

Brooklyn Park Charter Commission Meeting Agenda
Wednesday, December 11, 2024, 7:00 p.m.
City Hall Room A203

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1. Call to Order/Roll Call
2. Public Comment
3. Additions/Approval of the Agenda of December 11, 2024
4. Approval of Minutes
 - 4.1** SEPTEMBER 11, 2024, REGULAR MEETING MINUTES
5. Old Business
6. New Business
 - 6.1 Code Enforcement and Administrative Penalties in Brooklyn Park
 - 6.1A** CHARTER SECTION 14.19-ADMINISTRATIVE PENALTIES
 - 6.1B** STAR TRIBUNE ARTICLE ON CODE ENFORCEMENT ISSUES IN ST. PAUL
 - 6.2 Presentation on Code Enforcement in Brooklyn Park – Jason Newby, Inspections & Environmental Health Manager
 - 6.2A** CITY OF BROOKLYN PARK ADMINISTRATIVE ENFORCEMENT PROGRAM
7. Reports of Officers, Boards, and Standing Committees
 - 7.1 Council Liaison Klonowski Update on Council Actions
8. Correspondence/Communications
9. Adjournment

Commission members are asked to let Devin Montero, Staff Liaison, know if you won't be able to attend this meeting. Devin can be reached by phone (763-493-8180) or by email (devin.montero@brooklynpark.org).

City of Brooklyn Park

CHARTER COMMISSION Attachments

Agenda Item No.:	4.1	Meeting Date:	December 11, 2024
Prepared by:	Devin Montero	Presented By:	Dennis Secara, Chair

Attachments:

4.1 SEPTEMBER 11, 2024, REGULAR MEETING MINUTES

Brooklyn Park Charter Commission Meeting Minutes
Wednesday, September 11, 2024, 7:00 p.m.
City Hall Room A203

1. Call to Order/Roll Call

Present: Commissioners, Sunday Alabi, Dennis Secara, LaDawn Severin, Shemara Freeman Gregory Szach Scott Simmons (excused) Susan Maberera, Amy Hanson, LaDawn Severin; Peggy Larkin

Absent: Commissioner Barbara Bor (excused) Adam Hunt, Council Liaison Nichole Klonowski (excused)

2. Public Comment – None.

3. Additions/Approval of the Agenda of March 13, 2024

Motion Chair Secara, Second Commissioner Hanson to approve the agenda as presented. Motion carried unanimously.

4. Approval of Minutes

4.1 JUNE 12, 2024, REGULAR MEETING MINUTES

Motion Commissioner Alabi, Second Commissioner Simmons to approve the June 12, 2024, regular meeting minutes as amended. Motion carried. Commissioners Hanson and Maberera abstained.

5. Old Business

5.1 Proposed Amendments to Sections 4.03 and 2.06.

Chair Secara presented the proposed amendments to Charter Sections 2.06 and 4.03. He stated the amendments would be presented to the council in the interest of shortening vacancies in the office of city council in cases where the unexpired term exceeded 365 days, where a special election was needed per the City Charter.

He stated on Section 4.03, the commissioners already voted on it and would be presenting it to the council, was the same language and did not need to approve it a second time.

He stated tonight the commissioners would be focusing on Section 2.06. He stated two weeks ago he was in a meeting with city attorney Thomson, attorney Tolar and the city clerk discussing the commission's intent for Section 2.06. He stated the Commissioners voted to send the language for review to the city attorney and the city attorney said there was no legal issue with any of the language the Commissioners proposed and was a policy question. The question being, the commissioners were asking the council to call for the special election simultaneously when declaring a vacancy. He stated both would be declared on the same date and currently, the Charter said, the council had within 45 days of the vacancy date to call for a special election. He stated with moving it to the same day, they were saving 45 days in a vacancy.

He stated when the proposal was added to Section 4.03, they shortening the vacancy by 45 days, but were shortening it 45 days plus potentially three months. He stated assuming a primary election was necessary and in cases where it was necessary and where the candidate received 50 percent plus one, there was no need for the second or general election which would save three months to

four and months off a potential vacancy versus three to six months.

He stated one of the issues that came up in the virtual meeting, when the last time the council waited 30 to 45 days to call for a special election following the declaration of vacancy, the legislature had not yet passed the dates cities could hold special elections on. He stated he didn't recall how long that was, maybe 15 to 20 years ago, when there was a vacancy on the council and a special election was required, they waited 30 days to the next council meeting to do that, to call for the special election, and at that time the city could hold special elections according to the timetables stated in the charter at that time.

He stated in 2017, the legislature passed a provision, mandated that special municipal city elections could only be held on specified dates.

He stated when that was factored that in to their proposal, the sooner they got the ball rolling; the shorter the vacancy would be under any circumstances. He stated in that respect, they had met the council's request to look into shortening the vacancies and reducing the costs the city must incur for the special elections. He believed both proposals achieved that and the only hang up was the issue of appointments. He stated he made it clear to the city attorney that it was the consensus of the commission appointments or temporary appointments were not advisable in that circumstance. He stated in circumstances where the vacancy was less 365 days, the council had the option of appointing. If they decided to appoint, they would have to go fully through the appointment process. He stated that was because of an issue where there was a vacancy, and was three months before an election and the council appointed the person who won in the election as opposed of going through the appointment process and appointing someone. He stated it was a pragmatic decision and the commission decided that didn't square with the spirit of the charter. If the issue happens again, and the council decides to make an appointment they should actually follow through and had to define the process which was now defined in the charter.

