

|AGENDA Monday, February 9, 2009  
|Informational Sioux Falls City Council  
|  
| 4:00 p.m. at Carnegie  
|  
|Town Hall  
|  
| 235 West 10th Street

1. Call To Order
2. City Council Staff Report
  - A. Updates from Debra A. Owen, City Clerk
3. Mayor Munson
4. Audit Committee
5. Fiscal Committee
6. Land Use Committee
7. Public Services Committee
8. City Council Open Discussion
9. Presentations
  - A. Special Report on Code Enforcement, by Lead Internal Auditor Rich Oksol  
  
Special Report - Code Enforcement  
  
Director Mike Cooper's response

10. Executive Session

11. Adjournment

Date: 2009-02-09  
SIRE Meeting ID: 946  
Meeting Type: Informational Meeting

YouTube:<https://youtu.be/A4m6PnZr7kY>  
Agenda Item: Not Assigned  
Item ID: 40499

The following document(s) are public records obtained from the  
City of Sioux Falls.

**SPECIAL PROJECT  
CODE ENFORCEMENT  
INTERNAL AUDIT REPORT 08-17**

**INTRODUCTION**

This Internal Audit project was not part of the 2008 Annual Audit Program. The Audit Committee of the City Council has a policy for considering special projects that were not foreseen when the Annual Audit Program was developed. This special project was a request by a City of Sioux Falls City Council member and approved at the August 27, 2008 meeting of the Audit Committee.

**PURPOSE**

The purpose of this project was to determine:

1. The amount of uncollected fines for code violations levied by the City of Sioux Falls.
2. The steps the City takes to collect unpaid fines for code violations.

**BACKGROUND**

Code enforcement in this report refers to the enforcement by the City of Sioux Falls of various ordinances relating to such things as weeds, abandoned vehicles, and illegal signs. Code enforcement is a multidepartment function. Although the City has a fulltime Code Enforcement Officer in the Planning/Building Services' major organizational unit, many employees in various departments, including Health and Parks/Recreation, are involved with some aspect of code enforcement. For example, the forestry division of Parks/Recreation becomes involved in situations involving untrimmed trees. An environmental health specialist from the Health department is involved in investigating complaints related to public health.

The City's hired the first Code Enforcement Officer in 2003. The decision to create a Code Enforcement Officer position was made to:

- Speed up the process by which property owners comply with City ordinances.
- Put more emphasis into code compliance by having an employee fully devoted to code enforcement inspection and enforcement.

Money collected by the City from property owners for code violations assessed by the Code Enforcement Officer:

<b>2008</b>	\$ 33,310 (as of 10/31/2008)
<b>2007</b>	92,089
<b>2006</b>	129,485
<b>2005</b>	55,995
<b>2004</b>	33,755
<b>2003</b>	1,900

City policy regarding code enforcement has been reactive until recently. When first hired, the Code Enforcement Officer would investigate code violations on a complaint basis. Beginning with the Pettigrew Heights cleanup in 2006, the City has become more proactive in enforcing administrative and health codes. This effort involves more departments than just Planning/Building Services.

## **METHODOLOGY**

We interviewed staff and management, attended meetings of City employees involved with code enforcement process, documented procedures, and accompanied the City's Code Enforcement Officer on a typical work day. We verified the amount of assessed but uncollected fines. We inquired of other local governments about their method of collecting unpaid fines. We also reviewed reports from other cities on changes they are making in regard to code enforcement activities.

## **RESULTS**

### **The amount of uncollected fines for code violations levied by the City of Sioux Falls**

Unpaid code violations as of 08/12/2008 were \$ 114,720. This figure does not include the unpaid health code violations assessed by the Environmental Health Specialists for health code violations.

