

# **MEETING NOTICE AND AGENDA**

**White Bear Lake Charter Commission**

**Wednesday, November 13, 2019**

**7:00 p.m.**

**White Bear Lake City Hall – 2<sup>nd</sup> Floor Conference Room**

1. Call to Order and Roll Call
2. Approval of minutes of meeting held on September 11, 2019
3. Approval of Agenda
4. Old Business
  - Charter Amendment – Assessment of Administrative Fines
5. New Business
6. Open Discussion
7. Adjournment

**NOTE: Please call or email Kara Coustry if you **cannot** attend,  
651-429-8508 or [clerk@whitebearlake.org](mailto:clerk@whitebearlake.org)**

**MINUTES OF THE  
WHITE BEAR LAKE CHARTER COMMISSION  
SEPTEMBER 11, 2019**

**1. CALL TO ORDER AND ROLL CALL**

In accordance with published notice, a meeting of the White Bear Lake Charter Commission was called to order by Chairman Tim Geck at 7:00 p.m. in the second floor conference room at City Hall. The Chair announced this meeting would serve the purpose of the annual meeting requirement set forth in State Statute. The following members were present: Marc Aune, James Patrick Barone, James Berry, Scott Bill, Scott Costello, Tim Geck, Dale Grambush, Robert Hafdahl, Dan Louismet, Mark Sather, and Ray Smith. A quorum was declared.

Also present was City Manager, Ellen Hiniker.

The Chair introduced Karen Hogen as a recently appointed member of the Commission and asked each member of the Commission to introduce themselves.

**2. APPROVAL OF THE MINUTES**

It was moved by Member **Barone**, seconded by Member **Aune**, to approve the minutes of the meeting held September 12, 2018 as presented.

The motion carried unanimously.

**3. APPROVAL OF THE AGENDA**

It was moved by Member **Louismet**, seconded by Member **Smith** to approve the agenda as presented with the addition of item 5B – Proposed Charter Amendment to Allow Assessment of Administrative Fines.

The motion carried unanimously.

**4. OLD BUSINESS**

A. Updated edition of the City Charter – printed edition

The Secretary reported that as called for by the Commission, the City Clerk had codified all charter amendments since the last printing of the charter until December 31, 2018, and referred to copies which had been sent with the agenda and meeting notice, on file in the City Clerk's Office and available at City Hall and the WBL Library. The updated edition was accepted and the City Clerk was thanked for her assistance.

## 5. NEW BUSINESS

### A. Election of Offices

The Chair explained that according to the commission By-Laws the term of offices will expire at the conclusion of the annual meeting. The Chair called for nomination of offices.

It was moved by Member **Barone** to nominate current Chair Tim Geck for a one-year term to the position of Chair. There were no further nominations after three calls.

It was moved by Member **Louismet** to nominate Dale Grambush for the position of Vice Chair.

It was moved by Member **Smith** to nominate Raymond Smith for the position of Vice Chair. There were no further nominations.

Member Grambush asked to have his name removed from nomination.

It was moved by Member **Hafdahl** to nominate Mark Sather for the position of Secretary. There were no further nominations.

The Chair called for a vote. It was moved by Member **Barone**, seconded by Member **Hafdahl** to elect all three officer nominees.

The motion carried unanimously.

### B. Proposed Charter Amendment Allowing Assessment of Municipal Code Violations Fine Against Subject Property

Chair Geck referred to a memorandum dated August 21, 2019, proposing a City Charter amendment to allow special assessment of unpaid administrative fines against subject property and called upon the City Manager to further explain the proposal.

City Manager Hiniker presented an explanation of events leading to the administrative offense procedure, which provides that lower level municipal code violations may be enforced by issuing an administrative citation rather than citation heard in District Court. This less formal procedure allows alleged violators to correct conditions in response to the complaint or offer an explanation or objection to an independent third party Hearing Officer appointed by the City Council.

She further explained that almost 99% of individuals so charged take action to resolve the alleged or apparent violation. The remaining one to two percent ignore the violation/citation and enforcement staff is then allowed to pass the alleged violation/citation to District Court. This is an expensive option, which is not often

enforced by District Court Judges. The proposed amendment will allow the City Council, following findings by the hearing officer to levy unpaid violation fines against the subject property.