He read the proposed amendment to Section 2.06.

SECTION 2.06 COUNCIL VACANCIES

If any of the foregoing is determined to have happened, the Council shall, by resolution at the next regular or special Council meeting declare a vacancy on the Council to exist and call for a special election if one is required. Declaration date of vacancy shall be the date of the Council meeting at which the resolution is adopted. Vacancies must be publicly declared by resolution, posted at City Hall, and with notification to be given by any other practical means.

If 365 days or more remain in the term, the Council must upon declaring a vacancy, ~~within 45 days of the declaration date~~ order a special municipal election to fill the vacancy for the balance of the unexpired term. The Council shall set times for candidates to file for such office, however, filings may close no sooner than 7 days after the election is ordered. If a special primary election is required by Section 4.03 of this Charter, the special election must be held no more than 120 days after the election is ordered. If a special primary election is not required, the special election must be held no more than 75 days after the election is ordered. Except as provided in this section of the City Charter, all of the provisions of the Minnesota election law are applicable to the election as far as practicable.

Commission Alabi asked if the city attorney didn't see any problem legally doing it and was sound.

Commissioner Secara stated the city attorney did not see a legal problem with the proposal and said it was a policy question. The new policy would be to call for a special election simultaneously with the declaration of vacancy.

Commissioner Freeman asked if anyone remember about the filing dates being 15 days instead of 7 days.

Chair Secara stated the filing issue was brought up and as was discussed with the commissioners, the charter deferred to the state. He stated they could change the charter at a later time if the commissioners wanted to change it.

Commissioner Severin stated it was irrelevant to have seven days because the state would override the charter. She felt the charter was confusing.

Chair Secara stated the charter was not consistent with the statute but the statute was preeminent and was not irrelevant. He stated they could change it at a later time but the legislature could also change too.

Commissioner Simmons stated he recalled at the June meeting, there were two laws, one was for local and one was for statewide elections and a conflict of laws. He stated the city attorney said there was a Attorney General's opinion that said, the city had to follow the state law and not the local municipal law and that was the issue and was based on an opinion by the Attorney General. He stated that might change if there was a different Attorney General and offer a different opinion. He stated it was not in the law that it was 15 days because it was state law. Municipal law said it could have a shorter filing period and referenced in MS 410.21.

Commissioner Alabi stated the seven days could still be superseded by statute and not make sense and if there was a way to reference it. He stated whatever date that was chosen, they would have to rely on the statute at the time the vacancy was declared regarding the 7 days and 30 days.

Chair Secara stated as of right now, the charter said seven days. He stated it would be an issue for the city attorney to advise the charter commission regarding the seven days and 30 days.

Commissioner Mabera asked about the language that said, it may close no sooner than 7 days and can order the filing dates to less than 7 days. She asked if that would be an issue for the candidates.

Chair Secara stated the candidates would be notified of the filing deadlines and would be an issue to bring up to the city attorney.

Commissioner Simmons asked that the minutes be amended on the last page, regarding the statute number. He stated it was, "4.10.21" and should be "410.21". He stated there were two laws, one was for those filing for legislature, state office or governor, it was 15 days and if filing for local office you can have the filing period shorter. He stated there was an opinion by the attorney general and according to the city attorney, the city had to follow the state law and not the local law. He stated his recommendation was to leave it and could wordsmith it and gave an example, "pursuant to state law" if they wanted to consider the opinion by the city attorney on the state law.

Commissioner Larkin stated an Attorney General's opinion was not binding, it was advisory, and a court could decide something different. She stated the city charter was not invalid with the seven days and didn't need to change it. She stated it might be advisable that they went by the state statute because that was the attorney general's opinion. She stated someone could sue the city and have the court decide the city was locally allowed to use the days per the statute. \

Commissioner Simmons stated the comma after the word "vacancy" in the proposal for Section 2.06, was not necessary. If "upon declaring a vacancy" was an independent clause, suggested putting a comma after "must" and after "vacancy", otherwise strike the comma after "vacancy". Read

the sentence.

(without the comma(s))
If 365 days or more remain in the term, the Council must upon declaring a vacancy ~~within 45 days of the declaration date~~ order a special municipal election to fill the vacancy for the balance of the unexpired term.

Chair Secara read the second paragraph to the proposed amendment to Section 2.06.

Motion Commissioner Hanson and seconded by Commissioner Larkin to approve the amendments to Section 2.06 and removing the comma after the word “vacancy”.

Commissioner Simmons asked if the previous amendment to Section 4.03 approved at the last meeting and both amendments would be forwarded together to the council.

Chair Secara stated they amendment to Section 4.03 was approved at the last meeting.

The motion carried. Commissioner Severin abstained.

Chair Secara stated the amendments would be presented concurrently to the council. He stated the council would set the public hearing at the September 23 Council meeting.

Staff Liaison Montero presented the timeline of the amendments presented to the council.

Chair Secara stated if all went well, the Commissioners might not have to meet next month due to lack of agenda items.

6. New Business – None.
7. Correspondence/Communications – None.
8. Adjournment

Motion Commissioner Simmons, second by Commissioner Mabera to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 7:25 p.m.