This is the breakdown of uncollected fines:

#### **Building Services**

\$ 73,679 (greater than 365 days unpaid)

31,167 120-365 days

545 90-120 days

945 60-90 days

945 30-60 days

7,439 current

**\$114,720** total uncollected administrative code violations as of 08/12/2008

#### **Health**

\$ 11,433 (greater than 365 days unpaid)

11,403 120-365 days

3,600 90-120 days

2,600 60-90 days

5,400 30-60 days

11,246 current

**\$ 45,682** total uncollected health code violations as of 08/12/2008

**Note:** The City has turned some of these uncollected fines over to a collection agency. The amount turned over to AAA Collections was \$28,136 as of 08/12/2008. The City receives 64% of any amounts collected by AAA (the City receives 50% if the bad debt goes to court).

### **The steps the City take to collect unpaid fines for code violations**

When the City incurs a cost in hiring a contractor to correct a code violation such as snow removal, weeds mowing, or tree trimming, the property owner will be sent a bill for the cost of the contractor. If this bill remains unpaid, the charge will be placed on the property owner's property tax bill in the form of a special assessment. In August 2008 the City Council approved \$39,810 in special assessments for 2007 code violations.

For other code violations, the City turns the bad debt over to a collection agency (see note at the top of this page) or the City Attorney's office seeks a court judgment. The details of the present process are complex and represented in flow charts on appendices A and B of this report. Until recently, the City Attorney's office could seek a remedy in small claims court. However, the small claims judge for Minnehaha County will no longer hear cases involving unpaid code violations; the City is required to go to circuit court to receive a judgment. Even when a judgment is received, the code violator may refuse to pay.

Starting this year, City management and staff from the departments involved in code enforcement have been meeting on a regular basis to better coordinate the effort to collect unpaid code violations. Some in this group have proposed sending all unpaid fines to collections after a period of time has passed. However, the City Attorney's office is reluctant to do this because of concerns over due process.

### **RECOMMENDATIONS**

1. The City Council should request regular reports concerning the collection of unpaid fines from the group organized to coordinate these efforts.
2. The City Council should consider having a discussion on changing the ordinance to raise the penalty for code violations. The purpose of this would not be to raise revenue. The point of code enforcement is to correct the violation. Currently the property owner has one week to resolve a violation. Additional time to comply is given at the discretion of the Code Enforcement Officer to account for extenuating circumstances. If the violation is not resolved, a fine of \$100 is assessed. The fine may go up another \$100 every 10 day period that the violation is unresolved or there is no effort by the property owner towards compliance. A bigger penalty may result in greater efforts at compliance.
3. When doing research for this report, we asked other local government auditors what their government did to collect unpaid fines. We received responses from eight local governments. All eight place a lien on the property tax bill. Some

governments will force a sale on the property if the fines get too large (Toronto, Canada and Chattanooga, Tennessee), although this is rare. We recommend that the City Council have a discussion on placing all unpaid fines (of any type) above a certain dollar threshold on the property owner's tax bill by way of a special assessment.

