

EUREKA TOWNSHIP
Dakota County, State of Minnesota

SPECIAL TOWN BOARD MEETING
June 28, 2022 – 6:00 P.M.

Call to Order

The Eureka Township Special Town Board meeting was called to order at 6:00 p.m. by Town Board Chair Lu Barfknecht and the Pledge of Allegiance was given.

Members Present: Lu Barfknecht, Donovan Palmquist, Ralph Fredlund, Nancy Sauber, Kathleen Kauffman.

Others Present: Bill Clancy and Deb Burkhardt.

Zoom Attendance: Troy Gilchrist, Rane Solis, Julie Larson, Carol Cooper.

Chair Barfknecht announced the purpose of the Special Meeting is to discuss the proposed administrative hearing process.

Troy Gilchrist of Kennedy & Graven presented the following documents for review by the Board:

- I. Statement calling for a Special Town Meeting

EUREKA TOWNSHIP
DAKOTA COUNTY, MINNESOTA

STATEMENT OF THE TOWN BOARD
CALLING FOR A SPECIAL TOWN MEETING

We, the undersigned Town Supervisors and the Town Clerk of Eureka Township, Dakota County, Minnesota (“Town”) do hereby declare, pursuant to Minnesota Statutes, section 365.52, subdivision 1, that the interests of the Town require a special town meeting be held for the purpose of requesting that the Town electors exercise their authority under Minnesota Statutes, section 365.10, subdivision 17 to authorize the Town Board to establish by ordinance and administer an administrative enforcement program for the Town. The administrative enforcement program would create an alternative enforcement process that is less expensive and timelier than a civil or criminal enforcement action.

The meeting is to be held on the _____ day of _____, 2022, at _____ p.m. at the Eureka Town Hall located at 25043 Cedar Avenue, Farmington, MN 55024.

This statement shall be filed in the Town Clerk/Treasurer’s office. After the statement is filed, the Town Clerk/Treasurer shall record this statement of need in her office and provide ten days’

published notice of the time, place, and purpose of the special town meeting in a qualified newspaper having general circulation in the Town.

Dated this ___ day of June 2022.

II. Town elector Resolution

**EUREKA TOWNSHIP
DAKOTA COUNTY, MINNESOTA**

TOWN ELECTOR RESOLUTION NO. 2022-__

**RESOLUTION AUTHORIZING THE TOWN BOARD TO
ESTABLISH AN ADMINISTRATIVE ENFORCEMENT PROGRAM**

WHEREAS, the Town Board of Eureka Township (“Town”) has adopted several ordinances, which have been codified into the Eureka Township Code of Ordinances (“Town Code”);

WHEREAS, we recognize the regulations adopted by the Town Board serve little purpose if they are not enforced and that failure to enforce only serves to breed further noncompliance by the owner and others within the Town;

WHEREAS, the Town currently has two options available to it to enforce the Town Code: (1) filing a civil lawsuit seeking an order from the court requiring the owner to come into compliance with the Town Code; or (2) criminally prosecuting the owner for a misdemeanor, which carries a potential penalty of up to 90 days in jail, a fine of up to \$1,000, or both;

WHEREAS, undertaking a civil enforcement action is expensive and can take more than two years to complete, and a criminal enforcement action, which can typically be completed more quickly, focuses on punishment and does not provide for an outcome tailored toward correcting the violation;

WHEREAS, we recognize the importance of the Town having an efficient and cost-effective method for enforcing its regulations that also provides owners subject to enforcement a less disruptive and lower cost method for responding to violations that does not involve litigation or potential incarceration;

WHEREAS, the Minnesota Legislature structured town government in a way that provides town electors a direct role in the exercise of a number of town powers to give residents an opportunity to help shape how their town operates. This structure is similar to the authority granted to residents in a charter city to shape how their city operates by granting or restricting city council powers through the city charter. In both cases, residents can authorize the governing body to exercise certain powers to further and protect the interests of the community;

WHEREAS, many of the powers a town board may not exercise without elector authorization are contained in Minnesota Statutes, section 365.10;

WHEREAS, subdivision 17 of Minnesota Statutes, section 365.10 contains a broad range of powers the electors can authorize their town board to exercise, including through the adoption of ordinances, to provide for a specific activity in any of the following categories:

- (1) the government and good order of the town,
- (2) the suppression of vice and immorality,
- (3) the prevention of crime,
- (4) the protection of public and private property,
- (5) the benefit of residence, trade, and commerce,
- (6) the promotion of health, safety, order, and convenience, and
- (7) the general welfare.