There was considerable discussion by members of the Commission. In response to concerns expressed regarding due process, it was explained that an individual receiving an administrative citation may pled guilty, pay the established fine and correct or cease the violation. If the individual so charged disputes the citation, an appeal to the independent Hearing Officer may be initiated. If the alleged violator takes no corrective action, the enforcement may be elevated to District Court and heard by a District Judge.

Member Barone asked whether others cities in Minnesota with home rule charters had similar provisions. City Manager Hiniker responded that some had administrative offense procedures and she was aware of at least one that provided for assessment of unpaid fines.

Member Hogen expressed concern that such a procedure may result in an equity disparity whereby individuals with limited means of compliance may be more likely to have fines assessed against their property. Member Barone and Member Geck responded that the administrative offense procedure was less costly and provided as much, if not more, opportunity for the alleged violator to be heard through the alternative - District Court.

Member Grambush raised concern that in cases of rental property the tenant could be the cause of the violation yet the fine would be assessed to the owner who may not be able influence the tenant's behavior. He also stressed the importance of separation of authority between enforcement staff and the individual levying fines for violations. He suggested the possibility of establishment of a panel to hear cases and perhaps serve as a mediator.

Following further discussion it was moved by Member Hafdahl, seconded by Member Smith to continue this proposal to November 13, 2019, and request that city staff provide examples of violations which may be subject to the proposed charge and charter language from other Minnesota cities which have similar provisions as proposed.

The motion carried unanimously.

## **6. OPEN DISCUSSION**

Chair Geck noted that three vacancies exist on the Charter Commission. City Manager Hiniker explained that efforts, including a news release and posting on the city's website had been made to recruit interested citizens. The Chair suggested that current members should reach out to prospective members and encourage them to apply.

**7. ADJOURNMENT**

There being no further business to come before the Commission, it was moved by Member **Smith**, seconded by Member **Aune**, to adjourn the meeting at 8:22 p.m.

The motion carried unanimously.

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Tim Geck, Chair

ATTEST:

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Mark Sather, Secretary



## City of White Bear Lake City Manager's Office

**To:** Members of the Charter Commission

**From:** Rick Juba, Asst. City Manager, on behalf of Code Enforcement Review Committee

**Date:** August 21, 2019  
Revised October 14, 2019

**Subject:** **Assessment of Administrative Fines**

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This memorandum has been revised in response to the discussion at the September 11, 2019 Charter Commission meeting. Please note that the City already performs code enforcement and has the ability to issue administrative fines. The requested amendment to the charter is not to change the present authority by the city to impose and to enforce the correction of current code violations but it provides an additional compliance remedy allowing the city to assess the related property for the collection of related fines and penalties. This process would keep those in violation out of a criminal process, speed up proceedings and ultimately result in compliance rather than jail time or fines.

The City of White Bear Lake performs both proactive and complaint based enforcement of City Codes on residential and commercial properties throughout the City. Common code compliance issues include long grass, junk vehicles, exterior storage, and unmaintained conditions (paint peeling, missing shingles, etc.) The City Code containing these rules was developed to protect property values, protect the environment, and provide a baseline of standards that residents can expect their neighbors to live by and the City to uphold. **When averaged over a three-year period, the City responded to 210 citizen complaints and proactively pursued 500 nuisance code violations each year.** It should be noted that the number of nuisance complaints received each year continues to grow, similar to upward trending calls for service in the Police and Fire Departments.

### **Violation totals from January 2016 - August 15, 2019**

- Ward 1: 678
- Ward 2: 641
- Ward 3: 488
- Ward 4: 396
- Ward 5: 572

**2,775 (since Jan. 2016)**

More than twice as many violations are identified through proactive enforcement, with the others being complaint-based. Once a city code violation is confirmed, City staff sends the property owner a letter explaining the violation and required corrective action. On most occasions, the property owner takes timely, corrective action, or works with staff to correct the violation within a mutually agreed upon

period. Deadlines are regularly extended for property owners who do not have the means to comply or have a special circumstance.