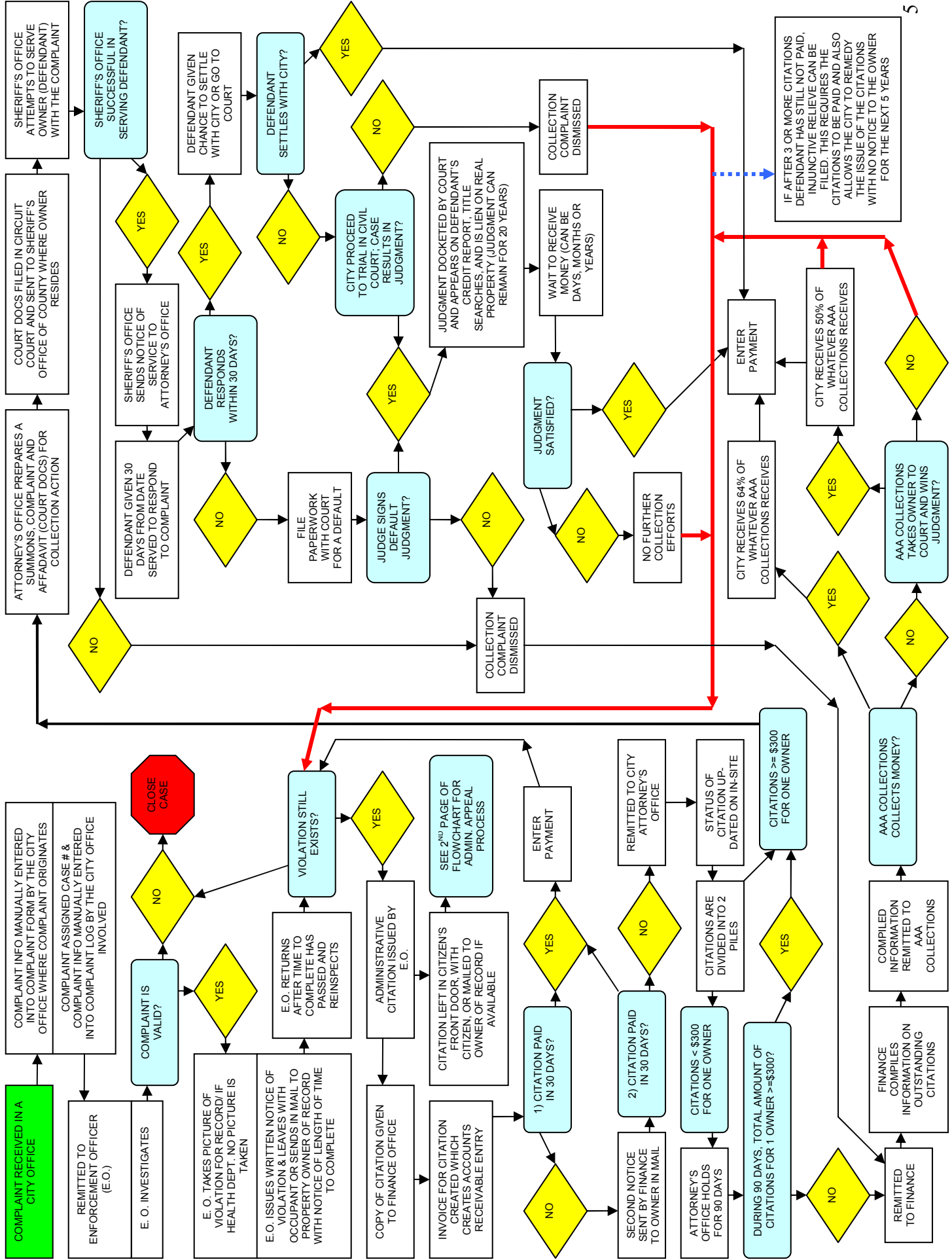
4. The City Council should consider forming a Citizen Policy Review Committee to review code enforcement. The city council of Arlington, Texas formed such a committee in 2004 to examine that city's approach to code enforcement. The committee was a group of volunteers from the community who were asked to review and analyze the code enforcement function from a public policy perspective. The committee was empanelled for 10 to 12 weeks. They prepared a report for the city council before the next budget cycle. They were specifically asked to review the adequacy and appropriateness of Arlington's code enforcement ordinances, the role of education versus enforcement, and the reasonable balance between community standards and property rights. A copy of the Arlington, Texas report is available upon request from Internal Audit.
5. We recommend that the City Council inquire of City administration about reorganizing the code enforcement responsibilities to one centralized division. If this is not feasible, there should be continued effort towards increasing cross-training and coordination among City departments. We believe this could improve customer service. Currently, the City of Sioux Falls has about ten separate divisions that enforce different code violations. Such a division of responsibilities can be confusing for citizens. A good example of confusion is with vehicles parked illegally. If the vehicle is on private property and is inoperable and unlicensed, the point of contact is the Health Department. If they are operable and licensed, the citizen is to contact Code Enforcement. If the vehicle is on a public street, the Police Department is to be notified. Another downfall of many divisions involved in code enforcement responsibilities is different policies, procedures, and philosophies in the way each division handles violations.

