

## **CHAPTER 10: GENERAL PROVISIONS**

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### **§ 10.01 TITLE OF CODE.**

(A) All ordinances of a permanent and general nature of the city, as revised, codified, rearranged, renumbered and consolidated into component codes, titles, chapters and sections, shall be known and designated as "The Breezy Point City Code", for which designation "code of ordinances", "codified ordinances" or

“code” may be substituted. Code title, chapter and section headings do not constitute any part of the law as contained in the code.

(B) All references to codes, titles, chapters and sections are to the components of the code unless otherwise specified. Any component code may be referred to and cited by its name, such as the “Traffic Code”. Sections may be referred to and cited by the designation “§” followed by the number, such as “§ 10.01”. Headings and captions used in this code other than the title, chapter and section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

## **§ 10.02 RULES OF INTERPRETATION.**

(A) *Generally.* Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition and application shall govern the interpretation of this code as those governing the interpretation of state law.

(B) *Specific rules of interpretation.* The construction of all ordinances of the City of Breezy Point shall be by the following rules, unless that construction is plainly repugnant to the intent of the legislative body or of the context of the same ordinance:

(1) **AND or OR.** Either conjunction shall include the other as if written “and/or”, whenever the context requires.

(2) *Acts by assistants.* When a statute, code provisions or ordinance requires an act to be done which, by law, an agent or deputy as well may do as the principal, that requisition shall be satisfied by the performance of the act by an authorized agent or deputy.

(3) *Gender; singular and plural; tenses.* Words denoting the masculine gender shall be deemed to include the feminine and neuter genders; words in the singular shall include the plural, and words in the plural shall include the singular; the use of a verb in the present tense shall include the future, if applicable.

(4) *General term.* A general term following specific enumeration of

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terms is not to be limited to the class enumerated unless expressly so limited.

### **§ 10.03 APPLICATION TO FUTURE ORDINANCES.**

All provisions of Title I compatible with future legislation shall apply to ordinances hereafter adopted which amend or supplement this code unless otherwise specifically provided.

### **§ 10.04 CAPTIONS.**

Headings and captions used in this code other than the title, chapter and section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

### **§ 10.05 DEFINITIONS.**

(A) *General rule.* Words and phrases shall be taken in their plain, or ordinary and usual sense. However, technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

(B) *Definitions.* For the purpose of this code, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**CITY.** The City of Breezy Point, Minnesota, acting by or through its duly authorized representative.

**CITY CLERK** and **CITY CLERK-TREASURER.** The person duly appointed by the City Council and acting in the capacity.

**CODE, THIS CODE** or **THIS CODE OF ORDINANCES.** The City of Breezy Point Code as modified by amendment, revision and adoption of new titles, chapters or sections.

**CONVICTION.** Either of the following accepted and recorded by the

court:

- (a) A plea of guilty; or
- (b) A verdict of guilty by a jury or a finding of guilty by the court.

**COUNCIL.** The City Council of the City of Breezy Point, Minnesota.

**COUNTY.** The County of Crow Wing, Minnesota.

**CRIME.** Conduct which is prohibited by ordinance and for which the actor may be sentenced to imprisonment or fine.

**EX-OFFICIO MEMBER.** A person who is not counted for the purpose of determining a quorum, and has no right to vote, but shall have the right and obligation (within his or her discretion) to speak to any question coming before the board, commission or other deliberative body of which he or she is such member.

**INTERSECTION.** The area embraced within the prolongation or connection of the lateral curb line or, if no curb, then the lateral boundary lines of the roadways or streets which join one another at, or approximately at, right angles or the area within which vehicles traveling upon different streets joining at any other angle may come in conflict.

**MAY.** The act referred to is permissive.

**MISDEMEANOR.** The crime for which a sentence of not more than 90 days or a fine of not more than \$1,000, or both, may be imposed.

**MONTH.** A calendar month.

**OATH.** An affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in those cases the words **SWEAR** and **SWORN** shall be equivalent to the words **AFFIRM** and **AFFIRMED**. All terms shall mean a pledge taken by the person and administered by an individual authorized by state law.