However, for some, gaining compliance can take several weeks, which frustrates neighbors and consumes excessive staff time. In the past, when a stalemate had been reached with a property owner, the property owner was issued a Ramsey County citation, a misdemeanor, which required an appearance in court. If the person did not appear in court, a bench warrant would be issued. In recent years, however, district court judges have not had the necessary resources to deal with these lower profile cases. Consequently, judges typically extend, dismiss or issue a small fine, all of which do not typically result in compliance. Warrants are no longer issued for these types of offenses.

The City's municipal code currently provides staff the authority to issue administrative citations in place of County citations. Approval of the Building Official and the Patrol Captain is required before a nuisance violation citation can be issued. The City has an established administrative hearing process to provide property owners an opportunity to appeal their citation to a neutral, third-party administrative judge appointed by the City Council. An appeal must be filed within seven (7) days of receiving the citation, a hearing would then be scheduled within seven (7) days of the appeal. The administrative hearing judge has the authority to sustain the appeal or dismiss, reduce or waive the penalty. If sustained, the penalty must be paid within seven (7) days of the ruling.

Currently, if the ticket is upheld by the administrative judge and still is not paid, it becomes a County citation. However, as described, the County citations are no longer effective. Subsequently, code enforcement staff does not have an effective enforcement tool to gain compliance in difficult situations. In order to provide an effective code enforcement tool, the Code Enforcement Review Committee is requesting the Charter Commission to consider a charter amendment that would provide the City Council the authority to develop an assessment procedure for administrative code enforcement fines through the adoption of an ordinance.

There is an appeal process in place for property owners with unpaid utility bills before assessing them to their property taxes, which provides property owners an opportunity to appeal their case to the City Council. The same process would be in place for consideration of assessing administrative penalties. Notice of a public hearing in front of the City Council would be sent out each September to property owners with unpaid administrative fines. Affected property owners would then have an opportunity to appeal to the City Council at the hearing. If the City Council upheld the assessment, that property owner could file a dispute to the City Council in writing, then follow that with an appeal in district court.

The authority to assess fines for code violations, however, is unique to Charter cities. If the charter were amended to provide the City Council authority to adopt an ordinance, there could be a process whereby unpaid code enforcement citations are assessed in the same fashion as unpaid utility fees. This would be a compliance tool, not a revenue generator. On average, administrative citations, including parking and speeding, only generate about \$1,000 in revenue.

The Cities of Minnetonka, Crystal and Coon Rapids are the only other cities found to have adopted an authorizing charter amendment. Staff is aware of at least one other community in the greater metro area that assesses unpaid fines for code violations to property taxes, but has not adopted corresponding authorizing language. Instead, it references the Chapter 429 process, which is state authorizing language related to municipal infrastructure assessments. The language used by Coon Rapids is broad and does

not specifically address administrative or civil penalties. Staff would advise that the City clarify its authority to assess code enforcement fines through a Charter amendment, as was done in Minnetonka and Crystal. Below is the language adopted by all three cities:

*Minnetonka Charter Language:*

**Section 8.03. Fees and Civil Penalties.**

The council may provide by ordinance that fees, civil penalties, and late payment penalties imposed by the city may be assessed against (a) property that was the subject matter, or related to the subject matter, of the fees and penalties, or (b) property that was the location of an activity, proposed use, city service, or other circumstance that resulted in the fees and penalties. The ordinance must require the city to attempt to obtain voluntary payment of the fees and penalties before imposing the assessments. The ordinance must require the city to give notice and an opportunity to be heard to the property owner listed on the official tax records before imposing the assessments. The assessments will be collected like special assessments.

*Crystal Charter Language:*

**Section 12.09. Fines and Penalties. Subd. 2.**

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 the 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 will 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. (Added, Ord. No. 2002-07, August 5, 2002)

*Coon Rapids Charter Language:*

**1-802 - Assessments for Services.**

The Council may provide, by ordinance, that the costs of any special services to public or private property may be assessed against the property benefited and collected in like manner as are special assessments.

A draft ordinance is attached for review and consideration by the Charter Commission. In addition to the draft language enabling the assessment of fines, language has been proposed to clarify the City's authority to issue administrative penalties. While opinions do differ on the need for this clarifying language, the City Attorney advised that this would be an ideal opportunity to consider adding it.