If reorganization is found to be unworkable, the City should consider establishing one phone number or contact division for all code enforcement issues. This way, the average citizen knows which department to contact. The contact division can make the determination as to which department or division should do the investigation.

## **CONCLUSION**

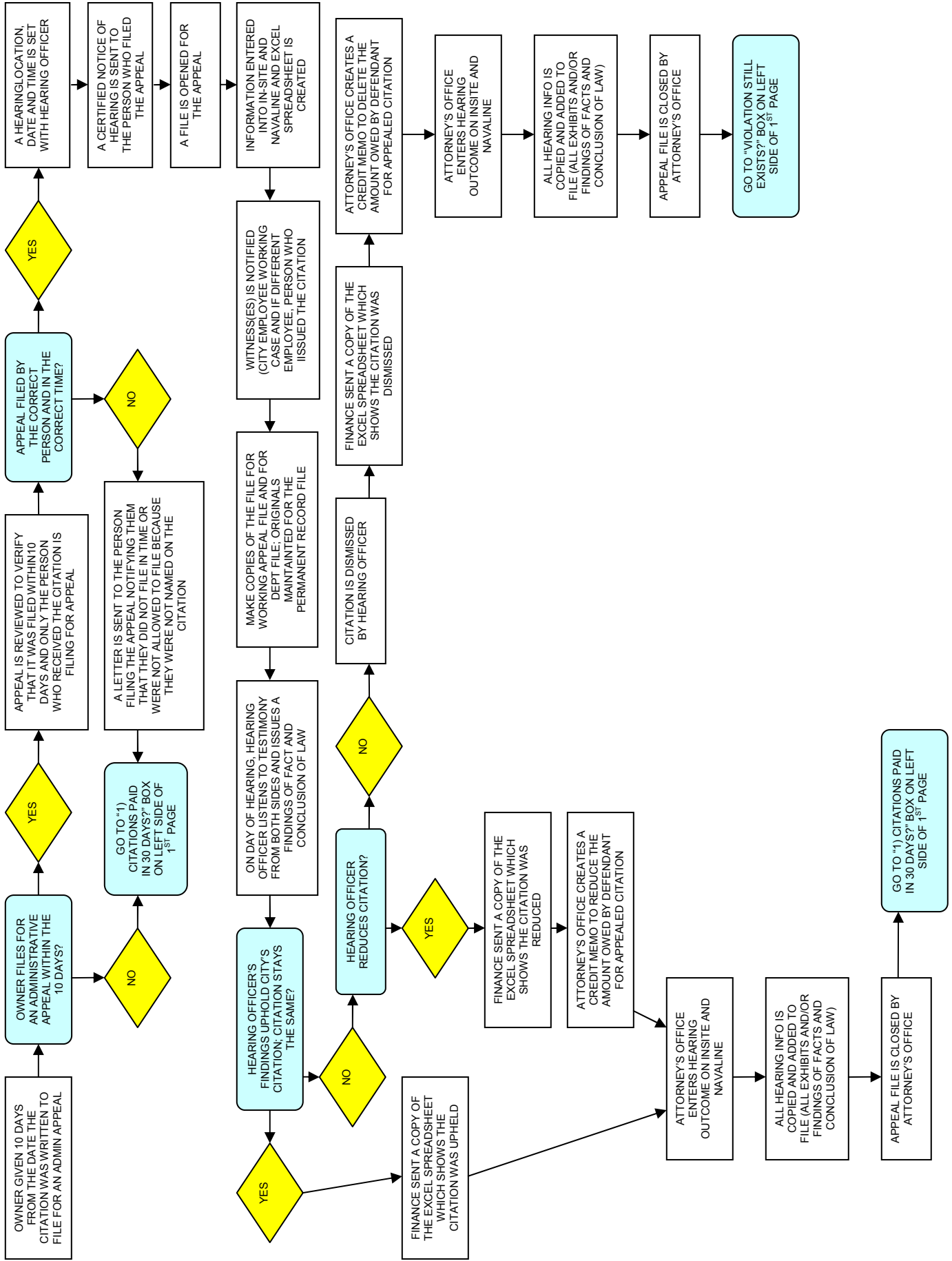
When the City hired its first full-time Code Enforcement Officer in 2003, the volume of fines assessed for administrative code violations and the amount of fines that would not be paid by property owners was unknown. Over the past five years, the amount of unpaid fines has grown to over \$100,000. An increasing number of offenders do not pay their fines. The process the City uses to collect unpaid code violations is tedious and consumes a large amount of staff time.