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***OFFICER, OFFICE, EMPLOYEE, COMMISSION or DEPARTMENT.***

An officer, office, employee, commission or department of the city unless the context clearly requires otherwise.

***ORDINANCE.*** An ordinance duly adopted by the City Council of Breezy Point, Minnesota.

***PERSON.*** Extends to and includes an individual, person, persons, firm, corporation, copartnership, trustee, lessee or receiver. Whenever used in any clause prescribing and imposing a penalty, the terms ***PERSON*** or ***WHOEVER***, as applied to any unincorporated entity, shall mean the partners or members thereof, and as applied to corporations, the officers or agents thereof.

***PETTY MISDEMEANOR.*** An offense, which does not constitute a crime, and for which a sentence of a fine of not more than \$300 may be imposed.

***POLICE OFFICER*** and ***PEACE OFFICER.*** Every officer, including special police, authorized to direct or regulate traffic, keep the peace and appointed or employed for the purpose of law enforcement.

***PRECEDING*** or ***FOLLOWING.*** Next before or next after, respectively.

***PREMISES.*** Any lot, piece or parcel of land within a continuous boundary whether publically or privately owned, occupied or possessed.

***PRIVATE PROPERTY.*** All property not included within the definition of ***PUBLIC PROPERTY*** or ***PUBLIC PLACE.***

***PUBLIC PROPERTY*** and ***PUBLIC PLACE.*** Any place, property or premises dedicated to public use, owned by the city, occupied by the city as a lessee or occupied by the city as a street by reason of an easement, including, but not limited to, streets, parks or parking lots so owned or occupied.

***ROADWAY.*** That portion of a street improved, designed or ordinarily used for vehicular travel. In the event a street includes two or more separate roadways, the term ***ROADWAY***, as used herein, shall refer to any roadway separately but not to all the roadways collectively.

**SHALL.** The act referred to is mandatory.

**SIGNATURE** or **SUBSCRIPTION.** Includes a mark when the person cannot write.

**STATE.** The State of Minnesota.

**STREET.** The entire area dedicated to public use, or contained in an easement or other conveyance or grant to the city, and shall include, but not be limited to, roadways, boulevards, sidewalks, alleys and other public property between lateral property lines in which a roadway lies.

**SUBCHAPTER.** A division of a chapter, designated in this code by a heading in the chapter analysis and a capitalized heading in the body of the chapter, setting apart a group of sections related by the subject matter of the heading. Not all chapters have subchapters.

**VIOLATE.** Includes failure to comply with.

**WRITTEN.** Any representation of words, letters or figures, whether by printing or otherwise.

**YEAR.** A calendar year, unless otherwise expressed.  
(Prior Code, § 1.02)

## **§ 10.06 SEVERABILITY.**

If any provision of this code, as now or later amended, or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

## **§ 10.07 REFERENCE TO OTHER SECTIONS.**

Whenever in one section reference is made to another section hereof, that reference shall extend and apply to the section referred to as subsequently amended, revised, recodified or renumbered unless the subject matter is

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changed or materially altered by the amendment or revision.

### **§ 10.08 REFERENCE TO OFFICES.**

Reference to a public office or officer shall be deemed to apply to any office, officer or employee of the city exercising the powers, duties or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

### **§ 10.09 ERRORS AND OMISSIONS.**

If a manifest error is discovered, consisting of the misspelling of any words, the omission of any word or words necessary to express the intention of the provisions affected, the use of a word or words to which no meaning can be attached or the use of a word or words when another word or words was clearly intended to express the intent, the spelling shall be corrected and the word or words supplied, omitted or substituted as will conform with the manifest intention, and the provisions shall have the same effect as though the correct words were contained in the text as originally published. No alteration shall be made or permitted if any question exists regarding the nature or extent of the error.

### **§ 10.10 OFFICIAL TIME.**

The official time, as established by applicable state and federal laws, shall be the official time within the city for the transaction of all city business.

### **§ 10.11 REASONABLE TIME.**

(A) In all cases where an ordinance requires an act to be done in a reasonable time or requires reasonable notice to be given, reasonable time or notice shall be deemed to mean the time which is necessary for a prompt performance of the act or the giving of the notice.

