

ENFORCING YOUR ORDINANCES



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What Is Zoning From an Enforcement Point of View?

Zoning ordinances and codes:

- Prohibit certain activities
- Prohibit certain land uses
- Restrict development

In effect, zoning is very frequently the business of saying “No”.

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Where Does Zoning Power Come From?

Minnesota Statute 462.353 Subd. 1

“A municipality may carry on comprehensive municipal planning activities for guiding the future development and improvement of the municipality and may prepare, adopt and amend a comprehensive municipal plan and implement such plan by ordinance and other official actions in accordance with the provisions of sections 462.351 to 462.364.”

Minnesota Statute 462.352 Subd. 2

“Municipality” means any city, including a city operating under a home rule charter, and any town.”

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How are Zoning Ordinances, and other Ordinances Enforced?

Minnesota Statute 462.362

“A municipality may by ordinance provide for the enforcement of ordinances or regulations adopted under sections 462.351 to 462.364 and provide penalties for violation thereof. A municipality may also enforce any provision of sections 462.351 to 462.364 or of any ordinance adopted thereunder by mandamus, injunction, or any other appropriate remedy in any court of competent jurisdiction.”

Minnesota Statutes 366.01 Subd. 10 and 368.1 Subd. 22 both grant the power to townships to declare that a violation of an ordinance is a penal offense and to prescribe remedies not to exceed that provided by law for a misdemeanor.

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Civil Enforcement

- Lawsuit
- Preponderance of the evidence
- Probably does not involve your insurance
- Can be expensive
- Broad range of remedies including damages, injunctions, etc.
- Counterclaims

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When Your Town Has an Ordinance Violation: Make a Firm Decision About Whether to Proceed

Pros:

- Sets an example
- Deters future bad conduct
- Brings property into compliance

Cons:

- Expensive
- A defendant may call your bluff
- If you lose, you may lose credibility

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How to Choose Between Criminal and Civil Enforcement

- Check with your township attorney
- Evaluate the kind of violation you are talking about
- Do not discount or immediately rule out a criminal enforcement. Oftentimes it will be faster and more certain.

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Criminal Prosecution of Ordinance Violations

A. County Attorney or Township Attorney?

- A Township can enact ordinances that are consistent with or more (but not less) restrictive than planning and zoning controls adopted by county. *Haverhill Township County of Olmsted, 674 N.W.2d 781 (Minn. Ct. App. 2004)*
- If a township enacts ordinances that are more restrictive than county controls, the County Attorney is not required to prosecute violations of the more restrictive ordinances. *Scinocca v. St. Louis County Board of Commissioners, 281 N.W.2d 659 (Minn. 1979)*

B. Criminal Prosecution vs. Civil Nuisance or Abatement Action

- Essentially a cost/benefit analysis

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Case Study: Salem Township vs. Buy Rite Fuels, LLC and Royal Johnson

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Salem Township vs. Buy Rite Fuels, LLC and Royal Johnson

1. Defendants

- If a company is involved, always name an owner, manager or officer as a defendant, as well as the company.
- It gets their attention, and brings into play the potential of going to jail!

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Salem Township vs. Buy Rite Fuels, LLC and Royal Johnson

2. Resistance by Court System

- Olmsted County checked with County Attorney to get the OK for Township Attorney to file a Criminal Complaint (not required).
- Tendency to treat ordinance violations as less serious than other criminal cases such as DWI, domestic assault, or theft.
- Frustration with delays, it took 2 years to get to trial, and had to file Demand for Speedy Trial to force a trial.

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Salem Township vs. Buy Rite Fuels, LLC and Royal Johnson

4. Remedy

- Cease and desist orders as part of probation
- Fine to company and individual (limited to \$1,000 each)
- Key is suspended jail time hanging over individual's head as a deterrent

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