WHEREAS, the Town Board called a special town meeting for _____, 2022 specifically for the purpose of discussing the establishment of an administrative enforcement program and determining whether the Town electors would authorize the Town Board to establish the proposed program for the Town;

WHEREAS, the proposed administrative enforcement program would be established by ordinance, authorize the issuance of administrative citations, provide for the imposition of an administrative penalty in the form of a civil fine, establish the amount of the civil fines in a schedule that provides for increases in fines for subsequent violations, provide for an administrative hearings process before a hearing officer for those who wish to challenge an administrative citation, provide an opportunity to appeal to the Town Board, provide for an appeal to district court, and set out procedures to collect the civil fines imposed and any related fees and costs; and

WHEREAS, we determine that authorizing the Town Board to establish an administrative enforcement program by ordinance, and to take such other actions as may be needed to implement and carry out such program, is an activity that falls within all of the categories listed in subdivision 17 of Minnesota Statutes, section 365.10 as it promotes the enforcement of Town Code regulations that address aspect of each of them, is much more cost effective and timely than other enforcement actions, and is in the best interests of the Town, its residents, and its taxpayers.

NOW, THEREFORE, the Town electors present and voting at this special town meeting, based on the findings contained herein, hereby resolve as follows:

1. Pursuant to Minnesota Statutes, section 365.10, subdivision 17, we hereby grant the Town Board the authority to establish and administer an administrative enforcement program (“Program”) as an alternative means of enforcing Town ordinances.
2. Use of the Program shall be limited to the enforcement of current and future Town ordinances and shall not apply to the enforcement of any moving traffic violations including, but not limited to, those identified in Minnesota Statutes, section 169.999.
3. The Town Board is authorized to take such other actions and to adopt and amend such ordinances as may be needed to establish, administer, and effectively carry out the Program as it determines is in the best interests of the Town.
4. The authorized granted by this Resolution does not restrict the Town Board’s authority to utilize any other enforcement options available to it under law as it determines is appropriate.

Adopted this ____ day of _____, 2022 by at least a majority of the electors present and voting on the grant of authority contained in this Resolution.

BY THE TOWN ELECTORS

III. Proposed Ordinance rough draft

**EUREKA TOWNSHIP
DAKOTA COUNTY, MINNESOTA
Ordinance No. 11**

**AN ORDINANCE ESTABLISHING AN
ADMINISTRATIVE ENFORCEMENT PROGRAM**

The Board of Supervisors of the Town of Eureka ordains:

- I. **Administrative Enforcement Program**. The Eureka Township Code of Ordinances is hereby amended to add a new Ordinance 11 establishing an administrative enforcement program as follows:

ORDINANCE 11: ADMINISTRATIVE ENFORCEMENT PROGRAM

CHAPTER 1: GENERAL PROVISIONS

Chapter 1: General Provisions

Section 1 – PURPOSE AND INTENT

- A. The Township electors adopted a resolution pursuant to their authority under Minnesota Statutes, section 365.10, subdivision 17 to authorize the Town Board to adopt an ordinance establishing an administrative enforcement program for the Township. The Township electors recognized the benefits of establishing administrative enforcement procedures and authorized the Town Board to undertake this specific activity to protect and promote the government and good order of the Township, suppress vice and immorality, prevent crime, protect public and private property, benefit residence, trade, and commerce, promote health, safety, order and convenience, and the general welfare by creating an alternative method for enforcing the Township Code.
- B. The Town Board concurs with the direction given by the Township electors and finds there is a need for an alternative method to enforce the Township Code in a manner that is efficient, cost effective, and beneficial to all parties involved. The procedures set out in this administrative enforcement program seek to gain compliance with the Township Code without needing to pursue formal criminal or civil enforcement actions. While civil and criminal actions are the most frequent enforcement mechanisms, those procedures produce

negative consequences for both the Township and the party subject to enforcement. The delay inherent in that system does not ensure prompt resolution. Citizens resent being labeled as criminals for violations of Township regulations or incurring the costs to respond to a civil lawsuit. The higher burden of proof and the potential for incarceration associated with a criminal prosecution are not appropriate for most ordinance regulations. The criminal justice system does not always regard ordinance violations as being important. Accordingly, the Town Board finds that the use of administrative citations and the imposition of civil penalties is a legitimate and necessary alternative method of enforcement.