**ATTACHMENTS:** Examples of three properties with long-standing issues  
Proposed Charter Amendment



## 2311 Circle Dr

This case was opened on November 6<sup>th</sup> of 2017. After much correspondence, the homeowner was cited on October 1<sup>st</sup> of 2018. The court hearing is scheduled for the fall of 2019. During this time the home has remained non-compliant. The primary code violation is the major state of disrepair on the exterior of the home. The homeowner was offered the option to voluntarily assess the cost to repair the exterior of the home, which was turned down after staff provided him with two bids for the repair. White Bear Lake city prosecutor notified code enforcement as to the standings of the case, and advised that the judge will likely not impose jail time for this violation or require compliance. We were given the option to re-cite for the same offense, and start the court process from the beginning after this case is resolved.



**2188 12<sup>th</sup> St**

Code Enforcement staff has opened twenty six (26) violations at this address since 2002. None of these violations have reached a permanent solution. There are continuous violations regarding the number of vehicles on the property, where they are parked and their state of disrepair. In addition to the vehicle issues, there are additional exterior storage of junk violations. This property owner historically will comply after the third letter from staff, and then revert back to non-compliance within weeks or months. This again is another address that habitually reoffends, frustrates neighbors and is a drain on city resources.



## 4920 Washington Ave

Code Enforcement has opened fourteen (14), violations at this property since 2002. This property owner began a full addition to his home without a building permit. To date, his permits are expired and the work has not been completed. There is a commercial vehicle stored on this property, along with a commercial trailer which are both not allowed to be stored on residential property. The back yard has not been maintained in years, causing it to turn to a dirt surface. The shed is in disrepair and needs to be removed or improved. This homeowner was cited for many of these violations in 2018. The courts decided to give the homeowner a stay of adjudication for one count of exterior storage, and dismiss the remaining code violations. The Homeowner was given six months to become complaint. The homeowner has failed to become complaint with all city code violations. The next step for code enforcement would be to start the process over again from the beginning with notice letters and re-issue a citation for the same code violations.





**CITY OF WHITE BEAR LAKE**  
**Ordinance No. \_\_\_\_\_**

**ORDINANCE AMENDING THE WHITE BEAR LAKE CITY CHARTER REGARDING  
ADMINISTRATIVE PENALTIES AND THE COLLECTION OF FEES AND PENALTIES**

The Council of the City of White Bear Lake does ordain as follows:

**ARTICLE I.** Section 8.05 of the White Bear Lake City Charter is hereby amended as follows:

Sect. 8.05. Punishment for Offense. Every act or omission to act under this Charter or the ordinances and regulations of the City which is made subject to punishment shall be, if the punishment is not otherwise prescribed, punishable as a misdemeanor. The 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 that any person charged with an administrative penalty will receive notice of the violation and an opportunity to be heard by a neutral party. The procedure may authorize the City to use the services of a non-City employee to decide whether an administrative penalty should be imposed.

**ARTICLE II.** The White Bear Lake City Charter is hereby amended by adding a new Section 8.11 as follows:

Sect. 8.11. Fees and Penalties. The Council may provide by ordinance that unpaid fees, charges, administrative penalties, and late payment penalties imposed by the City may be imposed and collected as a special assessment against property that was the subject matter, or related to the subject matter, of the fee, charge, or penalty, or against the property that was the location of an activity, proposed use, delivery of City service, or other circumstances that resulted in the fee, charge, or penalty. The ordinance must provide that the City will first attempt to obtain voluntary payment of the fee, charge, or 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.

**Article III.** Effective Date. This Ordinance shall become effective after adoption and upon ninety (90) days following its legal publication, except that if within sixty (60) days after publication a petition requesting a referendum on this ordinance, signed by the number of registered voters of the City required by Minnesota Statutes, section 410.12, subdivision 7 is filed with the City Clerk, this ordinance will not be effective until approved by a majority of the voters voting on the question at an election.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk

Date of Publication \_\_\_\_\_

Effective Date \_\_\_\_\_

(~~Strike out~~ indicates matter to be deleted, double underline indicates new matter.)