Respectfully submitted,

Devin Montero,
Staff Liaison

City of Brooklyn Park

CHARTER COMMISSION Attachments

Agenda Item No.:	6.1A	Meeting Date:	December 11, 2024
Prepared by:	Devin Montero	Presented By:	Dennis Secara, Chair

Attachments:

6.1A CHARTER SECTION 4.19-ADMINISTRATIVE PENALTIES

SECTION 14.19 ADMINISTRATIVE PENALTIES (Amended by Ordinance #1998-875 Effect. 7/22/98;
Ordinance #2009-1102 Effect. 10/30/09)

- (A) The City Council may establish by ordinance a procedure for imposing an administrative penalty for any violation of the City Code or a City ordinance. The procedure must provide an opportunity for any person charged with an administrative penalty to be notified of the penalty and to have an opportunity to respond to the charge. The procedure may authorize the City to use the services of a non-City employee to decide whether an administrative penalty should be imposed.
- (B) The City Council may provide by ordinance that unpaid administrative penalties be collected as a special assessment against real property if the administrative penalty relates to the maintenance of the property or to an activity, proposed use, or delivery of City service associated with the property. The ordinance must provide that the City should first attempt to obtain voluntary payment of the penalty. The ordinance must also provide that notice and an opportunity to be heard will be given to the property owner listed on the official tax records before the penalty is assessed.
- (C) With respect to unpaid administrative penalties specially assessed against real property pursuant to Paragraph (B) of this Section, the special assessment may include the administrative and legal costs incurred by the City in connection with collecting those unpaid administrative penalties.

City of Brooklyn Park

CHARTER COMMISSION Attachments

Agenda Item No.:	6.1B	Meeting Date:	December 11, 2024
Prepared by:	Devin Montero	Presented By:	Dennis Secara, Chair

Attachments:

6.1B STAR TRIBUNE ARTICLE ON CODE ENFORCEMENT ISSUES IN ST. PAUL

THURSDAY, JUNE 6, 2024

St. Paul officials seek to add code violation fine to charter

New tool to enforce city ordinances is on docket for third time in a decade.

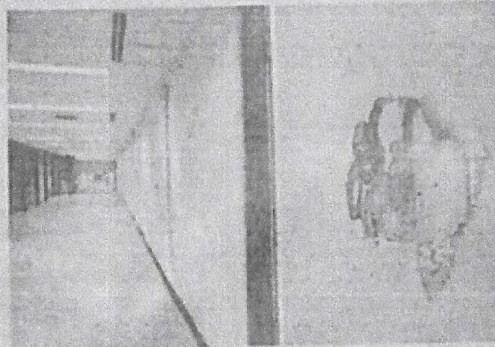
By KATIE GALIOTO
katie.galieto@startribune.com

St. Paul leaders are renewing a push for a charter change that would give the city the ability to impose fines for code violations ranging from wage theft to property negligence to dog bites.

Officials say St. Paul lacks a tool that most other cities have to enforce its ordinances. Staff instead is sometimes forced to address lower-level code violations with criminal citations, which involve a lengthy prosecution process and can leave someone with a criminal record.

"Our goal as the city is that we want compliance with city codes that is consistent, timely and graduated," Deputy Mayor Jaime Tincher said.

But opponents have argued administrative fines can disproportionately hurt low-income residents or be used to target marginalized populations. Two attempts to make the change in recent years



ALEX KORMANN • alex.kormann@startribune.com

Officials say administrative fines could help enforce maintenance laws and avoid situations like this 2023 skyway hole.

have failed due to insufficient support from the City Council and the judicially appointed Charter Commission.

In a presentation to the council Wednesday, city staff described instances when administrative fines may have been an effective means of law enforcement.

Angie Wiese, director of the Department of Safety and Inspections, said staff heard from a bus driver who lost their job after receiving a criminal citation for not painting their house in a timely manner.

Beth Commers, interim director of Human Rights and Labor Standards, said the courts still haven't resolved a violation of the city's earned sick and safe time law that was filed in 2019.

"Administrative citations would be another tool in our toolbox to accomplish the goal," Wiese said. "And the goal is to get compliance."

Since four of the council's seven seats turned over at the start of the year, Council President Mitra Jalali said she is hopeful the measure will be

passed. The city needs to be able to address code violations when residents come forward, she said.

"One of the worst feelings of an elected official is powerlessness," Jalali said.

Jalali said she expects the council to come forward with a resolution asking the Charter Commission to consider the change in the coming months. If an amendment is approved there, it goes to the council, where it must receive unanimous support to pass.

In 2021, a proposal failed by a 7-6 Charter Commission vote. Seven of the group's 15 members have terms expiring at the end of July.

If the effort stalls a third time, officials noted the city charter can also be changed by ballot measure.

If the charter is changed, the council would then lay out when and how administrative fines can be issued. Council members have suggested they could be used to enforce a number of ordinances passed in recent years, including rent stabilization and minimum wage laws.

Katie Galieto • 612-673-4470



ST. PAUL

St. Paul officials seek power to impose fines against landlords, others accused of code violations

For the third time in less than a decade, city leaders are advocating for a new tool to enforce ordinances.

By **Katie Galioto**

The Minnesota Star Tribune

JUNE 5, 2024 AT 2:37PM



A hole in the wall of a downtown St. Paul skyway sits in disrepair in late 2023. City officials said administrative fines could be used to enforce building maintenance laws. (Alex Kormann)



St. Paul leaders are renewing a push for a charter change that would give the city the ability to impose fines for code violations ranging from wage theft to property negligence to dog bites.

Officials say St. Paul lacks a tool that most other cities have to enforce its ordinances. Staff are instead sometimes forced to address lower-level code violations with criminal citations, which involve a lengthy prosecution process and can leave someone with a criminal record.

