should sell for and make an offer of \$19,900. Silence fills the air that you find awkward, but the sales representative craves. During that silence, the sales representative is checking your facial expression and body language — two "tells" about your interest in the car. Invariably, you (not the sales rep) break the silence and increase your offer to \$21,000. Without saying a word, she just put \$1,100 in her pocket by keeping her mouth shut. Why would she be eager to jump at your counter-offer? She tells you that she needs to talk to her "manager" for approval. Trust me — she and her manager are both checking your body language out. After what seems like an agonizingly long period of time, she comes out and tells you her "manager" wouldn't approve your offer and makes a counteroffer of \$23,000 — then keeps her mouth shut. The additional silence seems like a long time, and you finally accept the counteroffer and purchase the vehicle.

In this situation, the sales representative used silence to gain an edge in the negotiations. This can also be used in enforcement negotiations. Imagine you're at a site negotiating compliance terms with the property owner. By this time, you've had enough time to determine how long it should take the average person to bring the property into compliance. During your negotiations, you ask the property owner how long is needed for the property to become compliant. An awkward silence fills the air. Keep in mind the previous paragraph; the first to talk has lost the negotiating advantage.

MOVING TOWARD A MORE EFFECTIVE CODE ENFORCEMENT STRATEGY: STEPS IN THE PROCESS

Utilizing the strategies discussed above, what follows is a step-by-step process that has proved effective in developing voluntary compliance with zoning and property maintenance codes and ordinances, as well as making the enforcement process fun and a pleasure to perform. It is

important to note that these steps can be used as either a stand-alone system (for smaller jurisdictions) or as a prelude to the more formal correspondence system (for larger jurisdictions).

Step One: Determination of Compliance Timeline

The planner is at the site, initially to determine whether a violation exists. During this examination, she is calculating how long it would take for a "normal" person to bring the property into compliance. While it is unrealistic for a property that took weeks and months to fall out of compliance to magically achieve conformance with the ordinance within a day or two, it is equally unrealistic to allow weeks and months for the property to become compliant.

Several factors play into a time determination. The first is the threat to the health, safety, and welfare that the condition presents. Obviously, immediate threats need to be abated in a timely manner. The second is whether the property is residential or nonresidential. Properties used for a commercial purpose have a greater financial wherewithal to achieve compliance more quickly than most residential properties where owners are away at work during the day. For residential properties, a third factor is the financial ability to bring the property into compliance. While this last factor can't be ascertained precisely without talking to the property owner, if the condition of the property indicates some degree of "deferred maintenance" the code enforcement agent should take this into account when determining a compliance timeline.

Step Two: Notification to the Property Owner

The preferred method of notification is in person, or at least by voice and not by mail. If the property owner is present, the enforcement agent should knock on the door, establish identification, and say to the property owner "I suppose you're wondering why I'm here this morning (afternoon)." Invariably, the response will be some variation of "well, as a matter of fact I am wondering that." At that point, the enforcement agent should state that the city received a complaint about the property. Note the agent does not say the city received a complaint about the property owner. This is deliberate and sets the stage for the next step in the process – negotiating a compliance timeline.

If the property owner is not home, the enforcement agent should leave a business card in the door with a handwritten instruction to "please call." I have done this close to 1,000 times in my career, and each time the property owner has called. They are curious about why I was at their property. When the property owner calls, the enforcement agent should state "I suppose you're wondering why I was at your house/cabin/business (never say "property") the other day." Proceed as indicated above.

Step Three: Negotiating Compliance Terms

At the site, the enforcement agent persuades the property owner to step outside to view the condition of the property that is non-compliant and has a copy of the ordinance with her to show the property owner. As indicated earlier, the point of this exercise is to separate the animate (property owner and enforcement agent) and inanimate (ordinance and condition of the property) objects in the transaction, to eliminate the tendency of the planner to personalize the code. As

well, keep in mind that the *property* is in violation. The property owner may have caused the property to be in violation, but the *person* is not in violation. This is an important distinction and critical to the success of this approach.

When viewing the condition of the property, the enforcement agent should demonstrate to the property owner a degree of detachment from the code. One way of doing this is by pointing out the section of the code and stating "unfortunately, this section of the ordinance appears to prohibit that condition. I'm sure you were unaware of this ordinance." This statement effectively creates the animate/inanimate separation and allows the property owner an opportunity to look at the property dispassionately, and acknowledges that you as the enforcement agent do not ascribe nefarious motives for the condition of the property.

After a conversation about how the property came to be in violation, there comes a point where compliance terms need to be negotiated. With your previous review of the property in mind, ask the property owner, "How long do you think you need to bring your property into compliance?" A better question is to state the action required for compliance in the question: "How long do you think you need to remove the junk vehicles?" Recall the previous discussion about people naturally wanting to clean up their own mess. The vast majority of property owners will own up to their responsibility and voluntarily comply – if simply given a reasonable amount of time.

