Council Communication

Department: Community Development Case #ZT-18-006 Applicant: Council Bluffs Community Development Department	Ordinance No.	City Council: 1/14/19 Planning Commission: 12/11/18

Subject/Title

CASE #ZT-18-006: Public hearing on the request of the Council Bluffs Community Development Department to amend Title 15: Zoning of the Municipal Code (Zoning Ordinance) by repealing Section 15.02.130, *Enforcement*, and replacing it with Section 15.02.130, *Violation and Penalty*

Background

After discussion at an interdepartmental code enforcement meeting, it became evident to the Community Development Department that Chapter 15.02 *Administration and Enforcement* of the City's Municipal Code (Zoning Ordinance) lacks a comprehensive code enforcement section. Specifically, the section lacks a consistent basis off of which to assign remediation times for zoning code violations and the specific processes and procedures for zoning enforcement. The proposed Section 15.02.130, *Violation and Penalty* includes set remediation timeframes for zoning code violations as well as establishes new, more in-depth standards for zoning enforcement action in the City of Council Bluffs.

In the process of drafting the proposed enforcement section, the Community Development Department conducted research on a number of Iowa cities' municipal codes including: Des Moines, West Des Moines, Davenport, Dubuque, Ames, Iowa City, and Cedar Rapids. The proposed Section 15.02.130 *Violation and Penalty* is primarily modeled after the City of Cedar Rapids' Municipal Code Section 32.08.090 *Violation and Penalty.*

The proposed Section 15.02.130 *Violation and Penalty* is included as Attachment "A." The Council Bluffs Community Development Department proposes repealing Section 15.02.130, *Enforcement* and replacing it with Section 15.02.130, *Violation and Penalty* for the following reasons:

- The proposed Section 15.02.130 *Violation and Penalty* states in more thorough and direct terms the notification process for each type of zoning code violation, the procedure to follow for multiple and repeat violations, and the remedies and powers of the Community Development Department to enforce the Ordinance.
- The specifically outlined notification process allows for greater consistency and fairness in zoning code enforcement cases as every violation of the same type shall receive the same remediation timeframe. In the event that a zoning enforcement case would go to court, these set timeframes would ensure that the deadlines given are less likely to be considered arbitrary or capricious.
- The outlining of the zoning enforcement process in the City's municipal code provides greater transparency and knowledge to the public regarding the Community Development Department's zoning code enforcement practices.

In summary, the proposed amendment includes the following:

Notification Process

The proposed Section 15.02.130 *Violation and Penalty* outlines the notification process that shall be taken in every zoning code enforcement case with an identified zoning code violation. When a violation is confirmed, the following process shall be taken to notify the property owner and/or other responsible party of said violation:

- Step 1: The property owner and/or other responsible party shall be sent Letter #1: 'Notice of Violation #1: Voluntary Compliance Request'. This letter emphasizes voluntary compliance and contains the applicable code section(s) in violation, photographic evidence of the violation and a deadline for remediation.

- Step 2: If the violation has not been remedied by the deadline given in Letter #1, the property owner and/or other responsible party, shall be sent Letter #2: 'Notice of Violation #2: Final Request'. This letter reiterates the sending of the first notice of violation and contains the applicable code section(s), photographic evidence of the violation, the civil penalties associated with a municipal infraction and a deadline for remediation before receiving a citation.

- Step 3: If the violation has not been remedied by the deadline given in Letter #2, a citation shall be served to the property owner on the next business day following the expiration date in Letter 2 in accordance with the methods listed in Section 1.95.030 *Civil Citations* of Council Bluffs Municipal Code. A first offense violation results in a $750.00 fine plus the additional $85.00 court costs. A second offense violation results in a $1,000.00 fine plus the additional $85.00 court costs. A letter shall be sent to any other responsible party informing them of the issued citation.

Violation Tiers

The proposed Section 15.02.130 *Violation and Penalty* specifies four (4) tiers of zoning code violations. Each type of zoning code violation falls into a tier based on the intensity of the violation and the amount of time needed for remediation. The timeframes given in Notice of Violation Letters #1 and #2 are based on the following violation tiers. *Table 1: Violation Tiers* lists the violations that fall under each of the four tiers and *Table 2: Timeframes to Remedy Violations* outlines the corresponding notification process:

Table 1: Violation Tiers

Tier 1 Violation	**Tier 2 Violation**	**Tier 3 Violation**	**Tier 4 Violation**
• Temporary Sign • Nonpermanent Outdoor Lighting • Parking where conforming parking space is available on site • Storage Container • Occupying a recreational vehicle	• Permanent Sign • Permanent Outdoor Lighting • Fence • Parking where conforming parking space is not available on site • Landscaping	• Home Occupation • Illegal Structure • Illegal Use • Building material /architectural design when located within a Corridor Design Overlay or on a property with an approved development plan	• Any violation that poses to be an emergency or threat to public health and safety

Table 2: Timeframes to Remedy Violations

All notice of violation letters shall be sent to the property owner and/or other responsible party for all violations. The property owner shall be the party subject to citation if the violation is not remedied within the amount of time as set forth in this table.