(B) The time within which an act is to be done, as herein provided, shall be

computed by excluding the first day and including the last. If the last day is a legal holiday or a Sunday, it shall be excluded.

**§ 10.12 ORDINANCES REPEALED.**

This code, from and after its effective date, shall contain all of the provisions of a general nature pertaining to the subjects herein enumerated and embraced. All prior ordinances pertaining to the subjects treated by this code shall be deemed repealed from and after the effective date of this code.

**§ 10.13 ORDINANCES UNAFFECTED.**

All ordinances of a temporary or special nature and all other ordinances pertaining to subjects not embraced in this code shall remain in full force and effect unless herein repealed expressly or by necessary implication.

**§ 10.14 EFFECTIVE DATE OF ORDINANCES.**

All ordinances passed by the legislative body requiring publication shall take effect from and after the due publication thereof, unless otherwise expressly provided.

**§ 10.15 REPEAL OR MODIFICATION OF ORDINANCE.**

(A) Whenever any ordinance or part of an ordinance shall be repealed or modified by a subsequent ordinance, the ordinance or part of an ordinance thus repealed or modified shall continue in force until the publication of the ordinance repealing or modifying it when publication is required to give effect to it, unless otherwise expressly provided.

(B) No suit, proceedings, right, fine, forfeiture or penalty instituted, created, given, secured or accrued under any ordinance previous to its repeal shall in any way be affected, released or discharged, but may be prosecuted, enjoyed and recovered as fully as if the ordinance had continued in force unless it is otherwise expressly provided.



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(C) When any ordinance repealing a former ordinance, clause or provision shall be itself repealed, the repeal shall not be construed to revive the former ordinance, clause or provision, unless it is expressly provided.

### **§ 10.16 ORDINANCES WHICH AMEND OR SUPPLEMENT CODE.**

(A) If the City Council shall desire to amend any existing chapter or section of this code, the chapter or section shall be specifically repealed and a new chapter or section, containing the desired amendment, substituted in its place.

(B) Any ordinance which is proposed to add to the existing code a new chapter or section shall indicate, with reference to the arrangement of this code, the proper number of the chapter or section. In addition to this indication as may appear in the text of the proposed ordinance, a caption or title shall be shown in concise form above the ordinance.

### **§ 10.17 PRESERVATION OF PENALTIES, OFFENSES, RIGHTS AND LIABILITIES.**

All offenses committed under laws in force prior to the effective date of this code shall be prosecuted and remain punishable as provided by those laws. This code does not affect any rights or liabilities accrued, penalties incurred or proceedings begun prior to the effective date of this code. The liabilities, proceedings and rights are continued, punishments, penalties or forfeitures shall be enforced and imposed as if this code had not been enacted. In particular, any agreement granting permission to utilize highway rights-of-way, contracts entered into or franchises granted, the acceptance, establishment or vacation of any highway, and the election of corporate officers shall remain valid in all respects, as if this code had not been enacted.

### **§ 10.18 COPIES OF CODE.**

The official copy of this code shall be kept in the office of the City Clerk-Treasurer for public inspection. The Clerk-Treasurer shall provide a copy for sale for a reasonable charge.

**§ 10.19 ADOPTION OF STATUTES AND RULES BY REFERENCE.**

It is the intention of the City Council that, when adopting this code, all future amendments to any state or federal rules and statutes adopted by reference in this code or referenced in this code are hereby adopted by reference or referenced as if they had been in existence at the time this code was adopted, unless there is clear intention expressed in the code to the contrary.

**§ 10.20 ENFORCEMENT.**

(A) Any licensed peace officer of the city's Police Department, the County Sheriff or any Deputy Sheriff, shall have the authority to enforce any provision of this code.

(B) As permitted by M.S. § 626.862, as it may be amended from time to time, the City Clerk-Treasurer shall have the authority to administer and enforce this code. In addition, under that statutory authority, certain individuals designated within the code or by the Clerk-Treasurer or City Council shall have the authority to administer and enforce the provisions specified. All and any person or persons designated may issue a citation in lieu of arrest or continued detention to enforce any provision of the code.