At this point, stay quiet and allow the property owner to respond – regardless of how long it takes. This is the single most difficult part of the enforcement process; however, if the enforcement agent speaks first, then he is negotiating with himself, not the property owner.

The property owner will invariably respond, and it is up to the enforcement agent to accept the terms or reject it. In about 70 percent of enforcement cases, the time asked for will be acceptable. In the other 30 percent, negotiations will be necessary. A rule of thumb I've found effective is to mirror the extra time so the midpoint of the two timelines is what the agent wanted anyway.

Step Four: Oral Confirmation of Compliance Terms

The enforcement agent repeats back the requested compliance terms to the property owner for confirmation. If there is agreement, tell the property owner that a contract will be drawn up that reduces these terms to writing.

Step Five: Contract

The contract is to be signed by the enforcement agent and the property owner. During execution of the contract, the property owner should be advised to contact the enforcement agent before the end of the term if extra time is needed. This last part is very important, as it lets the property owner know that you, as the enforcement agent, empathize with the situation and genuinely want to work with the property owner to achieve voluntary compliance. Make sure the contract states the consequences if compliance is not achieved by the agreed-upon time (e. g. summary abatement, citations, etc.)

Step Six: Monitoring

Once a compliance timeline has been agreed upon, the property should be monitored regularly to check that the progress is being made. It may appear no progress has been made, and it is natural to call or contact the property owner to see what's going on. *Under no conditions should that call or visit be made.* If the property owner has three weeks, for example, the contract has been followed even if compliance is achieved on the last day. An attempt by the enforcement agent to contact the property owner may be perceived by the property owner as a display of mistrust; once trust is broken it never will be restored.

Step Seven: Post-Timeline Activity

At the end of the contractual term, compliance has been either achieved or not. If achieved, thank the property owner, take some final pictures, and close out the file. If compliance has not been achieved, visit with the property owner to see what any issues held up timely compliance. The enforcement agent should use proper judgment whether to allow for a contract extension; however, if extensions are granted too liberally the word will get out that timelines mean little and the contract will hold no meaning.

If the city uses this program as a prelude to a formal enforcement process, then commence the formal process and let it play out. The fact that the enforcement agent gave the property owner a reasonable period of time to voluntarily comply will strengthen the city's case – whether in court or before the city council.

If the city uses this program as the basis for its enforcement, the next step involves introducing progressively increasing pressure points to make it clear to the property owner that the city is serious about this matter. For example, in most metropolitan areas there are firms that specialize in cleaning up junked properties. One effective tactic is to invite that firm out to the property to determine a price for cleaning up the property, and to make sure the property owner is there to observe. While this tactic works for cities with summary abatement authority, in most cases it works even if the city lacks that authority. Even in situations where the city council needs to authorize the abatement, the elected official will want to know how much it is going to cost before voting to approve.

BENEFITS OF THIS APPROACH

The above strategy for approaching the code enforcement function offers the following benefits:

Alleviates Employee Burnout

Using a tangential approach like this greatly reduces the confrontational nature of enforcement actions. When used properly, enforcement is converted from a struggle over whether the property will be brought into compliance to a negotiation over when compliance will be achieved. This conversion makes the task much more pleasant, and all of us are looking for that kind of work. Employee burnout will be a thing of the past.

Minimizes Animosity between the Property Owner and the Enforcement Agent

Eliminating the personalization of the ordinance, as well as decoupling the property owner from the condition of his property, takes personalities out of the discussion and results in a conversation over how to resolve the problem. Done properly, animosity is not only minimized, it is eliminated.

Decreases Compliance Costs

Every dollar spent on compliance by the property owner is one less dollar spent by the city. Even in abatement actions that are ultimately paid for by the property owner, the city needs to pay the costs of the abatement up front. The city has additional costs beyond the abatement, including notices to the property owner and certification of the unpaid compliance costs for payment with property taxes. It is financially more efficient for the property owner to voluntarily achieve compliance. The city can assist the property owner by sourcing organizations such as the Boy Scouts and county sentence-to-serve programs that offer free or reduced labor costs, charging only what they are charged for disposal.

Enhances the Public's Opinion of City Enforcement Staff

By giving property owners the benefit of the doubt about whether they know their property is noncompliant, city staff creates a source of good will in the community. The complainant, of course, will always be satisfied with compliance; however, if not done properly, the property owner can create havoc in the neighborhood that could create more problems in the future. Treating property owners properly is a courtesy that pays dividends in the future.

CONCLUSION

In this article I have discussed issues with the traditional approach to code and ordinance enforcement. I pose an alternative strategy that is designed to use the natural apprehension of planners toward conflict to their advantage. This strategy uses psychology, human nature, trust, and contracts to promote voluntary compliance. It has been used in urban, suburban, and rural settings; it has been used in cities with proactive enforcement and in cities with complaint-based enforcement. This system has proven effective for all land-use classifications, from agricultural to heavy industrial. Finally, this process works whether the violation is minor or major, and for violations of the terms of conditional use permits.