Notice Type:	**Tier 1 Violation**	**Tier 2 Violation**	**Tier 3 Violation**	**Tier 4 Violation**
Letter 1: Voluntary Compliance Request/Notice	Ten (10) business days from the date of the letter to remedy the violation before receiving Letter 2: Second Notice of Violation	Thirty (30) days from the date of the letter to remedy the violation before receiving Letter 2: Second Notice of Violation	Sixty (60) days from the date of the letter to remedy the violation before receiving Letter 2: Second Notice of Violation	In situations where a violation is considered to be an emergency or is a threat to public health and safety, enforcement action shall be taken immediately by the Community Development Director or his/her designee.
Letter 2: Second Notice of Violation	Five (5) business days from the date of the letter to remedy the violation before receiving Letter 3: Citation for Municipal Infractions	Fifteen (15) days from the date of the letter to remedy the violation before receiving Letter 3: Citation for Municipal Infractions	Thirty (30) days from the date of the letter to remedy the violation before receiving Letter 3: Citation for Municipal Infractions	
Letter 3: Citation for Municipal Infractions	A citation shall be served in accordance with Section 1.95.030 on the next business day following the expiration date in Letter 2: Second Notification of Violation.	A citation shall be served in accordance with Section 1.95.030 on the next business day following the expiration date in Letter 2: Second Notification of Violation.	A citation shall be served in accordance with Section 1.95.030 on the next business day following the expiration date in Letter 2: Second Notification of Violation.	

Multiple and Repeat Violations

Additionally, the proposed section states the procedure for multiple and repeat violations. Multiple violations that occur on the same property shall be reviewed and enforced separately in accordance with Tables 1 and 2. Violations of the same type that occur on a property within a twenty-four (24) month period where the owner of the property remains the same shall be considered repeat violations and notified following the schedule designated in Table 2.

Repeat Violations Example: 'Property Owner A' has remedied a temporary sign violation within the specified timeframe after receiving Notice of Violations #1 and #2. Two months later, the same property owner places an illegal temporary sign on the property again. This would be considered a repeat violation within a twenty-four (24) month period. At this time, 'Property Owner A' would be cited for the illegal sign violation.

Remedies and Powers
The proposed section lists all the remedies and powers available to the Community Development Department to enforce the Ordinance. Those remedies and powers are as follows: Deny/Withhold Permits; Permits Approved with Conditions; Citation for Municipal Infractions; Revoke of Approvals or Permits; Revoke Licenses; Stop Work Order; Injunctive Relief; Abatement; Administrative Extension of Time; or Other action permitted by Iowa law.

Administrative Extension
The proposed section states that an administrative extension of time may be granted to the property owner and/or other responsible party by the Community Development Director for remedying violations that require paving, landscaping, or removal or altering of illegal structures where seasonal weather conditions make remedying impractical. If the property owner and/or other responsible party are actively pursuing the remedy of an identified zoning violation, a stay of all enforcement action may be granted by the Community Development Director or his/her designee. A stay of action shall not exceed 90 days. An administrative extension of time or stay of enforcement action shall not be granted for a Tier 4 violation as these violations are emergency situations that require immediate action.

Comments

All City departments received a copy of the proposed text amendment. The following comments were received regarding proposed Section 15.02.130, *Violation and* Penalty:

- The Council Bluffs Fire Department stated that they have no comments.
- The Council Bluffs Public Works Department stated that the ordering of the four tiers of violation was confusing as "tier one has a short time line (higher urgency to resolve), tier 2 has a longer (less urgent) timeline, tier 3 has the longest timeline, but tier 4 is an emergency that needs immediate resolution."

Recommendation

The Community Development Department recommends approval of the following proposed text amendment:

- Amend Title 15: Zoning of the Municipal Code (Zoning Ordinance) by repealing Section 15.02.130, *Enforcement* and replacing it with Section 15.02.130, *Violation and Penalty.*

Public Hearing

Speaker providing explanation:

1. Haley Weber, Zoning Enforcement Officer, Community Development Department, City of Council Bluffs, 209 Pearl Street, Council Bluffs, IA 51503.