(C) The City Clerk-Treasurer and any city official or employee designated by this code who has the responsibility to perform a duty under this code, may, with the permission of a licensee of a business or owner of any property or resident of a dwelling, or other person in control of any premises, inspect or otherwise enter any property to enforce compliance with this code.

(D) If the licensee, owner, resident or other person in control of a premises objects to the inspection of or entrance to the property, the City Clerk-Treasurer, peace officer or any employee or official charged with the duty of enforcing the provisions of this code may, upon a showing that probable cause exists for the issuance of a valid search warrant from a court of competent jurisdiction, petition and obtain a search warrant before conducting the inspection or otherwise entering the property. This warrant shall be only to determine whether the provisions of this code enacted to protect the health, safety and welfare of the

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people are being complied with and to enforce these provisions only, and no criminal charges shall be made as a result of the warrant. No warrant shall be issued unless there be probable cause to issue the warrant. Probable cause occurs if the search is reasonable. Probable cause does not depend on specific knowledge of the condition of a particular property.

(E) Every licensee, owner, resident or other person in control of property within the city shall permit, at reasonable times, inspections of or entrance to the property by the City Clerk-Treasurer or any other authorized city officer or employee only to determine whether the provisions of this code enacted to protect the health, safety and welfare of the people are being complied with and to enforce these provisions. Unreasonable refusal to permit the inspection of or entrance to the property shall be grounds for termination of any and all permits, licenses or city service to the property. Mailed notice shall be given to the licensee, owner, resident or other person in control of the property, stating the grounds for the termination, and the licensee, owner, resident or other person in control of the property shall be given an opportunity to appear before the City Clerk-Treasurer to object to the termination before it occurs, subject to appeal of the Clerk-Treasurer's decision to the City Council at a regularly scheduled or special meeting.

(F) Nothing in this section shall be construed to limit the authority of the city to enter private property in urgent emergency situations where there is an imminent danger in order to protect the public health, safety and welfare.

### **§ 10.98 ADMINISTRATIVE PENALTIES.**

(A) *Purpose and intent.* The administrative enforcement procedures established within this section are intended to provide the city with an informal, cost-effective and more efficient alternative to criminal prosecution or civil litigation for certain violations of the adopted City Code. The city retains the right, at its sole discretion, to enforce provisions of this code by bringing criminal charges or commencing civil litigation in any case where the city determines it is appropriate or necessary, but finds that an administrative process is beneficial to the residents of the city, and further finds that such a process is a legitimate and necessary alternative method of enforcing code violations.

(B) *Definitions.* For purposes of this section, the following definitions shall

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apply unless the context clearly indicates or requires a different meaning.

**CODE COMPLIANCE OFFICER.** Any officer of the Police Department, any employee of the city, or any person or company contracted to provide code enforcement services who has received official authority by the City Council to enforce the City Code. There may be more than one person designated as Code Compliance Officer at any given time.

**CODE OFFENSE.** A violation of any section, subdivision, paragraph or provision of the City Code that is subject to a civil penalty, determined according to a schedule adopted by resolution of the City Council from time to time, and payable directly to the City Clerk. Each day the violation exists constitutes a separate code offense.

**OWNER.** An individual, association, syndicate, partnership, corporation, limited liability company, trust or any other legal entity holding an equitable or legal ownership interest in land, buildings, structures, dwelling unit(s) or other property.

**PERSON.** A natural person of either sex, a firm, partnership, corporation, limited liability company, any other association of people, including the manager or agent of that person or organization.

(C) *Procedure.*

(1) *Administrative notice.* A Code Compliance Officer may issue, either in person or by United States first class mail, an administrative notice to a person suspected or known to have committed a code offense and/or to be the owner of property upon which a code offense is being committed. The administrative notice shall identify the code offense, the location upon which the code offense occurred or is occurring, and the recommended corrective action for the code offense. The administrative notice may also state that the alleged violator has, at the discretion of the Code Compliance Officer, a set number of days to correct or abate the code offense. If the alleged violator and/or owner of property upon which a code offense is being committed is unable to correct or abate the code offense within the prescribed time, that person may request in writing an extension of a set number of days from the Code Compliance Officer. Any extension granted by the Code Compliance Officer shall be in writing and shall

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specifically state the date of expiration. If the code offense is not corrected or abated, as outlined in the administrative notice, within the prescribed time or any extension thereto, the Code Compliance Officer may issue a citation, as provided below.