While this strategy can be implemented as either a stand-alone program or as a prelude to a more formal enforcement program, it is not designed for situations that present immediate and imminent threats to the health, safety, and welfare of the community. There are times to work with property owners, and there are times when the nuisance needs to be abated in a timely manner.

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619. PENALTIES AND ENFORCEMENT

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.

619.040. 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.

619.050. 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.

LEAGUE OF MINNESOTA CITIES

2012 City Policies

For Legislative and Administrative Action

November 17, 2011

SD-17. Administrative Fines for Code Violations

Issue: Many statutory and home rule charter cities have implemented administrative enforcement programs for violations of local regulatory ordinances such as building codes, zoning codes, health codes, and public nuisance ordinances. This use of administrative proceedings has kept enforcement at the local level and reduced pressure on over-burdened district court systems. Cities using administrative enforcement processes experience a lower cost of enforcement and a quicker resolution to code violations.

Minnesota statutes expressly provide the authority for all cities to utilize administrative enforcement of local codes enforcement of liquor license and tobacco license violations.

In 2009, the Legislature amended Minn. Stat. ch. 169, the chapter of law pertaining to state traffic regulations, to allow cities and counties to issue administrative citations for certain minor traffic offenses. Since the passage of the 2009 administrative traffic citations law, some people have questioned whether administrative citations for nontraffic, liquor, and tobacco license code violations can be legally issued by statutory cities given that state law does not expressly provide authority on other code matters.

Response: The League of Minnesota Cities continues to support the use of city administrative fines for local regulatory ordinances, such as building codes, zoning codes, health codes, public nuisance ordinances, and regulatory matters that are not duplicative of misdemeanor or higher level state traffic and criminal offenses. The Legislature should clarify that both statutory and home rules charter cities have the authority to issue administrative citations for code violations. Further, state statute should allow statutory and home rule charter cities to adjudicate administrative citations and to assess a lien on properties for unpaid administrative fines.

2.10. - Purpose

Pursuant to City Charter Chapter 4, Section 5, the city council enacts this Article of the Minneapolis Code of Ordinances to provide an administrative enforcement and hearing process for the resolution of certain violations of the Minneapolis Code of Ordinances. The council finds that an administrative enforcement and hearing process will facilitate compliance with certain provisions of this Code and avoid unnecessary delay in the enforcement of the Minneapolis Code of Ordinances. (2001-Or-104, § 1, 9-14-01)

2.20. - Persons authorized to issue citations.

The following city employees are authorized to issue citations for violations of the Minneapolis Code of Ordinances:

- (1) Police officers.
- (2) Animal control officers.
- (3) License inspectors.

2.30. - Alternative methods of enforcement.

This administrative enforcement procedure provides for an alternative method for the city to gain compliance with provisions of the Code prior to any formal criminal or civil court action. The administrative enforcement and hearing process provided for in this chapter will be in addition to any other legal or equitable remedy available to the city for Code violations, except that if a determination is made by the hearing officer, pursuant to the hearing process detailed in section 2.100 of this chapter, that a violation did not occur, the city may not then proceed with criminal prosecution for the same act or conduct. (2001-Or-104, § 1, 9-14-01)

2.40. - Offenses subject to administrative enforcement.

A violation of the following provisions of the Minneapolis Code of Ordinances is an administrative offense that may be subject to the administrative enforcement and hearing process of this Article:

- (1) Title 3 Air Pollution and Environmental Protection.
- (2) Title 4 Animals and Fowl.
- (3) Title 5 Building Code.
- 4) Title 9 Fire and Police Protection.

(5) Title 10 Food Code.

(6) Title 11 Health and Sanitation.

(7) Title 12 Housing.

(8) Title 13 Licenses and Business Regulations.

(9) Title 14 Liquor and Beer.

(10) Title 15 Offenses—Miscellaneous.

(11) Title 17 Streets and Sidewalks.

(12) Title 18 Traffic Code.

(13) Title 20 Zoning Code. (2001-Or-104, § 1, 9-14-01; 2005-Or-080, § 2, 9-23-05)

2.50. - Orders to correct; administrative citations.

Upon the reasonable belief that an offense detailed in section 2.40 of this chapter has occurred, the city officials listed in section 2.20 of this chapter may serve on the violator an order to correct the violation or may issue a citation for the violation. If compliance is not achieved by an order to correct, the official is authorized to issue an administrative citation pursuant to this chapter of the Code. An administrative citation must be served on the alleged violator, or, in the case of citations issued for parking violations under to the traffic code, the citation may be issued in the same manner as a traffic tag pursuant to section 478.480. The administrative citation must state the date, time, and nature of the offense, the name of the official issuing the citation, the amount of the scheduled civil fine, and the manner for paying the fine or appealing the citation by requesting a mediation and hearing. (2001-Or-104, § 1, 9-14-01; 2010-Or-040, § 2, 4-16-10)

2.60. - Civil fines.