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BOOKS

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Marion Winik



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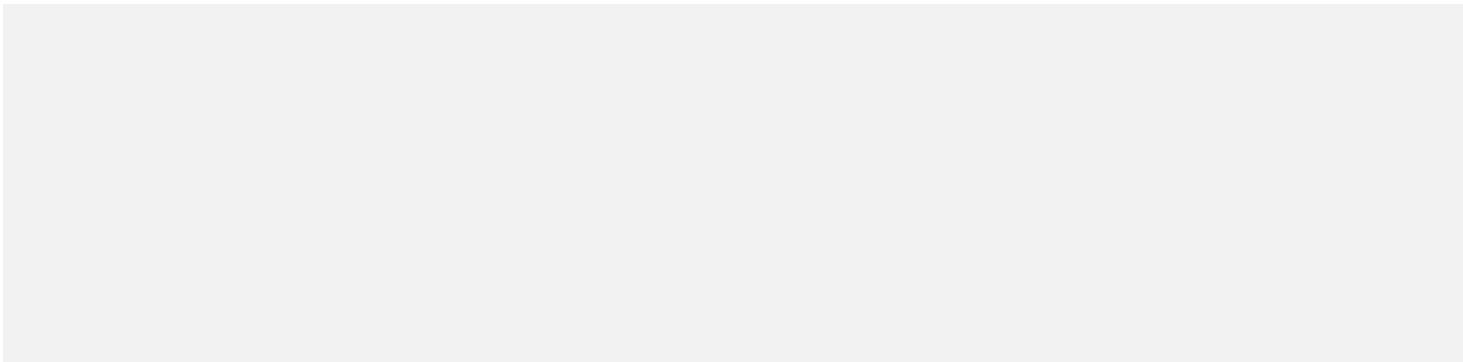
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COMPANY

**City of Brooklyn Park
CHARTER COMMISSION Attachments**

Agenda Item No.:	6.2A	Meeting Date:	December 11, 2024
Prepared by:	Devin Montero	Presented By:	Dennis Secara, Chair

Attachments:

6.2A CITY OF BROOKLYN PARK ADMINISTRATIVE ENFORCEMENT PROGRAM



**City of Brooklyn Park
Administrative Enforcement
Program**

Bench Book for Hearing Officers

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Chapter 1 Introduction

1.1 Intent

The Brooklyn Park Administrative Penalties Program was created by the City of Brooklyn Park as an alternative forum for enforcing City Ordinances. The City previously used the criminal justice system for enforcement of its ordinances but found that system to be unsatisfactory:

- A. The delay in that system did not ensure prompt resolution.
- B. Citizens resented being labeled as criminals for violations of administrative regulations.
- C. The higher burden of proof and potential of incarceration did not appear appropriate for most administrative violations.
- D. The criminal system does not always regard City ordinance violations as important.

The Administrative Penalties Program is intended to avoid these disadvantages and to provide a forum that is more informal and less threatening to alleged violators.

1.2 Authority

The Brooklyn Park City Charter authorizes the City Council to establish by ordinance a procedure for imposing a civil penalty not exceeding \$2,000 for each violation of a city ordinance. This procedure must provide an opportunity for the accused to be heard by a neutral party.

The City Council adopted City Code Chapter 37 to govern administrative enforcement of the ordinances, including imposition of civil penalties. Pursuant to these sections, enforcement is commenced by the issuance of an administrative citation. The recipient may pay a fine established by City Council resolution or may request a hearing. If a hearing is requested, the procedures in this handbook are followed.

Chapter 2 Introduction

2.1 Selection of Hearing Officers

The Program Administrator's office will randomly select a Hearing Officer from the list of lawyers approved by the City Council. The Program Administrator will contact the selected Hearing Officer and indicate the types of cases and the names of the parties involved.

2.2 Self-Disqualification

Upon being assigned to a case, the Hearing Officer must decide if there are grounds for self-disqualification. Grounds for such disqualification include:

- A. Personal interest in the action.
- B. Financial interest in the action.
- C. Relationship to any party.
- D. Former counsel for party. If any member of your firm would be disqualified under this provision, you are also disqualified.
- E. Bias or prejudice.

2.3 Disqualification by Party

No later than five days before the date of the hearing, any party may file a written request with the Program Administrator's office to remove the assigned Hearing Officer. The first such request by an accused will automatically be granted. Any subsequent request by an accused for the same matter and any request by the City will be referred to the assigned Hearing Officer, who will decide whether he or she cannot fairly and objectively hear the case. You must issue a written decision by the date of the hearing. If you grant the request, you should file the decision with the Program Administrator as quickly as possible to allow for assignment of another Hearing Officer. If the request is not granted, you may either:

- A. File the decision with the Program Administrator who will mail it to the requesting party.
Or
- B. Serve it upon the requesting party at the scheduled hearing.

2.4 Hearing Date and Time

The Program Administrator must schedule a hearing to occur within 30 days after receiving the accused's request for a hearing. The Program Administrator's office will contact you for an available date and schedule the time and place for the hearing. You will generally be expected to be available for one-half of a day. More than one matter may be scheduled for hearing during that time.

2.5 Notice of Hearing

The Program Administrator will send all parties a Microsoft Outlook calendar invite and written notice of the hearing date, time, and location. The notice will contain the names of parties and the type of violation alleged.

2.6 Hearing Packet

The City will provide a hearing packet detailing the violations five (5) business days prior to scheduled hearing.