Speakers against: None

Planning Commission Recommendation

The Planning Commission recommends approval of the following proposed text amendment:

- Amend Title 15: Zoning of the Municipal Code (Zoning Ordinance) by repealing Section 15.02.130, *Enforcement* and replacing it with Section 15.02.130, *Violation and Penalty.*

VOTE: AYE 8 NAY 0 ABSTAIN 0 ABSENT 1 VACANT 2 Motion: Carried

Attachment(s)

Attachment A: Proposed text amendment §15.02.130 *Enforcement,* of the Administration and Enforcement chapter of the City of Council Bluffs Municipal Code (Zoning Ordinance)

Prepared by: Haley P. Weber, Zoning Enforcement Officer

~~**15.02.130 Enforcement**~~

~~A. Enforcement. This ordinance shall be enforced by the zoning administrator. The zoning administrator may secure the assistance of the city attorney to seek an injunction, abatement, municipal citations or other appropriate actions to enjoin, abate or stop any violation of this ordinance. At times, the aid of the police department may be sought to enforce this ordinance. The property owner charged with the violation may be held responsible for any legal expenses incurred by the city.~~

~~B. Penalties. Any person, firm or corporation that violates, disobeys, omits, neglects or refuses to comply with, or who resists the enforcement of any of the provisions of this ordinance, upon conviction, shall be fined for each offense. Each day that a violation continues shall constitute a separate offense for the purpose of the penalties and remedies available to the city. The accumulation of penalties for violations, but not the obligation for payment for violations already committed, shall cease upon correction of the violation.~~

~~C. Fines. Fines for violation of this ordinance shall be as set forth in the prevailing schedule of fees as most recently adopted by the city council.~~

~~(Ord. No. 6012, § 2, 10-27-2008)~~

15.02.130 Violation and Penalty

The City may take any or all of the actions listed in this Section in response to any Violation of this Ordinance. The remedies and penalties provided for violations of this Ordinance shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

A. Enforcement

This ordinance shall be enforced by the Community Development Director or his or her designee. The Community Development Director or his or her designee may secure the assistance of the city attorney to seek an injunction, abatement, municipal citations or other appropriate action to enjoin, abate, or stop any violation of this ordinance. At times, the aid of the police department may be sought to enforce this ordinance. The property owner charged with the violation may be held responsible for any legal expenses incurred by the city.

B. Fines

Fines for violation of this Ordinance shall be set forth as per the adopted schedule of civil penalties stated in section 1.95 Municipal Infraction Citation Process of the Council Bluffs Municipal Code.

C. Notification

The Community Development Director or his/her designee shall, upon determination of any violation of this Ordinance, notify in writing the person(s) responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it; and specifically shall order the discontinuance of any illegal use of land, buildings, or structures, order removal of illegal buildings, structures, additions, or alterations; order discontinuance of illegal work being done; or take any other action authorized by this Ordinance to insure compliance with, or to prevent violation of its provisions, and in particular, shall, when appropriate, recommend to the City Attorney the institution of legal or equitable actions that may be required for the enforcement of this Ordinance. The City shall use the following letters as forms of written notification:

1. Letter #1: Voluntary Compliance Request Letter

   The City shall issue a voluntary compliance request letter to the property owner of record and any other responsible party citing the violation of this Ordinance. This letter will be mailed to the property's tax address as well as the physical street address. Each violation falls into one (1) of four (4) tiers. Table 1: Violation-Tier Categories outlines the type of violations and the corresponding tier. The Voluntary Compliance Request Letter shall state that the violation be removed within the time set forth in Table 2: Timeframes to Remedy Violations. This letter shall serve as the first notice of violation.

2. Letter #2: Second Notice of Violation

   The City shall issue a second notice of violation letter to the property owner of record and any other responsible party citing the violation of this Ordinance if the violation was not remedied within the timeframe specified in Letter #1: Voluntary Compliance Request Letter. This letter will be mailed to the property's tax address as well as the physical street address. The letter shall reiterate the sending of the first notice of violation and that the violation must be removed within the time set forth in Table 2.

3. Letter #3: Citation for Municipal Infractions

   The City shall cite the property for municipal infractions if the violation was not remedied within the time frame specified in Letter #2: Notice of Violation. The fines for municipal infractions shall be as set forth in Section 1.95.020 Violations, penalties and alternative relief of Council Bluffs Municipal Code. The citation shall be served in accordance with the methods listed in Section 1.95.030 Civil Citations of Council Bluffs Municipal Code.

The Community Development Department has specified four (4) tiers of zoning code violations. Each type of zoning code violation falls into a tier based on the intensity of the violation and amount of time needed for remediation. The following table shows the violations that fall under each of the four tiers:

Table 1: Violation Tiers

Tier 1 Violation	**Tier 2 Violation**	**Tier 3 Violation**	**Tier 4 Violation**
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Table 2: Timeframes to Remedy Violations

All notice of violation letters shall be sent to the property owner and/or other responsible party for all violations. The property owner shall be the party subject to citation if the violation is not remedied within the amount of time as set forth in this table.				
Notice Type:	**Tier 1 Violation**	**Tier 2 Violation**	**Tier 3 Violation**	**Tier 4 Violation**
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Letter 3: Citation for Municipal Infractions	A citation shall be served in accordance with Section 1.95.030 on the next business day following the expiration date in Letter 2: Second Notification of Violation.	A citation shall be served in accordance with Section 1.95.030 on the next business day following the expiration date in Letter 2: Second Notification of Violation.	A citation shall be served in accordance with Section 1.95.030 on the next business day following the expiration date in Letter 2: Second Notification of Violation.	

