

**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:

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

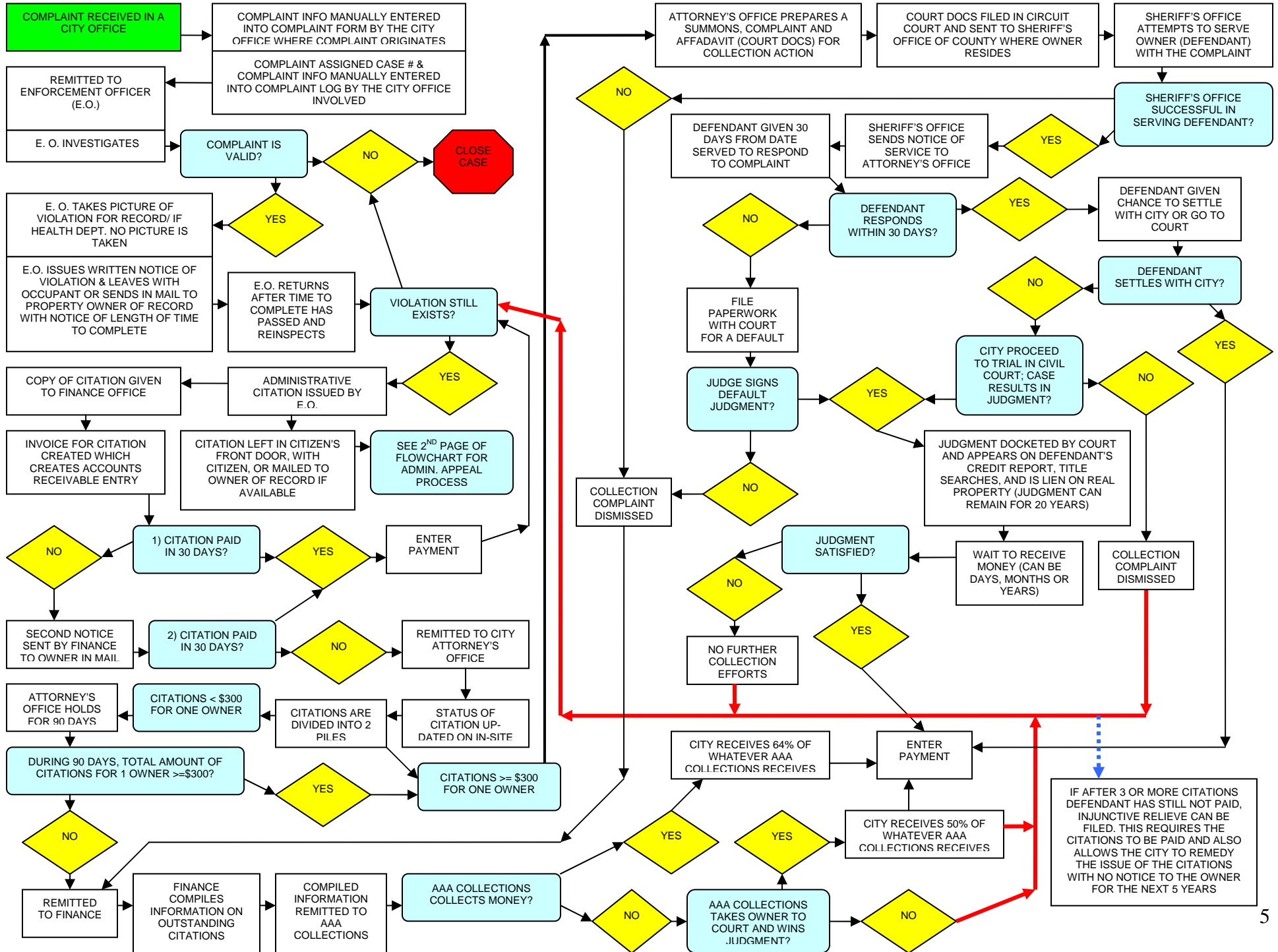
4. The City Council should consider forming a Citizen Policy Review Committee to review code enforcement. The city council of Arlington, Texas formed such a committee in 2004 to examine that city's approach to code enforcement. The committee was a group of volunteers from the community who were asked 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