2.7 Continuance for Good Cause

A continuance of the hearing may be granted only by the Program Administrator's office for good cause shown. Generally, continuances should be for no more than 10 days. Examples of good cause are:

- A. Death or incapacitation illness of the accused.
- B. Court order requiring the person to appear for another hearing at the same time.
- C. Lack of proper service of the citation or notice of the hearing.
- D. Good cause does not include: forgetfulness and intentional delay.

2.8 Pre-Hearing Communications

Except for a subpoena request (see below), there must be no ex parte communication between the hearing officer and the parties or parties' representatives. All scheduling and continuances will be handled by the Program Administrator's office.

2.9 Subpoenas

Upon the hearing officer initiative or upon written request of a party who demonstrates the need, you may authorize issuance of a subpoena for the attendance of a witness or the production of documents which are material to the matter being heard. If you authorize a subpoena, notify the Program Administrator's office who will obtain the necessary subpoena from the Hennepin County District Court which will issue the subpoena based on authority of the Brooklyn Park City Charter.

The party requesting the subpoena is responsible for serving it in the same manner as civil actions and paying fees and expenses of the witness. A person served with a subpoena may file an objection with the hearing officer before time for compliance. The Hearing Officer may cancel or modify the subpoena if it is unreasonable or oppressive.

Notify the Program Administrator's office if someone fails to comply with a subpoena. Failure to comply with a subpoena is a misdemeanor and constitutes contempt of court.

Chapter 3 Hearing Procedure

3.1 Reporting

Report to the Program Administrator's office at least 15 minutes before the scheduled hearing. This will allow for any administrative tasks and last-minute changes. The files may also be reviewed at this time.

3.2 Failure to Appear

The failure of an accused to appear constitutes an admission of the violation. You may proceed to impose a penalty. If the City representatives fail to appear, the charge must be dismissed. If the absent person contacts you or the Program Administrator's office within a reasonable time after the scheduled hearing, you will be asked to rule on whether there was a good cause for the absence. Examples of good cause:

- A. Death or incapacitation illness of the accused.
- B. Court order requiring the person to appear for another hearing at the same time.
- C. Lack of proper service of the citation or notice of the hearing.
- D. Good cause does not include: forgetfulness and intentional delay.

3.3 Hearing Introduction

Begin the hearing by introducing yourself and emphasizing your neutrality. You should also explain your role and how the hearing will proceed. You may also explain at this time the right to appeal.

3.4 Hearing Procedure

The Program Administrator's office will provide recording equipment, and the hearing must be recorded. A representative from the Program Administrator's office may be present to assist. The procedure should be informal, without strict rules of evidence. You should make such rulings and take such action as deemed necessary to conduct a dignified and orderly hearing. You will determine whether to allow opening and/or closing statements. The parties have the right to present testimony and cross-examine each other's witnesses. The City bears the burden of proving a violation occurred and should proceed first.

You must administer an oath or affirmation to each witness. You will receive testimony and exhibits and give weight to evidence, including hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs. Because this is a civil matter, you must find a violation only if the greater weight of the evidence supports such a finding.

3.5 Decision

The Hearing Officer has the authority to determine that a violation occurred, to dismiss a charge, to impose the fine established in the City Council approved schedule, and to reduce, stay, or waive the established amount of the fine either unconditionally or upon compliance with appropriate conditions.

When a violation is found, you may consider any or all of the following factors in imposing a penalty:

- A. the duration of the violation,
- B. the frequency of reoccurrence of the violation,
- C. the seriousness of the violation,
- D. the history of the violation,
- E. the violator's conduct after issuance of the notice of hearing,
- F. the good faith effort by the violator to comply,
- G. the economic impact of the penalty on the violator,
- H. the impact of the violation upon the community, and
- I. any other factors appropriate to a just result.

You may not impose a fine greater than the established fine but may impose a penalty for each day of a continuing violation if:

- A. the violation caused a serious threat of harm to the public health, safety, or welfare
or
- B. the accused intentionally and unreasonably refused to comply with the city code requirement.

3.6 Filing the Decision

You should try to announce your decision at the end of the hearing. If you feel uncomfortable in doing so, because of the desire for time to review evidence and reflect or because of an emotional party, you may announce that you are taking the matter under advisement.

You must place your decision in writing with a brief description of your basis for the decision. A form will be provided for your convenience. If you make your decision at the end of the hearing, the Program Administrator's representative will make copies for the parties. If a representative is not present, call the Program Administrator's office at 763-488-6487.

If you take additional time to make a decision, you must provide a written decision to the Program Administrator's office within ten days. That office will mail a copy of the decisions to the parties.

Chapter 4 Post- Hearing Procedure

4.1 Appeal

The decision will be final without the right to make an administrative appeal. The aggrieved party may, however, appeal your decision to the Clerk of Appellate Courts. The following matters may be appealed to the City Council:

- A. An alleged failure to obtain a permit, license, or other approval from the City Council,
- B. An alleged violation of a permit, license, other approval, or the conditions attached, which was granted by the City Council, and
- C. An alleged violation of regulations governing a person who has received a license from the City Council.

To exercise an appeal to the City Council, the person must submit a request in writing to the Program Administrator within ten days after the Hearing Officer's decision.

4.2 Payment of Imposed Fine

The violator may have 30 days within which to pay the fine. A late payment fee of 10% of the fine may be imposed for each 30-day period, or part thereof, after that time.