D. Multiple Violations

Multiple violations that occur on the same property shall be reviewed and enforced separately in accordance with Tables 1 and 2.

E. Repeat Violations

Violations of the same type that occur on a property within a twenty-four (24) month period where the owner of the property remains the same shall be considered repeat violations. The property owner or other responsible party shall be notified of the violation following the schedule designated in Table 2.

F. Remedies

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of this Ordinance, the City, in addition to other remedies, may institute any proper action or proceeding, including an action to enjoin such unlawful erection, construction, reconstruction, alteration, repair, conversion maintenance, or use, in the name of the City of Council Bluffs, to restrain, correct, or abate such violations, to prevent the occupancy of said building, structure, or land, or to prevent any illegal act, conduct business or use in or about said premises. More specifically, the Community Development Department shall have the following remedies and powers to enforce this Ordinance:

1. Deny/Withhold Permits

   The City may deny and withhold permits, certificates, or other forms of authorization to use or develop any land, structure, or improvements until the alleged violation related to such property use, or development is corrected. The provision shall apply whether or not the current owner or applicant for the permit is responsible for the violation.

2. Permits Approved with Conditions

   Instead of withholding or denying a permit or other authorization, the City may grant such authorization subject to the condition that the violation be corrected prior to occupancy or final approval.

3. Citation for Municipal Infractions

   The City may cite the property for a municipal infractions as set forth in Section 1.95 Municipal Infraction Citation Process of the Council Bluffs Municipal Code.

4. Revoke of Approvals or Permits

   Any permit issued by administrative approval is subject to revocation. Any permit issued by a Decision-Making Body is subject to revocation after notice and a public hearing by said Decision-Making Body. A permit is subject to revocation, after the responsible party has been provided an opportunity to remedy the violation within the time set forth in Table 2, when it is determined that either:

   i. There is a material departure from the approved plans, specifications, or conditions of approval;
   ii. There is a violation of any provision of this Ordinance;
   iii. The development approval or permit was obtained by false representation;
   iv. The development approval or permit was issued in error

b. Written notice of the revocation shall be served upon the property owner of record, the owner's agent, the applicant, or other person to whom the permit was issued or such notice may be posted in a prominent location at the place of the violation. No work or construction shall proceed after the service of the revocation notice.

5. Revoke Licenses

   The City may revoke applicable licenses issued pursuant to City Code. Revocation of licenses shall be processed according to applicable procedures adopted for this purpose by the applicable City department or entity.

6. Stop Work Order

With or without revoking permits, the Community Development Director or his or her designee may issue an order to stop work on any property on which there is an uncorrected violation of either a provision of this Ordinance or a provision of a permit or other form of authorization issued pursuant to this Ordinance. The stop work order shall specify the Ordinance provisions being violated. After any such order has been served, no work shall process on any building, other structure, or tract of land covered by such order, except to correct such violation or comply with this order. The stop work order may be issued at the same time as a notice of initial violation or subsequent to such notice.

7. Injunctive Relief

The City may initiate injunction proceedings or other appropriate legal action in any court of competent jurisdiction against any person who fails to comply with any provision of this Ordinance or any requirement or condition imposed pursuant to this Ordinance. In any court proceeding in which the City seeks a preliminary injunction, it shall be presumed that a violation of this Ordinance is a real, immediate, and irreparable injury to the public; that the public will be irreparably injured by the continuation of the Ordinance violation unless the violation is enjoined; and that there is no plan and adequate remedy at law for the subject Ordinance violation.

8. Abatement

The City may seek a court order in the nature of mandamus, abatement, injunction or other action to abate or remove a violation or to otherwise restore the premises to the condition that existed before the violation.

9. Administrative Extension of Time

a. An administrative extension of time may be granted to the property owner and/or other responsible party by the Community Development Director at his/her discretion for remedying violations that require paving, landscaping, or the removal or altering of illegal structures where seasonal weather conditions make remedying impractical.
b. If the property owner and/or other responsible party are actively pursuing the remedy of an identified zoning violation, a stay of all enforcement action may be granted by the Community Development Director or his/her designee. A stay of action shall not exceed 90 days.
c. An administrative extension of time or stay of enforcement action shall not be granted for a Tier 4 violation.

10. Other

The City may take any other action permitted by Iowa law.