The administrative offenses detailed in section 2.40 may be subject to a civil fine. Civil fines may not be imposed for ordinance violations that prohibit the same conduct that is classified as a crime or petty misdemeanor in Minnesota Statutes, Chapters 168, 168A, 169, 170, 171 and 609. (2001-Or-104, § 1, 9-14-01)

2.70. - Schedule of civil fines.

The city council will adopt by resolution a schedule of civil fines for administrative offenses. City officials enforcing this chapter must adhere to this schedule of fines. (2001-Or-104, § 1, 9-14-01)

2.80. - Payment of civil fine; request for administrative enforcement and hearing.

The alleged violator must either pay the scheduled civil fine or request a hearing within twenty (20) days after service of the administrative citation.

2.90. - Fee for late payment of civil fine.

(a) A late payment fee of ten (10) percent of the civil fine amount will be imposed if the person responsible for the violation fails to pay the civil fine within twenty-five (25) days after service of the administrative citation or fails to timely request a hearing pursuant to this chapter.

(b) If a civil fine is not paid within the time specified and no request for a hearing is timely received, the nonpayment of the civil fine will constitute a personal obligation of the violator. A personal obligation may be collected by the city by any appropriate legal means. If the fine was imposed for a property-related violation, the city may assess the applicable property pursuant to section 2.120 of this chapter. (2001-Or-104, § 1, 9-14-01)

2.100. - Administrative hearing procedures.

(a) Service; Minnesota Rules of Civil Procedure. The Minnesota Rules of Civil Procedure govern with regard to service of process and calculation of time.

(b) Hearing officers. The city attorney will periodically approve a list of lawyers from which the city attorney will select a hearing officer to mediate and hear a matter for which a hearing is requested. The alleged violator requesting a hearing will have the right to request, no later than five (5) days before the date of the hearing, that the assigned hearing officer be removed from the case. One request for removal for each case will be granted automatically by the city attorney. A subsequent request will be directed to the assigned hearing officer, who will decide whether the hearing officer cannot fairly and objectively review the case. If such a finding is made, the hearing officer will remove himself or herself from the case, and the city attorney will assign another hearing officer. The hearing officer is not a judicial officer, but is a public officer as defined by Minnesota Statutes, Section 609.415. The hearing officer must not be a current employee of the City of Minneapolis.

(c) Subpoenas. Upon the hearing officer's own initiative or upon written request of an interested party demonstrating the need, the hearing officer may issue an administrative subpoena for the attendance of a witness or the production of books, papers, records or other documents that are material to the matter being heard. The party requesting the administrative subpoena will be responsible for serving the subpoena and for paying the statutory fees and expenses of any witness. A person served with an administrative subpoena may file an objection with the hearing officer no later than the date specified in the administrative subpoena for compliance. The hearing officer may cancel or modify any portion of the administrative subpoena deemed unreasonable or oppressive. Any person who, without just cause, fails or refuses to comply with an administrative subpoena may be guilty of a misdemeanor. In the alternative, the party

requesting the administrative subpoena may seek an order from district court directing compliance with the administrative subpoena.

(d)Notice of hearing. A notice of the hearing must be served on the alleged violator. The notice must be served at least ten (10) days in advance of the scheduled hearing unless a shorter time is accepted by all parties.

(e)Mediation. Immediately prior to any hearing, with the agreement of all parties, the hearing officer may attempt to mediate the dispute. If the dispute is settled as a result of mediation, the hearing will be canceled. Any mediated settlement must be commemorated by the hearing officer in writing and signed by the person responsible for the violation. A mediated settlement that calls for formal action by the city council is contingent on final city council approval and will be presented as a recommendation to the city council from the hearing officer.

(f)Hearing procedure. If a mediated settlement cannot be reached, the matter will proceed to a hearing. At the hearing, the parties will have the opportunity to present testimony and question witnesses, but strict compliance with the Minnesota Rules of Evidence will not be required. The hearing officer will tape record the hearing and receive testimony and exhibits into evidence. The hearing officer will receive and give weight to evidence, including hearsay evidence, that possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs. The city will have the burden of proof to demonstrate by a preponderance of the evidence that a violation occurred and that the required corrective action, if applicable, is reasonable. The determination by the applicable department director as to the need for the required corrective action shall be accorded substantial weight by the hearing officer in determining the reasonableness of the required corrective action.

(g)Authority of hearing officer. The hearing officer will have the authority to:

(1)Mediate and enforce a settlement of the dispute;

(2)Hear an appeal of the issuance of a notice of noisy or unruly assembly under section 389.65 and either uphold or rescind the issuance of the notice;

(3)Determine whether a violation occurred;

(4)Dismiss the administrative citation;

(5)Impose the scheduled fine;

(6)Reduce, stay, or waive a scheduled fine upon compliance with appropriate conditions; or

(7)Increase the scheduled fine when the actual costs of enforcement are shown by a preponderance of the evidence to be greater than the amount of the scheduled fine.

