

Memo

To: Honorable Mayor and City Council
From: Joe Kohlmann, City Administrator
Date: March 24, 2015
Re: SLMPD Code Enforcement

The City of Excelsior is looking to proactively enforce certain sections of their City Code using the SLMPD. Chief Siitari has stated that this service should be provided at no additional cost to the City of Excelsior. The previous SLMPD Chief thought that this service would require an additional service agreement.

*Attached is Chief Siitari's email outlining Excelsior's request
Attached is two legal memos regarding the cost of Code Enforcement*

It is worth noting that the City of Tonka Bay does reactive code enforcement. If we receive a complaint, the City Administrator will investigate the matter. My experience has been that once a property owner has been personally contacted, they are usually willing to comply with the City's request. Off the top of my head, I cannot think of a scenario where a resident has not complied with a request to bring their matter into compliance with the City Code. Aside, from property boundary violations, which become a civil matter, there has been nearly 100% compliance once Staff reaches out to the property owner.

Staff is recommending staying with reactive code enforcement. As noted in the attached legal memos, proactive code enforcement can be a very expensive venture. The City Council should discuss their position on the SLMPD providing code enforcement services to the City of Excelsior for no additional cost. Mayor De La Vega will be representing the City at a Coordinating Committee meeting on this topic in April.

Suggested Action:

Review and discuss SLMPD Code Enforcement services for Excelsior.

Joe Kohlmann

From: Mike Siitari <msiitari@southlakepd.com>
Sent: Monday, March 09, 2015 12:24 PM
To: szerby@ci.shorewood.mn.us; mgaylord@ci.excelsior.mn.us; gerrydtonkabay@gmail.com; dkind100@gmail.com
Cc: bjoynes@ci.shorewood.mn.us; kluger@ci.excelsior.mn.us; JKohlmann@cityoftonkabay.net; danayoung@mchsi.com
Subject: Code Enforcement Proposal

Good morning Mayors,

Excelsior City Administrator Kristi Luger has asked for my input on a proposal for proactive code enforcement by SLMPD in their city. I have reviewed the paper trail from previous discussions in which Chief Litsey submitted a supplemental service cost estimate. Although this would be additional work for the PD I do not consider this a supplemental service. Many police departments do code enforcement as part of their assigned duties. I had those duties as a sergeant in Edina. The police department is a logical department to do this because it is law enforcement (City Code) and the process can become contentious with safety concerns due to a few recalcitrant residents.

I propose that SLMPD provide the code enforcement, without a supplemental service agreement, on a trial basis. The bulk of the work would be done by the existing CSO staff as part of their assigned duties. Police officers would only be involved when there are safety concerns. I forecast an initial flurry of activity, with a significant reduction once the program becomes known and any initial appeals are settled, by the Council or court.

I realize that proactive code enforcement is not a common practice, most often it is by resident complaint. However, I do not think this would be taking away needed services from the other JPA cities. My initial impression is that the CSO program is underutilized and the code enforcement duties are a good fit for existing staff.

I also realize that cost allocation for services can be a contentious issue for the four cities. I do not agree with Bryan's philosophy on charging for some additional services, e.g speed enforcement, so this is a change of direction. I welcome your thoughts on this issue before I proceed in discussion with Kristi.

Mike Siitari

Memorandum

To: Kevin Staunton

From: HBK

Date: 6/26/2014

Re: Ordinance Enforcement

The work required to enforce City Ordinances will depend, in large part, on the specific ordinance to be enforced. For example, our experience is that enforcement issues regarding City rental dwelling codes are often resolved short of litigation. In fact, over the last eleven months, we have served but have not filed any complaints regarding rental code violations. Many (probably 50-75%) of rental code violations are resolved upon a first letter from the City Attorney's office. Some require the service (but not filing) of a complaint to achieve compliance with the City rental code.

With respect to nuisance code violations, the chance of litigation is higher. However, we do have some success with achieving cooperation after a letter from the City Attorney's office. Additionally, there is a greater likelihood that an individual who insists on violating the City's nuisance code will disregard any lawsuit. If the defendant is in default and does not contest the lawsuit, it obviously lessens the litigation costs. However, in that scenario, after the City receives a judgment in its favor, it may find itself back in court on a contempt action.