4.3 Consequence of Failure to Pay

If the person does not pay the fine, the City may:

- A. Assess the penalty against real property in the City which was the subject of the violation if the owner was responsible for the violation.
- B. Obtain a judgment and begin collection procedures.
- C. Suspend or revoke a City issued license that is associated with the violation.

Chapter 5 Administrative Matters

5.1 Hearing Officer's Fees

The Hearing Officer must submit to the Program Administrator a signed application for fees on the form provided. No fees will be paid if any of the officer's decisions have not been timely filed, without good cause, at the Program Administrator's office. The fee will be \$150 per hearing and \$10 each for actions on a request for disqualification, a subpoena, quashing a subpoena, or for a finding of good cause for a nonappearance.

5.2 Custody of File

You should give to the Program Administrator's office all exhibits submitted at the hearing and save the recording. If a party wishes to withdraw an exhibit, the Program Administrator will make a copy to keep with the City's file. The Hearing Officer is not expected to retain your notes regarding the matter.

Chapter 6 Fine Schedules

6.1 Administrative Penalty Schedule

All violations of city ordinances, including rental license violations are subject to a \$200 penalty, unless the violation is one of the following:

\$55 Violations

- Management of garbage and refuse containers for storage and collection. Ch. 98.14
- No visible address numbers on the house. Ch. 106.02 (R) Section 304.3
- Snow and ice removal (i.e. sidewalk shoveling) Ch. 96.28, 94.02 and 117.53

\$500 Violations, include, but are not limited to:

Violations conducted in such a manner that the violation significantly endangered life or property or involved critical unsafe conditions.

Repeat violations within 12 months

Double the amount of the scheduled fine for the previous violation, up to a maximum of \$2,000. For example, if there were four occurrences of a same or similar violation and the fine for the first occurrence is \$200, the fourth occurrence would be \$1,600 (first: \$200; second: \$400; third: \$800; fourth: \$1,600).

Continuing violations: Fine Per Day

A fine for more than one day of a continuing violation may be imposed only by a Hearing Officer. The Hearing Officer must find that either (1) the violation caused a serious threat of harm to the public health, safety or welfare, or (2) the violator intentionally and unreasonably refused to comply with the code requirement.

6.2 Tobacco Schedule

Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged as follows:

- A. First violation, an administrative fine of \$75
- B. Second offense at the same licensed premises within a twenty-four (24) month period, an administrative fine of \$200.00
- C. Third offense at the same licensed location within a twenty-four (24) month period, an administrative fine of \$250.00 and the license shall be suspended for seven (7) days
- D. Fourth offense at the same licensed location within a twenty-four (24) month period, an administrative fine of \$300.00 and the license shall be suspended for thirty (30) days
- E. Fifth offense at the same licensed location within a twenty-four (24) month period, an administrative fine of \$350.00 and the license shall be revoked

Other individuals, other than minors regulated by Code Section 122.99(B)(3), found to be in violation of this ordinance shall be charged an administrative fee of \$50.00.

6.3 False Alarm Schedule

Any alarm user found to have more than three (3) false alarms in a calendar year, pursuant to Brooklyn Park City Code Chapter 91, shall be fined according to the Administrative Penalty Program. The penalty shall be \$50 for the fourth alarm and shall increase by the sum of \$25 for each succeeding false alarm thereafter.

Any alarm user not returning the Alarm Ordinance Compliance Form within five (5) days of notification of a false alarm shall be fined \$25.00 per occurrence.

Payment of these penalties may be enforced by civil action.

Chapter 7 Brooklyn Park Charter Provisions

Section 14.19 Administrative Penalties

(Amendment eff. 10/30/2009, Ord #1998-875)

- A. The City Council may establish by ordinance a procedure for imposing an administrative penalty for any violation of the City Code or a City Ordinance. The procedure must provide an opportunity for any person charged with an administrative penalty to notice of the penalty and an opportunity to respond to the charge. The procedure may authorize the city to use the services of a non-City employee to decide whether an administrative penalty should be imposed.
- B. The City Council may provide by ordinance that unpaid administrative penalties be collected as a special assessment against property which was the subject matter, or related to the subject matter, of the penalty or against property which was the location of an activity, proposed use, delivery of City service, or other circumstances that resulted in the penalty. The ordinance must provide that the City should first attempt to obtain voluntary payment of the penalty. The ordinance must also provide that notice and an opportunity to be heard will be given to the property owner listed on the official tax records before the penalty is assessed.
- C. With respect to unpaid administrative penalties specially assessed against real property pursuant to Paragraph (B) of this Section, the special assessment may include the administrative and legal costs incurred by the City in connection with collecting those unpaid administrative penalties.

Chapter 8 Brooklyn Park City Ordinances

CHAPTER 37: ADMINISTRATIVE PENALTIES

§ 37.01 PURPOSE

The City Council finds that there is a need for alternative methods of enforcing the city code. While criminal fines and penalties have been the most frequent enforcement mechanisms, there are certain negative consequences for both the city and the public. The delay inherent in that system does not ensure prompt resolution. Citizens resent being labeled criminals for violations of administrative regulations. The higher burden of proof and the potential of incarceration do not appear appropriate for most administrative violations. The criminal process does not always regard city code violations as important. Accordingly, the City Council finds that the use of administrative citations and the imposition of civil penalties is a legitimate and necessary alternative method of enforcement. This method of enforcement is in addition to any other legal remedy which may be pursued for city code violations. ('72 Code, § 903:10) (Ord. 1998-881, passed 7-22-98)