(h) Imposition of civil fine by hearing officer. When imposing a fine for a violation, the hearing officer may consider any or all of the factors listed below:

- (1) The duration of the violation;
- (2) The frequency or recurrence of the violation;
- (3) The seriousness of the violation;
- (4) The history of the violation;
- (5) The violator's conduct after issuance of the notice of hearing;
- (6) The good faith effort by the violator to comply;
- (7) The economic impact of the fine on the violator;
- (8) The impact of the violation upon the community;
- (9) Prior record of city code violations; or
- (10) Any other facts appropriate to a just result.

(i) Fines for continuing violations. The hearing officer may exercise discretion to impose a fine for more than one (1) day of a continuing violation but only upon a finding that:

- (1) The violation caused a threat of harm to the public health, safety, or welfare; or
- (2) The violator unreasonably refused to comply with the code requirement. The hearing officer's decision and supporting reasons for continuing violations must be in writing.

(j) Decision of the hearing officer.

(1) The hearing officer must determine whether the city has established by a preponderance of the evidence that a violation has occurred and that the required corrective action is reasonable and must affirm, vacate or modify the city's decision regarding the alleged violation or corrective action.

(2) The hearing officer must issue a written decision and order to the alleged violator that contains the following information:

- a. The decision regarding the alleged violation including findings of fact and conclusions thereon in support of the decision.
- b. The required corrective action, if any.
- c. The date and time by which corrective action must be completed.

d. The monetary penalty assessed based on the criteria set forth herein.

(3) The decision of the hearing officer must be served on the alleged violator.

(k) Finality of decision. The decision of the hearing officer shall be final without any further right of administrative appeal. (2001-Or-104, § 1, 9-14-01; 2006-Or-006, § 1, 2-10-06)

2.110. - Judicial review.

An aggrieved party may obtain judicial review of the decision of the hearing officer by petitioning the Minnesota Court of Appeals for a writ of certiorari pursuant to Minnesota Statutes, Section 606.01. (2001-Or-104, § 1, 9-14-01)

2.120. - Assessment of civil fines for property related violations.

(a) Civil fines subject to assessment. In accordance with chapter 10 of the Minneapolis City Charter, unpaid civil fines imposed for property-related violations may be assessed against property that was the subject matter of the civil fines.

(b) Prior voluntary payment. Prior to any assessment for unpaid fines, the city shall seek voluntary payment of the fines by notifying the owner of the property in writing of the fine imposed.

(c) Assessment procedure. The following information relating to property having unpaid civil fines will be certified to the county auditor and collected in the same manner as taxes and special assessments against the property:

(1) The unpaid civil fine and late fees, including the administrative charge due under subdivision (d) of this section.

(2) Interest at the maximum lawful rate permitted under Minnesota Statutes, Chapter 429.

(3) A description of the premises.

(4) The name of the owner of the property.

The assessed-unpaid civil fine will be a perpetual lien on the premises until paid. Prior to the certification to the county auditor, the owner must be given written notice of the proposed assessment and be provided an opportunity to be heard before the city council.

(d) Administrative charge for assessment. An administrative charge of eight dollars (\$8.00) is due upon the mailing of the notice of the proposed assessment. (2001-Or-104, § 1, 9-14-01; 2010-Or-088, § 1, 10-8-10)

SCHEDULE OF CIVIL FINES FOR ADMINISTRATIVE OFFENSES

Unless otherwise specified in the following schedule, the civil fine for an administrative offense enforced pursuant to Chapter 2 of the Minneapolis Code of Ordinances is \$250 for an offense of a provision of Title 12 of the Code of Ordinances and \$200 for an offense of any other title there under.

A second or subsequent violation of the same type by the same person or entity in a twenty-four (24) month period of time shall be subject to a fine that is double the amount of the fine imposed for the previous violation, up to a maximum of \$2000 per violation.

Description of Violation	Code Citation	Fine
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Title 3 – Air Pollution and Environmental Protection

Prohibited connections	56.70	\$750
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Title 4 – Animals and Fowl