Section 2 – ADMINISTRATIVE OFFENSES, CITATIONS, AND CIVIL PENALTIES

- A. Administrative Offenses. A violation of any provision of the Township Code is an administrative offense that may be subject to an administrative citation and civil penalties under this Ordinance. Each day a violation exists constitutes a separate offense. The Town Board shall determine which Township officials are authorized to issue administrative citations for Township Code violations. Nothing in this Ordinance authorizes the issuance of administrative citations or the imposition of penalties under Minnesota Statutes, section 169.999. That statutory authority is separate and distinct from the administrative enforcement program established herein and the provisions of this Ordinance are not based on that statutory authority.
- B. Civil Penalty. An administrative offense is subject to a civil penalty not to exceed the maximum fine for a misdemeanor violation under state law. The Town Board shall adopt by resolution a schedule of civil penalties for offenses initiated by administrative citation. The schedule may establish increasing civil penalties for the recurrence of the same type of violation or for the ongoing failure to correct a violation. If a civil penalty is appealed as provided in this Ordinance to a hearing officer, the hearing officer is not limited by the schedule of civil penalties and may decrease or increase the amount imposed by the Township.
- C. Alternative Methods of Enforcement. The administrative enforcement program provided for in this Ordinance shall be in addition to any other legal or equitable remedy available to the Township to respond to or abate a violation of the Township Code. By undertaking the administrative enforcement process, the Township is not prohibited from, and does not waive, its authority to take any other enforcement actions available to it under law if the Town Board determines the administrative enforcement program would not be, or has proven not to be, effective to address a particular violation. However, if a hearing is conducted on a particular violation as provided under this Ordinance, the Township is bound by the hearing officer's decision. If the hearing officer determines that a violation did not occur, the Township may not then proceed with either a criminal or civil action for the same act or conduct. This provision does not preclude the Township from pursuing either a criminal or civil action for a violation of the same provision based on a different set of facts. A different date of violation will constitute a different set of facts allowing alternative enforcement actions by the Township.

Section 3 – ADMINISTRATIVE CITATION PROCEDURES

- A. Order to Correct. Upon the reasonable belief that an administrative offense under this Ordinance has occurred, an authorized Township official may serve on the violator an order to correct the violation as provided in this paragraph.
1. The order to correct shall identify the act, conduction, or condition that constitutes a violation, identify the section or sections of the Township Code that were violated, describe what must be done to correct the violation, and provide a date by which the violation must be corrected.
 2. The Township shall deliver the order to correct to the violator in person or by regular mail. If delivery in person or by mail is not reasonably possible, the Township may provide notice by posting the order to correct in a conspicuous place on the property.
 3. If the Township determines the violator is making a good faith attempt to remedy the violation, upon the request of the violator it may, but is not required to, grant an extension to the period in which the violation must be corrected. No extension is valid unless it is in writing and signed by a Township official.
- B. Administrative Citation. If the violator fails to correct the violation, the Township may issue an administrative citation as provided in this paragraph.
1. Upon reasonable belief the violator has not corrected the violation within the period provided for in the corrective order, or any approved extensions, the Township official is authorized to issue an administrative citation to the violator.
 2. The administrative citation shall identify the name of the issuing Township official, the violation, the Township Code sections being violated, the date of issue of the corrective order, the date by which the violation was to be corrected, the amount of the scheduled civil penalty, the manner for paying the civil penalty, and the opportunity to appeal the citation by requesting a hearing.
 3. The violator must either pay the identified civil penalty or request a hearing within ten days after issuance of the citation. Payment of the civil penalty constitutes admission of the violation. The violator may appeal the administrative citation by submitting a written notice of appeal to the Township before the end of the ten-day appeal period. The notice of appeal shall include a statement explaining the reasons for the appeal.

Section 4 – ADMINISTRATIVE HEARING PROCEDURES

- A. Hearing Officers. The Town Board will periodically approve a list of qualified individuals, from which the Town Clerk will randomly select a hearing officer to hear and determine a matter for which a hearing is requested. The hearing officer is not a judicial officer, but is a public officer as defined by Minnesota Statutes, section 609.415. The hearing officer must not be a current or former employee, or elected official, of the Township.