(2) *Citation.* A Code Compliance Officer is authorized to issue a citation upon the belief that a code offense has occurred, whether or not an administrative notice has first been issued in regard to the code offense. The citation shall be given to the person responsible for the violation and/or to the owner of the property upon which the violation has occurred, either by personal service or by United States first class mail. The citation shall state the nature of the code offense, the time and date it occurred, the applicable civil penalty as set forth in a schedule of civil penalties, which shall be adopted by resolution of the City Council from time to time, and the manner for paying the civil penalty or requesting a hearing before a Hearing Officer to contest the citation.

(3) *Responding to a citation/payment.* Once a citation is issued, the alleged violator and/or the owner of the property upon which the violation has occurred shall, within 15 days of the time of issuance of the citation, either pay the civil penalty set forth in the citation or request a hearing in writing according to the procedure set forth in this section. The civil penalty may be paid either in person at City Hall, or by United States first class mail, postage prepaid and postmarked within the prescribed 15 days. Payment of the civil penalty shall be deemed to be an admission of the code offense.

#### *(D) Appeal to Hearing Officer.*

(1) *Requesting a hearing.* Any person contesting a citation issued pursuant to this chapter may, within 15 days of the time of issuance of the citation, request a hearing before a Hearing Officer. Any request for a hearing before a Hearing Officer shall be made in writing on a form provided by the City for such a request, and either delivered personally to the city at City Hall or mailed to the city by United States first class mail, postage prepaid and postmarked within said prescribed 15 days. The hearing shall be held at City Hall within 30 days of the date the city received a timely written notice that a hearing has been requested. Failure to attend the hearing constitutes a waiver of the violator's rights to an administrative hearing and an admission of the violation. A Hearing Officer may waive this result upon good cause shown. A

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determination of good cause shall be made by the Hearing Officer, but does specifically not include forgetfulness or intentional delay.

(2) *Hearing Officer.* The City Council shall by resolution from time to time appoint a list of persons authorized to act as Hearing Officers. The Hearing Officer is authorized to conduct an informal hearing to determine if a code offense has occurred. The Hearing Officer may be compensated by the city for such hearings and related findings. The Hearing Officer shall have the authority to uphold or dismiss the citation, or reduce, stay or waive the civil penalty imposed, upon such terms and conditions as the Hearing Officer shall determine. The Hearing Officer's decision shall be made in writing on a form provided by the city for such purpose. A copy of the Hearing Officer's decision shall be served by United States first class mail upon the person requesting the hearing. The Hearing Officer's decision is final, except for appeal of the Hearing Officer's decision in limited cases to the City Council, as set forth below.

(3) *Conduct of hearing.* At the hearing, the parties will have the opportunity to present testimony, documents and exhibits, and question witnesses. The Hearing Officer shall tape record the proceedings and receive testimony and exhibits. Strict rules of evidence will not apply. The Hearing Officer must receive and give weight to evidence, including hearsay evidence, that possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.

(4) *Payment for Cost of Hearing.* The cost of the hearing shall be borne solely by the non-prevailing party. The City shall provide an estimate of the cost of the hearing at the time of the request for hearing. In all cases, where the party requesting the hearing is unable to attend and fails to request a continuance of the hearing at least 48 hours in advance of the scheduled hearing, all costs incurred by the City attributable to the hearing shall be charged to the requesting party.

(E) *Appeal of a Hearing Officer's decision.*

(1) The Hearing Officer's decision shall be appealable to the City Council only for the following matters:

(a) An alleged failure to obtain a required permit, license, or other

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approval from the City Council as required by the City Code;

(b) An alleged violation of a permit, license or other approval, or the conditions attached to the permit, license or approval, that was issued by the City Council; or

(c) An alleged violation of regulations governing a person or entity who has received a license issued by the City Council.

(2) An appeal to the City Council of the Hearing Officer's decision must be made in writing, on a form provided by the city for such an appeal, and must be served on the City Clerk by United States first class mail, postage prepaid, within ten days after the date of the Hearing Officer's decision.