# APPENDIX A





# APPENDIX B



Date: 2009-02-09  
SIRE Meeting ID: 946  
Meeting Type: Informational Meeting

YouTube:<https://youtu.be/A4m6PnZr7kY>  
Agenda Item: Not Assigned  
Item ID: 40500

The following document(s) are public records obtained from the  
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To: Rich Oksol, Lead Internal Auditor; Members of the Audit Committee  
From: Mike Cooper, Director of Planning and Building Services **MJC**  
Re: Special Project Code Enforcement Audit

Thank you for the opportunity to provide a response to the recommendations in your special project code enforcement audit.

The purpose for this audit, as stated in your report, is to (a) determine the amount of uncollected fines for code violations levied by the City of Sioux Falls and (b) the steps the City takes to collect these unpaid fines. The department expected recommendations regarding potential changes to the financial practices associated with these two statements. However, several of the recommendations in your report exceed the scope of this audit's stated purpose and crosses over into matters of administrative affairs unrelated to financial practices. Nevertheless, we will address them; but we do ask that in the future Internal Audit not pursue work that deviates from the direction given by the Audit Committee or that which is specifically authorized by City Ordinance. If management had been aware of the enhanced scope of this particular audit, more specific information could have been provided throughout the process.

Before addressing the recommendations, we would like to point out a factual error in the second recommendation regarding the amount of time given to comply after a violation is cited. The recommendation reports residents are given one week; in actuality the time varies depending on the specific violation. This is done by ordinance.

In addition, we offer the following response to the audit report recommendations:

*2. The City Council should consider having a discussion on changing the ordinance to raise the penalty for code violations. The purpose of this would not be to raise revenue. The point of code enforcement is to correct the violation. Currently the property owner has one week to resolve a violation. Additional time to comply is given at the discretion of the Code Enforcement Officer to account for extenuating circumstances. If the violation is not resolved, a fine of \$100 is assessed. The fine may go up another \$100 every 10 day period that the violation is unresolved or there is no effort by the property owner towards compliance. A bigger penalty may result in greater efforts at compliance.*

Management does not see any finding in the audit to justify this recommendation. In 2003, the City decided to more aggressively pursue code violations. It stands to reason the number of citations would then increase, along with uncollected fines. As the process evolved, the City made an administrative decision to try and lower the amount of outstanding fines. As you can see from the audit report, there has been a substantial decrease in new amounts of uncollected fines so far in 2008 compared to 2007. This demonstrates we are making significant progress with our current penalty and new coordination procedures. We should also note that our current penalty is enough to

encourage the vast majority of residents to correct their violations after a warning is issued. We need to remember that correcting the violation is our primary objective. Only about ten percent of cases ever proceed to the level of actual enforcement and subsequent assessment of fines. That being said, ninety percent of the time, the current process seems to be accomplishing our objectives in a reasonable fashion. For example, as of November 19, the Health department had inspected 1617 nuisance cases in 2008. Of those cases, 171 property owners actually received a first citation and only 32 advanced to needing a third citation. This compliance rate is consistent among other divisions involved in code enforcement. Nonetheless, the City is always willing to review and look at ways to improve any existing process or procedures.