License Required (dogs and cats)	64.10	\$100
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Collars and Tags Required	64.20	\$25
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Leashing and tethers	64.50(a) & 64.50(b)	\$75
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Feces clean up	64.50(c)	\$100
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Off leash dog areas; permits and regulations	64.55	\$100
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Dogs and cats in heat	64.60	\$75
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Maximum number animals of the dog, cat, ferret, or rabbit kind	64.100	\$50
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License required (ferrets)	65.10	\$50
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Vaccinations of dogs required	66.10	\$100
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Vaccination of cats required	66.20	\$100
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Vaccinations of ferrets required	66.25	\$50
Permit required (Fowl, pigeons, and other small animals)	70.10	\$50
Unattended animals in streets, alleys, sidewalks, public places	74.10	\$50
Attachment of animals to trees, posts prohibited	74.20	\$50
Failure to provide adequate feed, shelter, exercise and space	74.60	\$500
Failure to provide adequate veterinarian care	74.60	\$1,000
Failure to follow security plan	74.60	\$500
Failure to provide required information	74.60	\$500
Keeping of honeybees	74.80	\$50
Animal Cruelty	64.170	\$500
<u>Title 10 – Food Code</u>		
Conducting or Operating a Food Establishment without a License	188.160	\$250
No Glass Outside After 11 PM in Downtown	188.540 (9)	\$100
<u>Title 11 – Health and Sanitation</u>		
Dumping debris on the property of another	225.100	\$1,000
Possessing Drug Paraphernalia in a Public Place	223.235	\$240
Public Urination	227.180	\$80
<u>Title 12 – Housing</u>		
Graffiti – Defacement of Property	244.495 (a)	\$240
Light and ventilation	244.410	\$500

Description of Violation	Code Citation	Fine
Prohibited uses	244.640	\$500
Required space in dwelling units	244.810	\$500
Dwelling unit to be occupied by one family	244.820	\$500
Basement space may be habitable	244.850	\$500
Attic rooms	244.940	\$500
Restricted attic use	244.945	\$500
Condemnation authorized; requiring vacating	244.1450	\$1,000
Operating a rental property without a rental license	244.1840(1)(a)	\$500
Second Offense Operating a rental without a license	244.1840 (1)(a)	\$2,000
Occupy property after rental license revocation without approval	244.197	\$2,000
Title 13 – Licenses and Business Regulations		
Operating a Business without a Required License (excluding Pawnshops and Precious Metal Dealers)	Chapters. 266 - 350 excluding Chapters	\$250
Operating as a Precious Metal Dealer without a Required License	322.20	\$500
Operating as a Pawnshop without a Required License	324.30	\$500
Taxi – Violation of Driver Prohibited Acts	341.250	\$250
Taxi – No Driver’s Licenses	341.340	\$250
Taxi – Operate a Taxi without a License	341.480	\$250
Taxi – Defective / Unsealed Meter	341.790	\$250
Sell tobacco to minor by a Tobacco Dealer establishment	281.500	\$200
Sell tobacco to minor by an individual	281.500	\$50

Gambling		
Failure to display ID tag by employee	268.80(s)	\$100
Failure to display compulsive gambling hotline	268.80(bb)	\$100
Failure to display statement "Illegal Gambling is Prohibited"	268.80(cc)	\$100
Failure to accurately complete prize receipt	268.80(t)	\$100
Failure to deface winning pull tab tickets	268.80(u)	\$100
Mechanical meter in dispensing device not displaying current or accurate information	268.80(ii)	\$500
The lessor and/or immediate family prohibited from purchasing pull tabs on site	268.80(y)	\$500
Lawful gambling prohibited at any times other than during lawful business hours	268.80(n)	\$500
Gambling employees prohibited from purchasing pull tabs on site	268.80(x)	\$500
Persons under 18 prohibited from lawful gambling	268.80(jj)	\$500
Sale of pull tabs for cash only	268.80(nn)	\$500
Prohibited activities during operating times of lawful gambling	268.80(dd)	\$500
Serial numbers of the game in play must match the game flare	268.80(kk)	\$500
All last sale prized offered are posted, by the distributor, on the game flare	260.80(mm)	\$500
The game flare does not display the State of Minnesota symbol or bar code is not displayed	268.80(ll)	\$500
All fines to be paid must originate from the gambling organization's general fund	268.80(pp)	\$500

Description of Violation	Code Citation	Fine
Failure to maintain a valid gambling manager's license	268.80(z)	\$500
Refuse inspection by police	268.80(oo)	\$500
Fail to display state registration stamp dispensing device	268.80 (qq)	\$500
Failure to maintain lease for dispensing device on site	268.80 (rr)	\$500
<u>Title 14 – Liquor and Beer</u>		
No Business License – License Required		\$500
Liquor License Required	362.100	
Wine License Required	363.200	
Beer License Required	366.100	
Premises to be Open to Inspection	362.490	\$500
Furnishing Liquor to Minors, not Large Venues or Special Events	364.100	\$500
Sales to Obviously Intoxicated Parties	364.300	\$500
Consumption in Public	364.400	\$80
Loitering in Possession of an Open Bottle	364.450	\$80
Consumption in on sale -hours regulated	364.850	\$500
Unauthorized Persons on Premises between 2:30 and 5:00 a.m.		\$500
“On Sale” Liquor License	364.100	
Wine or Beer License	368.700	
“Spiking” Prohibited	368.200	\$250
Club Sales to Non-Members	368.500	\$250
Sale of Liquor to a Minor	370.10 and 364.10	\$500