Other ordinance issues, such as enforcement of the City of Excelsior's Historic Preservation Program, may require the initiation of lawsuits, as property owners may be willing to contest its application to their property. After a successful enforcement action, however, the City may find a success rate of compliance by letter or service of a complaint from the City Attorney's office.

Any code enforcement work will require greater time at the outset. The attorney performing the work will need to become familiar with the applicable ordinances, develop necessary form letters required for enforcement, and work with City Staff to develop a procedure for enforcement. Procedures include the documentation of violation (needed for eventual lawsuits, if applicable), the form and number of notice of violations provided by the City prior to the involvement of the attorney, and the amount of time allowed to remedy a violation. Typically, the City will send 1-2 notices followed by only 1 from the City Attorney prior to the service of a complaint.

Of course, as a practical matter, procedure can be tweaked depending on the particular circumstances of a violation. We would anticipate that this initial work would take approximately 10-15 hours of attorney time.

As a general matter, code enforcement work by an attorney typically follows the trajectory below, including tasks and projected time spent.

Task	Projected Time
Gather information and draft letters for Code Enforcement	45 minutes to 1.5 hours per letter (obviously fact dependent)
Draft Complaint	3-5 hours (for nuisance complaint, e.g.)
Draft Motion for Default Judgment	4-6 hours (for nuisance complaint, e.g.)
Preparation for Court Appearance	1-3 hours (for nuisance complaint)
Court Appearance for Default Hearing	1-3 hours (avg. for nuisance complaint)

A recent nuisance code enforcement matter, however, which resulted in the filing of a lawsuit, a default judgment hearing, and additional briefing for the court, resulted in approximately 40 hours of attorney and staff time.

Our billing rate for Ordinance Enforcement work for attorneys ranges from \$180 to 225 per hour, depending on the attorney doing the work. Staff time is \$95.00 an hour.

STAUNTON LAW MEMORANDUM

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edina, minnesota 55436
(952) 836.1286

TO: Mayor and City Council

FROM: Kevin P. Staunton
City Attorney

RE: Enforcement Issues

DATE: July 22, 2014

I am writing to follow up on our recent discussions regarding enforcement options. As we have discussed, the City has a variety of options available for enforcing violations of the City Code. Chief among these are (1) criminal prosecution; (2) civil litigation; and (3) administrative penalties. Criminal prosecution is an impractical option for a variety of reasons including an elevated burden of proof, a general tendency for the courts to not take such cases as seriously as more “major” crimes, and limited available remedies. Our recent experience with administrative penalties has revealed that it is not always the best option for achieving compliance with our code or permits, either. As a result, you have asked me to research civil litigation options.

To that end, I met recently with George Hoff and Jared Shepherd of the Hoff, Barry & Kozar law firm to discuss options and costs for staffing civil litigation to enforce code violations in Excelsior. George Hoff works exclusively in the municipal area representing cities. His practice includes both advice and counseling work and litigation. He serves as the city attorney for the City of Maple Grove and is panel counsel for the League of Minnesota Cities Insurance Trust representing cities in litigation all over the state. He has represented Excelsior on litigation matters. Mr. Shepherd is an associate of George’s and does the firm’s civil litigation enforcement for Maple Grove.

At my request, Mr. Shepherd put together a brief memo outlining the typical process and costs associated with his enforcement efforts in Maple Grove. A copy is attached. The memo estimates a typical enforcement matter takes between 9.75 and 18.5 hours and costs between \$1,755 and \$4,162.50 but also notes that a recent case took approximately 40 hours (which would presumably roughly double the cost). Moreover, the examples cited by Mr. Shepherd presume that the defendant will fail to respond thereby permitting the city to obtain default judgment. It’s fair to assume that a contested proceeding could – depending on the particular circumstances – incur costs well beyond \$10,000.

Based on this memo, I’d suggest you consider a budget of \$20,000 for 2015. This amount would permit us to pursue as many as four simple default matters while also positioning us to act on a single more complex matter.

Mayor and City Council
July 22, 2014
Page 2

cc: Kristi Luger