*3. We recommend that the City Council have a discussion on placing all unpaid fines (of any type) above a certain dollar threshold on the property owner's tax bill by way of a special assessment.*

The City's code enforcement coordination committee is already discussing and analyzing this recommendation and will continue to do so. We believe an internal auditor was present for these discussions. It is important to remember that placing a lien on the property in all likelihood will not result in a speedier collection of the funds owed; for purposes of expediting collections, we still believe the courts and collections agencies are the most effective vehicle.

*4. The City Council should consider forming a Citizen Policy Review Committee to review code enforcement. The city council of Arlington, Texas formed such a committee in 2004 to examine that city's approach to code enforcement. The committee was a group of volunteers from the community who were asked to review and analyze the code enforcement function from a public policy perspective. The committee was empanelled for 10 to 12 weeks. They prepared a report for the city council before the next budget cycle. They were specifically asked to review the adequacy and appropriateness of Arlington's code enforcement ordinances, the role of education versus enforcement, and the reasonable balance between community standards and property rights.*

This recommendation goes beyond the scope of the audit's stated purpose. City administration, with the support of the City Council, is in the middle of a multi-year transition to performance measurement budgeting with the guidance of ICMA. In ICMA performance measurement, code enforcement is considered a program. This has been a great help to the City of Sioux Falls, because as we've collected data in preparation for setting benchmarks, our departments involved in code enforcement have become better coordinated. This will only continue as we move forward with performance measurement. Our next step in this process is securing a software program to help us track our data collectively and measure our success. Once we are able to establish our current level of performance, we can all begin to set benchmarks for future performance. We believe those benchmarks should be established by those most familiar with the program. Consideration should also be given to industry standards, comparative data with similar communities and our own community expectations. The most current data

we have is from the 2008 ICMA citizen survey. It shows 86 percent of Sioux Falls residents considered our code enforcement services at least fair. 51% said they were good or excellent. This ranks Sioux Falls in the top 39% of cities nationwide, above the norm.

*5. We recommend that the City Council inquire of City administration about reorganizing the code enforcement responsibilities to one centralized division. If this is not feasible, there should be continued effort towards increasing cross-training and coordination among City departments. We believe this could improve customer service. Currently, the City of Sioux Falls has about ten separate divisions that enforce different code violations. Such a division of responsibilities can be confusing for citizens. A good example of confusion is with vehicles parked illegally. If the vehicle is on private property and is inoperable and unlicensed, the point of contact is the Health Department. If they are operable and licensed, the citizen is to contact Code Enforcement. If the vehicle is on a public street, the Police Department is to be notified. Another downfall of many divisions involved in code enforcement responsibilities is different policies, procedures, and philosophies in the way each division handles violations. If reorganization is found to be unworkable, the City should consider establishing one phone number or contact division for all code enforcement issues. This way, the average citizen knows which department to contact. The contact division can make the determination as to which department or division should do the investigation.*

This recommendation also exceeds the scope of the audit's stated purpose. It is not feasible to organize all employees who currently have job responsibilities that include enforcing code under one division. These employees have other duties and specialties that necessitate their current placement within other divisions in our organization. Additionally, by City Charter, it is the Mayor's administrative responsibility to establish city departments, offices, or agencies. We have several concerns regarding cross-training employees to identify and report violations.

1. This practice could exponentially increase the number of reported code violations requiring increased staff to investigate/process the additional code violations.
2. Since we operate in a labor contract environment, we would need to be careful of the labor implications associated such a practice. The Code Enforcement Officer is currently placed at the C42 classification level. Anyone with a classification rating less than that (which would be a good portion of our "field" employees) would argue that engaging in code enforcement duties would mean they are exceeding the scope of their classification and thus the labor contract would require we pay them premium pay for all time engaged in such activity.
3. If city employees are expected to report observed/potential code violations, that activity would obviously draw them away from their original job duties; thus potentially affecting their productivity in their assigned field.
4. This could potentially have a negative impact on the public's perception of City employees.