Sales or Service by a Minor	370.200	\$500
Possession/Consumption by a Minor	370.400	\$160
Large Venues and Special Events		
Special Events: 1 to 10 points of sale (1 incident/sale to minor to be a violation/compliance failure)	370.1	\$500
Special Events: 11 or more points of sale (2 incidents/sales to minor to be a violation/compliance failure)	370.1	\$500 x I
Large Venues: 30 to 50 points of sale (2 incidents/sales to minor to be a violation/compliance failure)	370.1	\$500 x I
Large Venues: 51 to 75 points of sale (3 incidents/sales to minor to be a violation/compliance failure)	370.1	\$500 x I
Large Venues: 76 to 100 points of sale (4 incidents/sales to minor to be a violation/compliance failure)	370.1	\$500 x I
Large Venues: 101 to 150 points of sale (5 incidents/sales to minor to be a violation/compliance failure)	370.1	\$500 x I
Large Venues: 151 to 200 points of sale (6 incidents/sales to minor to be a violation/compliance failure)	370.1	\$500 x I
Large Venues: 201 or more points of sale (7 incidents/sales to minor to be a violation/compliance failure)	370.1	\$500 x I

Title 15 – Offenses – Miscellaneous

Loitering	385.500	\$240
Aggressive Solicitation	385.600	\$80
Lurking	385.800	\$240

Description of Violation	Code Citation	Fine
Noise – Amplified Sound from Vehicles	389.65 (c)(6)	\$80
Noisy/Unruly Assembly; Participating in, Conducting, Visiting, Remaining at or Permitting	389.65(c)(1)	\$150
Noisy/Unruly Assembly; Owner, Rental License Holder or Landlord	389.65(c)(1)(c)	\$200
Noise – No Amplified Sound Permit	389.105	\$250
<u>Title 17 – Streets and Sidewalks</u>		
Littering	427.300	\$80
<u>Title 18 – Traffic Code</u>		
Vehicles Displayed for Sale on Public Street	478.700	\$50
Violations as found in Chapter 478 and Chapter 482		Fees as approved by 4th Court District, including surcharges. All other violations \$42
<u>Title 20 - Zoning Code</u>		
Prohibited Home Occupation	535.460	\$250
Commercial Vehicle Parked in Residential Zone	546.800	\$50
Business Open After Hours		\$250
Residence Districts	546.600	
Office Residence Districts	547.600	

C1 Neighborhood Commercial Districts	548.240	
C2 Neighborhood Corridor Commercial Districts	548.300	
C3A Community Activity Center District	548.360	
C3S Community Shopping Center District	548.420	
C4 General Commercial District	548.480	
Downtown Districts	549.600	
Industrial Districts	550.900	

Roseville, Minn Code

102.01: GENERAL PENALTY:

A. General Offense: Unless otherwise provided in City Code, any person violating any provision of the City Code shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$1,000.00, or by imprisonment not to exceed 90 days, or both, or any different amounts adopted by statute. In either case the costs of prosecution may be added[1]. (Ord. 1067, 9-25-89; amd. 1995 Code)

B. Petty Misdemeanor Offense: A petty misdemeanor offense is an offense which is prohibited by statute which does not constitute a crime and is classified as a petty misdemeanor for which a sentence of a fine of not more than \$300.00 or any different amounts adopted by statute may be imposed[2]. (1995 Code)

C. Administrative Offense:

1. Purpose: Administrative offense procedures, established pursuant to this Section, are intended to provide the City with an alternative to traditional criminal charges for violations of certain ordinance provisions.

2. Definitions:

a. Administrative Offense: A violation of a provision of this Code that is subject to the administrative penalties set forth in the schedule of offenses and penalties referred to in Subsection

3. Notice: Any officer of the Police Department or any other person employed by the City, authorized under Section 102.02 of this Code shall, upon determining that there has been a violation of ordinance or Code, notify the violator or, in the case of a vehicular violation, attach to the vehicle a notice of the violation. Said notice shall set forth the nature, date and time of violation, the name of the official issuing the notice, the amount of the scheduled penalty and required compliance actions, if applicable.

4. Recovery of Administrative Costs: The owner of the premises, where an administrative offense ticket has been issued by the City's Community Development Department, shall be personally liable for the cost of the City for inspection of said property and administrative costs as allowed per Minnesota Statute 429.101. Staff shall prepare a bill for the cost and mail it to the owner. The amount shall be immediately due and payable at the office of the City Manager.

5. Notice Contestation and Hearing: Any person contesting an administrative offense may, within seven days of the time of issuance of the notice, request, in writing, a hearing. The Hearing Officer shall forthwith conduct an informal hearing to determine if a violation has occurred. The Hearing Officer shall have authority to dismiss the violation or reduce or waive the penalty. If the violation is sustained by the Hearing Officer, the violator shall pay the penalty imposed.

6. Hearing Officer: The City Manager shall be the hearing officer. The hearing officer is authorized to hear and determine any controversy relating to administrative offenses provided for in this Section.