§ 37.02 ADMINISTRATIVE CITATIONS AND CIVIL PENALTIES

This chapter governs administrative citations and civil penalties for violations of the city code. ('72 Code, § 903:20) (Ord. 1998-881, passed 7-22-98)

§ 37.03 ADMINISTRATIVE OFFENSE; SCHEDULE OF FINES AND FEES

- (A) A violation of any provision of the city code is an administrative offense, which may be subject to an administrative citation and civil penalties pursuant to this subchapter. Each day a violation exists constitutes a separate offense.
- (B) An administrative offense may be subject to a civil penalty not exceeding \$2,000.
- (C) The City Council must adopt by resolution a schedule of recommended fines for offenses initiated by administration citation. The City Council is not bound by that schedule when a matter is appealed to it for administrative review.
- (D) The City Council may adopt a schedule of fees to be paid to administrative hearing officers.
- (E) The City Manager must adopt written procedures for administering the administrative citation program.

('72 Code, § 903:40) (Ord. 1998-881, passed 7-22-98)

§ 37.04 ADMINISTRATIVE CITATION

- (A) A person authorized to enforce provisions of the city code may issue an administrative citation upon belief that a code violation has occurred. The citation must be issued in person or by first class mail to the person responsible for the violation or attached to the motor vehicle in the case of a vehicular offense. The citation must state the date, time, and nature of the offense, the identity of the person issuing the citation, the amount of the scheduled fine, and the manner for paying the fine or appealing the citation.
- (B) The person responsible for the violation must either pay the scheduled fine or request a hearing within 14 days after issuance of the citation. A hearing must be conducted within 30 days after a request

or within 30 days after a responsible person fails to return the automatic stay agreement pursuant to § 37.05(F)(8). Hearings exceeding 30 days may be granted by the Administrative Enforcement Program Coordinator for good cause. Payment of the fine constitutes admission of the violation. A late payment fee of 10% of the scheduled fine amount will be imposed in accordance with § 37.08. ('72 Code, § 903:50) (Ord. 1998-881, passed 7-22-98; Am. Ord. 2012-1136, passed 3-26-12)

§ 37.05 ADMINISTRATIVE HEARING-AUTOMATIC STAY

(A) The City Council must periodically approve a list of persons, from which the City Manager or designated agent will randomly select a hearing officer to hear and determine a matter for which a hearing is requested. A person who has been issued a citation has the right to request, no later than five days before the date of the hearing, that the assigned hearing officer be removed from the case. One such request for each case will be granted automatically by the City Manager or designated agent. A subsequent request must be directed to the assigned hearing officer who will decide whether the hearing officer can fairly and objectively review the case. The person issuing the citation may request the removal of a hearing officer only if the hearing officer cannot fairly and objectively review the case. If such a finding is made, the officer must remove that officer from the case, and the City Manager or designated agent must assign another hearing officer. The hearing officer is not a judicial officer but is a public officer as defined by M.S. § 609.415. The hearing officer must not be an employee of the city. The City Manager or designated agent must establish a procedure for evaluating the competency of the hearing officers, including comments from citizens and city staff. These reports must be provided to the City Council.

(B) Upon the hearing officer's own initiative or upon written request of an interested party demonstrating the need, the officer may issue a 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 subpoena is responsible for serving the subpoena in the manner provided for civil actions and for paying the fees and expenses of any witness. A person served with a subpoena may file an objection with the hearing officer promptly but no later than the time specified in the subpoena for compliance. The officer may cancel or modify the subpoena if it is unreasonable or oppressive. A person who, without just cause, fails or refuses to attend and testify or to produce the required documents in obedience to a subpoena is guilty of a misdemeanor. Alternatively, the party requesting the subpoena may seek an order from district court directing compliance.

(C) Notice of the hearing must be served in person or by mail on the person responsible for the violation at least ten days in advance, unless a shorter time is accepted by all parties. At the hearing, the parties will have the opportunity to present testimony and question any witnesses, but strict rules of evidence do not apply. The hearing officer must record the hearing and receive testimony and exhibits. The officer must receive and give weight to evidence, including reliable hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs.

(D) The hearing officer has the authority to determine that a violation occurred, to dismiss a citation, to impose the scheduled fine, and to reduce, stay, or waive a scheduled fine either unconditionally or upon compliance with appropriate conditions. When imposing a penalty for a violation, the hearing officer may consider any or all of the following factors:

- (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 penalty on the violator;
- (8) The impact of the violation upon the community; and
- (9) Any other factors appropriate to a just result.

(E) The hearing officer may exercise discretion to impose a fine for more than one day of a continuing violation, but only upon a finding that the violation caused a serious threat of harm to the public health, safety, or welfare or that the accused intentionally and the unreasonably refused to comply with the code requirement. The hearing officer's decision and supporting reasons must be in writing.

(1) The failure to pay the fine or request a hearing within seven days after the citation, or the failure to attend the hearing, constitutes a waiver of the violator's rights to an administrative hearing and is an admission of the violation. A hearing officer may waive this result upon good cause shown. Examples of "good cause": death or incapacitating illness of the accused; a court order requiring the accused to appear for another hearing at the same time; and lack of proper service of the citation or notice of the hearing. "Good cause" does not include: forgetfulness and intentional delay.

(2) The decision of the hearing officer is final without any further right of administrative appeal, except for matters subject to administrative review under § [37.06](#). In a matter subject to administrative review under § [37.06](#), the hearing officer's decision may be appealed to the City Council by submitting a request in writing to the City Manager or designated agent within seven days after the hearing officer's decision.