In addition, to someone unfamiliar with the code enforcement process, the examples presented in this recommendation portray it as overly bureaucratic. While we are always looking for ways to do business more efficiently and to streamline our processes, the vast array of areas included under the umbrella of "code enforcement" require different departments in order to provide the most expert service and due process to our citizens.

For example, illegal vehicles do require different departments to be involved. If a vehicle is left on a public street, it is a safety hazard to the traveling public and Police is the appropriate responder. If a vehicle is inoperable and sitting unlicensed on private property, it is considered a nuisance and a health inspector responds. It does not make sense to use public safety resources to address a private issue; nor is the health department responsible for ensuring the safety of the traveling public on city roads.

The flow chart attached to this report is another example that presents code enforcement as overly bureaucratic. City administration was shown this chart and told it was created by internal audit as a tool to help develop their final work product. It does not support the stated purpose of the audit and creates unnecessary confusion when presented to anyone reading this report.

We appreciate the suggestion of creating a single phone number to report code violations. We actually have a number designated for code enforcement (367-8613) although someone who calls it may ultimately be referred to a different department depending on the violation. We plan to raise awareness of that number in the course of upcoming communication efforts for our code enforcement program. In 2009, we plan to publish a guide for homeowners and renters that outlines their basic responsibilities under city ordinance. We hope this proactive education piece will help curtail violations from otherwise well-meaning residents. We also plan to add it to our code enforcement website as we continue to refine the site. We plan to make the site a direct link from our homepage where people will be able to find phone numbers and email contact information to reach our code enforcement program.

We would also like to respond to the following conclusion:

*Conclusion*

*When the City hired its first full-time Code Enforcement Officer in 2003, the volume of fines assessed for administrative code violations and the amount of fines that would not be paid by property owners was unknown. Over the past five years, the amount of unpaid fines has grown to over \$100,000. An increasing number of offenders do not pay their fines. The process the City uses to collect unpaid code violations is tedious and consumes a large amount of staff time.*

As seen in the 2008 data, it is simply untrue that an increasing number of offenders do not pay their fines. The dollar amount has dropped from \$92,000 in 2007 to \$33,000 through most of 2008.

We are working to expedite the collection process through the courts. We currently use a collections agency when law enforcement is unable to locate or serve a defendant and for those violations that have a minimal citation of less than \$300. The administration is very committed to this process. The Mayor also outlined his goals for the program in his 2009 budget address when he said, "As part of measuring our performance, we want to simplify our public complaint process, make sure we're responding in a timely fashion and better coordinate between departments that are involved in complaints."

While this audit seems to conclude our process is bureaucratic and tedious, it fails to establish or recommend any standard to audit *against*. It does not audit against any policy, procedure, industry standard or benchmark. Short of that justification for a finding, there is no way to support changing the code enforcement process based on this audit.

We also respectfully request that any recommendation not within the scope of the ordinance authority of Audit Committee be removed from this report.

## STATUS OF CODE ENFORCEMENT CITATION COLLECTION ACTIONS BY CITY

STATUS	APPROXIMATE NUMBER OF CITATIONS	APPROXIMATE TOTAL OF CITATIONS
Single or smaller citation amts being held for minimum threshold amt met or thereafter ready for civil collection agency action, etc.	113 <i>under \$300</i>	\$11,870
Collection actions filed; cases pending	202	\$38,200
Citations recently forwarded to collection agency due to amt or inability to serve dfd with civil court action	109	\$19,280
Citations ready for court action; to be included in next filing – July, 2008	109	\$21,200
<b>TOTAL CITATIONS WITH COLLECTION ACTIONS PENDING</b>	<b>424</b>	<b>\$71,270</b>
Citations where court judgments have been obtained by City Atty's Ofc – not yet paid	199	\$33,500
Citations where payment (partial or full) collected	1574	\$195,800