(3) A timely appeal will be heard by the City Council after a notice of hearing is served by the city upon the appellant in person or by certified mail at least ten days in advance of the date of the hearing. The parties to the hearing will have an opportunity to present oral or written arguments regarding the Hearing Officer's decision.

(4) The City Council shall consider the record, the Hearing Officer's decision, and any additional arguments before making a determination. The City Council is not bound by the Hearing Officer's decision, but may adopt all or part of the Hearing Officer's decision. The City Council's decision may be voted upon and given at the hearing, or may be given in writing within 15 days of the hearing.

(5) The failure of the appellant to appear in front of the City Council or participate in the appeal constitutes a waiver of the violator's right of appeal and an admission of the violation. The Council may waive the result upon good cause shown. The determination of a showing of good cause shown shall be made solely at the discretion of the City Council, but does not include forgetfulness and intentional delay.

(F) *Failure to pay.*

(1) In the event a person charged with a code offense fails to pay the civil penalty and correct or abate the code offense for which a citation was

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issued within the prescribed time, a late charge of 15% shall be imposed thereon for each seven days the civil penalty remains unpaid and the code offense remains uncorrected or unabated beyond the due date.

(2) An unpaid civil penalty and accrued late charges will constitute a personal obligation of the person(s) to whom the citation was issued, and the city shall have the right to collect such unpaid civil penalty and accrued late charges, together with the city's costs and reasonable attorney's fees, in criminal or civil proceedings.

(3) Pursuant to M.S. § 429.101, M.S. § 514.67 and other applicable law, a lien in the amount of the civil penalty and any accrued late charges may be assessed against the property where the code offense occurred, and collected in the same manner as taxes. Any such assessment shall not preclude the city from issuing additional citations for a continuing code offense, nor shall it preclude the city from making additional assessments against the same property resulting from a continuing or new code offense.

(4) The city may suspend or revoke a license or permit or other approval associated with the code offense if the civil penalty and accrued late charges are not timely paid.

(G) *Subsequent violations.* If a second citation for a code offense is issued by the city, to the alleged violator and/or owner of the property upon which the violation has occurred, within 24 months of the issuance of a previous citation for the same code offense, the civil penalty shall increase by 25% over the scheduled civil penalty amount. If a third citation for a code offense is issued by the city, to the alleged violator and/or the owner of the property upon which the violation has occurred, within 24 months of the issuance of a previous citation for the same code offense, the civil penalty shall increase by 50% over the scheduled civil penalty amount. If a fourth citation for a code offense is issued by the City, to the alleged violator and/or the owner of the property upon which the violation has occurred, within 24 months of the issuance of a previous citation for the same code offense, the civil penalty shall increase by 100% over the scheduled civil penalty amount.

(Ord. 08-02-09, passed 8-3-2009) (Ord. 10-013, 3<sup>rd</sup> series, passed 8-02-2010)



**§ 10.99 GENERAL PENALTY.**

(A) Any person, firm or corporation who violates any provision of this code for which another penalty is not specifically provided, shall, upon conviction, be guilty of a misdemeanor. The penalty which may be imposed for any crime which is a misdemeanor under this code, including Minnesota Statutes specifically adopted by reference, shall be a sentence of not more than 90 days or a fine of not more than \$1,000, or both.

(B) Any person, firm or corporation who violates any provision of this code, including Minnesota Statutes specifically adopted by reference, which is designated to be a petty misdemeanor shall, upon conviction be guilty of a petty misdemeanor. The penalty which may be imposed for any petty offense which is a petty misdemeanor shall be a sentence of a fine of not more than \$300.

(C) In either the case of a misdemeanor or a petty misdemeanor, the costs of prosecution may be added. A separate offense shall be deemed committed upon each day during which a violation occurs or continues.

(D) The failure of any officer or employee of the city to perform any official duty imposed by this code, shall not subject the officer or employee to the penalty imposed for a violation.

(E) In addition to any penalties provided for in this section or in § 10.98, if any person, firm or corporation fails to comply with any provision of this code, the Council or any city official designated by it, may institute appropriate proceedings at law or at equity to restrain, correct or abate the violation.