7. Payment of Penalty: Once notice is given, the alleged violator must pay the

specified fine within seven days of the time of issuance of the notice, unless contesting the notice pursuant to Subsection 5. of this Chapter. The amount of the fine shall be set forth on the schedule of penalties for the violation as adopted by the City Council. The penalty may be paid in person or by mail and payment shall be deemed to be an admission of the violation.

8. Failure to Pay Penalty and/or Administrative Costs: In the event a party charged with an administrative offense fails to pay the penalty when due, a misdemeanor or petty misdemeanor charge may be brought against the alleged violator in accordance with applicable statutes. In the event a party does not pay the monetary penalty and/or administrative costs, the City may seek to collect the costs of the administrative offense procedures per Section 407.07 and/or 906 of this Code.

a. If the penalty and/or administrative cost is unpaid, the City Manager shall, on or before September 1, list the total unpaid charges along with all other such charges, as well as other charges for current services to be assessed under Minnesota Statute 429.101 against each separate lot or parcel to which the charges are attributable. The City Council may then spread the charges against such property under that statute and other pertinent statutes for certification to the County Auditor and collection along with current taxes the following year, or in annual installments not exceeding ten, as the City Council may determine in each case.

9. Failure to Comply: If a violation requires code compliance within a set period of time and the compliance does not occur by the deadline specified, the City may initiate an abatement process, as provided in Chapter 407 of the City Code, and/or charge the party with a misdemeanor.

10. Disposition of Penalties: All penalties collected pursuant to this Section shall be paid to the City Treasurer and may be deposited in the City's general fund.

11. Offenses and Penalties: Offenses that may be charged as administrative offenses are infractions to the City Code. Monetary penalties associated with offenses shall be identified in the City's Fee Schedule. Subsection 314.05

12. Subsequent Offenses: In the event a party is charged with a subsequent administrative offense within an 18 month period for the same or substantially similar offense, the subsequent administrative penalty shall be increased by 100% above the previous administrative penalty. The City shall only increase the penalty twice within this period. (Ord. 1134, 1-24-94)
(Ord. 1366, 4-21-2008)

[1]M.S.A. §§412.231, 609.033(3), 609.033 and 609.034

[2]M.S.A. §609.0332

102.02: ISSUANCE OF ORDINANCE VIOLATION SUMMONS:

The persons hereinafter named, as employees or agents of the City, shall have power to issue summons with complaints incorporated therein (citations) in the form adopted by rule by the Municipal Court, but such issuance by those named shall relate only to offenses involving the City Code; building construction, operation or maintenance; fire and fire prevention; public health and sanitation; and zoning. No such employee or agent hereinafter authorized to issue said summons shall be authorized to arrest or otherwise take a violator into custody or to secure a promise to appear in court in lieu of arrest.

Those authorized are as follows:

Fire Marshal

Fire Inspector

Director of Public Works

Chief Code Enforcement Officer

Code Enforcement Officer

Electrical Inspector

Reserve Police Officer

Community Service Officer

Director of Community Development

Other employees or agents of the City specifically designated, in writing, by the City Manager shall also have such authority. (Ord. 1019, 8-10-87; amd. 1995 Code)

314.052: Administrative Fines

Fee / Charge Description	City Code	Amount
Alcohol and Tobacco Sales:	N / A	\$ 150.00
Purchase, possession - underage		100.00
Lending ID to underage person		200.00
Selling tobacco – underage		250.00
Selling alcohol – underage		150.00
License holder		100.00
Other violation		
Parking:	N / A	100.00
Handicap zone		25.00
Fire lane		25.00
Snowbird		25.00
Blocking fire hydrant		25.00
Other illegal parking		
Fires: No open fires	N / A	25.00
Fire Code		100.00
Animals:	N / A	50.00
Vicious animal		50.00
Barking dog		50.00
Animal at large		50.00
Other animal violation		
Miscellaneous:	N / A	100.00

Building code		100.00
Fill permits		50.00
Failure to apply for license		250.00
Fireworks – use, possession, sale		100.00
Land use		50.00
Licenses (not occurring elsewhere)		150.00
Illegal dumping		250.00
Consuming alcohol-unauthorized places		250.00
Tampering with Civic Defense System		25.00
Seat belts		35.00
Expired license plates	511	35.00
Missing plate/tab		150.00
Trespassing		50.00
Golf cart / ATV violation		250.00
Noise complaint		25.00
Park ordinance violation		75.00
Peddling		250.00
Property nuisance calls (starting with 3rd call) (a)		100.00
Public nuisance		100.00
Regulated businesses		50.00
Signs		50.00
Snowmobiles		250.00
Discharge, display of weapon		100.00
Wetland / Shore land		

(a) Beginning with the 4th call, the cost is \$250 plus the costs related to the call up to \$2,000.
(Ord. 1421, 11-28-2011)