

To: Rich Oksol, Lead Internal Auditor; Members of the Audit Committee
From: Mike Cooper, Director of Planning and Building Services **MC**
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
TOTAL CITATIONS WITH COLLECTION ACTIONS PENDING	<i>424</i>	\$71,270
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