(F) If a person who receives an administrative citation requests an administrative hearing, the Administrative Enforcement Program Coordinator will grant an automatic stay of the fine for one year if the following conditions are met:

- (1) No same or similar code violations have occurred at the property within the previous 24 months.
- (2) No code violations currently exist at the property as determined by city staff.
- (3) The code violation does not constitute an immediate health or safety hazard.
- (4) The responsible party agrees to allow city staff to enter all areas of the property for which the administrative citation was issued for purposes of inspecting the property to ensure compliance.
- (5) The responsible party admits that the code violation(s) existed and agrees to have the administrative citation fine stayed for a period of one year from the date issued.
- (6) If there are no same or similar code violations within one year, the Administrative Enforcement Program Coordinator will dismiss the administrative fine.

(7) If there are same or similar code violations within one year as determined by city staff, the stayed administrative citation fine will be re-imposed and the amount will be due and payable within 14 days.

(8) The responsible party must complete and return to City Hall the approved automatic stay agreement form within 14 days after receiving it from the Administrative Enforcement Program Coordinator. A responsible party who fails to return the signed agreement within the 14-day period will no longer be eligible to participate in the automatic stay process and an administrative hearing will then be scheduled.

(9) If the property for which the administrative citation was issued is sold to a new owner during the period of the automatic stay, all stayed fines will be dismissed.

(10) Automatic stays will not be granted for tobacco and alcohol compliance, false alarm or ruptured gas line citations.

('72 Code, § 903:60) (Ord. 1998-881, passed 7-22-98; Am. Ord. 2012-1136, passed 3-26-12)

§ 37.06 ADMINISTRATIVE REVIEW

(A) The hearing officer's decision in any of the following matters may be appealed by a party to the City Council for administrative review:

(1) An alleged failure to obtain a permit, license, or other approval from the City Council as required by an ordinance;

(2) An alleged violation of a permit, license, other approval, or the conditions attached to the permit, license, or approval, which was granted by the City Council; and

(3) An alleged violation of regulations governing a person or entity, who has received a license granted by the City Council.

(B) The appeal must be heard by the City Council after notice served in person or by registered mail at least ten days in advance. The parties to the hearing must have an opportunity to present oral or written arguments regarding the hearing officer's decision.

(C) The City Council must consider the record, the hearing officer's decision, and any additional arguments before making a determination. The Council is not bound by the hearing officer's decision, but may adopt all or part of the officer's decision. The Council's decision must be in writing.

(D) If the Council makes a finding of a violation, it may impose a civil penalty not exceeding \$2,000 per day per violation, and may consider any or all of the factors contained in § [37.05\(D\)](#). The Council may also reduce, stay, or waive a fine unconditionally or based on reasonable and appropriate conditions.

(E) In addition to imposing a civil penalty, the Council may suspend or revoke any city issued license, permit, or other approval associated with the violation, if the procedures in the city code have been followed. Any hearing required in the city code for such suspension or revocation is deemed satisfied by the hearing before the hearing officer with the right of appeal to the City Council.

('72 Code, § 903:70) (Ord. 1998-881, passed 7-22-98)

§ 37.07 JUDICIAL REVIEW

An aggrieved party may obtain judicial review of the decision of the hearing officer or the City Council in accordance with state law.

('72 Code, § 903:80) (Ord. 1998-881, passed 7-22-98)

§ 37.08 RECOVERY OF CIVIL PENALTIES

(A) If a civil penalty is not paid within the time specified, it constitutes:

- (1) A personal obligation of the violator; and
- (2) A lien upon the real property upon which the violation occurred if the property or improvements on the property were the subject of the violation and the property owner was found responsible for that violation.

(B) A lien may be assessed against the property and collected in the same manner as taxes. The lien may include the administrative and legal costs incurred by the city in connection with collecting the unpaid administrative penalty. Prior to assessing the lien against the property, the city must attempt to obtain voluntary payment of the administrative penalty and provide the property owner listed on the tax record with notice and an opportunity to be heard.

(C) A personal obligation may be collected by any appropriate legal means.

(D) A late payment fee of 10% of the fine will be assessed for each 30-day period, or part thereof, that the fine remains unpaid after the due date.

(E) During the time that a civil penalty remains unpaid, no city approval will be granted for a license, permit, or other city approval sought by the violator or for property under the violator's ownership or control.

(F) Failure to pay a fine is grounds for suspending, revoking, denying, or not renewing a license or permit associated with the violation.

('72 Code, § 903:90) (Ord. 1998-881, passed 7-22-98; Am. Ord. 2009-1103, passed 9-8-09)

§ 37.09 JUDICIAL REVIEW

The following are misdemeanors, punishable in accordance with state law:

(A) Failure, without good cause, to pay a fine or request a hearing within 30 days after issuance of an administrative citation.

(B) Failure, without good cause, to appear at a hearing which was scheduled under § [37.05](#).

(C) Failure to pay a fine imposed by a hearing officer within 30 days after it was imposed, or such other time as may be established by the hearing officer, unless the matter is appealed under § [37.06](#).

(D) Failure to pay a fine imposed by the City Council within 30 days after it was imposed, or such other time as may be established by the City Council.

('72 Code, § 903:100) (Ord. 1998-881, passed 7-22-98)

§ 37.10 APPLICABLE LAWS

Where differences occur between provisions of this chapter and other applicable code sections, this chapter applies.

('72 Code, § 903:110) (Ord. 1998-881, passed 7-22-98)