- B. Notice of Hearing. Within 30 days of receipt of the notice of appeal, the Town Clerk/Treasurer will schedule the hearing and will mail notice of the hearing to the violator and the hearing officer at least ten days in advance of the scheduled hearing. The notice must contain the names of the parties, the identity of the hearing officer, the nature of the violation, and the amount of the civil penalty. Parties are expected to be available at the hearing for a minimum of two hours.
- C. Cost of Hearing. The fee for the hearing shall be as established by Town Board resolution. At the time the request for hearing is made, the Township shall provide the requestor with amount of the requesting party's fee. The requestor must provide payment of that fee to the Township before they will schedule a hearing. The hearing officer has the authority to reduce the requesting person's fee where that person can demonstrate indigence by clear and convincing evidence. Proof of indigence can be demonstrated by the person's receipt of means tested government benefits or a demonstrated lack of assets or current income. Such proof shall be presented to the hearing officer for determination of the amount of the prepayment in advance of the hearing. In all cases, where the person requesting the hearing does not 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 Township attributable to the requested hearing shall be charged to the requesting party.
- D. Removal of Hearing Officer. No later than five days before the date of the hearing, the violator may make a written request that the assigned hearing officer be removed from the case. The Town Clerk/Treasurer will automatically grant one request for removal. A subsequent request must be directed to the assigned hearing officer who will decide whether they can fairly and objectively review the case. If the hearing officer determines they cannot fairly and objectively review the case, the hearing officer shall notify the Town Clerk/Treasurer in writing at least one day before the scheduled hearing date. The Town Clerk/Treasurer will then assign another hearing officer and reschedule the hearing as needed.
- E. Continuance. A request for a continuance must be made to the Town Clerk/Treasurer at least five days prior to the scheduled hearing date. The Town Clerk/Treasurer may grant a continuance at the request of the violator or the Township official only for good cause shown and for no more than ten days from the originally assigned date.
- F. File Transmittal. Upon receipt of any request for a hearing, the Township official that issued the administrative citation shall compile a summary report detailing the facts in support of any determination that the offense constitutes a violation. The summary report will include the following information: copy of the citation issued; copy of the correction order; copy of any case history maintained by the Township; available photographs and/or video taken by the Township; proof of mailing and/or posting of notice on the property if the citation was not personally served on the violator.
- G. Hearing Procedure. At the hearing, the parties will have the opportunity to present testimony and question any witnesses, but strict rules of evidence will not apply. The hearing officer must tape record the hearing and receive testimony and exhibits. The hearing officer must receive and give weight to evidence, including hearsay evidence that

possesses probative value commonly accepted by reasonable and prudent people in the conduct of their affairs.

H. Hearing Officer Authority. The hearing officer shall have the authority to:

1. Determine whether a violation occurred;
2. Dismiss the administrative citation;
3. Impose the scheduled civil penalty; or
4. Reduce, stay or waive a scheduled civil penalty either unconditionally or upon compliance with appropriate conditions.

I. Decision. The hearing officer must issue a written decision containing findings of fact, conclusions of law, and an order. The written decision shall be mailed to the parties within 20 days of the last date of the hearing. When imposing a penalty for a violation, the hearing officer may consider any or all of the following factors:

1. Duration of the violation;
2. Frequency of reoccurrence of the violation;
3. Seriousness of the violation;
4. History of the violation;
5. Violator's conduct after issuance of the corrective order and citation;
6. Violator's conduct after issuance of the notice of hearing;
7. Good faith effort by the violator to comply;
8. Impact of the violation upon the community;
9. Prior record of Township Code violations; and
10. Any other factors appropriate to a just result.

J. Cumulative Civil Penalty. The hearing officer may impose a separate civil penalty for each week that the violation continues if:

1. The violation caused or is causing a serious threat of harm to the public health, safety, or welfare; or
2. The violator intentionally and unreasonably refused or refuses to comply with the Township Code requirement.

- K. Failure to Appear. The 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. Examples of "good cause" are: death in the immediate family or documented incapacitating illness of the violator; a court order requiring the violator to appear for another hearing at the same time; or lack of proper service of the citation or notice of the hearing. "Good cause" does not include: forgetfulness; lack of transportation or child care; scheduling conflicts; or intentional delay.
- L. Final Decision. The decision of the hearing officer shall be final without any further right of administrative appeal.
- M. Judicial Review. An aggrieved party may obtain judicial review of the hearing officer's decision by petitioning the Minnesota Court of Appeals for a writ of certiorari pursuant to Minnesota Statute, section 606.01.

Section 6 – RECOVERY OF CIVIL PENALTIES

- A. Non-Payment. If a civil penalty is not paid within the time specified:
 - 1. It will constitute a lien on the real property upon which the violation occurred if the property or improvements on the property was the subject of the violation and the property owner was found responsible for that violation; or
 - 2. It will be a personal obligation of the violator in all situations.
- B. Late Fees and Charges.
 - 1. If after 30 days the civil penalty has not been paid or a hearing requested, a late fee of 20 percent will be applied, the total bill will be assessed to the property taxes. For continued violations, the Township may correct or abate the violation and assess the charges for doing so onto the property taxes and/or criminal charges may be filed.
 - 2. If the same property and property owner are charged with a subsequent violation(s) within a 12-month period for the same, or substantially similar offense, the initial civil penalty will be increased by 100 percent.
- C. Assessment. An unpaid civil penalty imposed for a property-related violation may be assessed and collected as provided in this paragraph.
 - 1. An assessment may be imposed on property which was the subject matter or related to the subject matter of the civil penalty, or on property which was the location of an activity, proposed use, delivery of Township services or other circumstances which resulted in the civil penalty.
 - 2. On or before the first day of October of each year, the unpaid civil penalty and late fees, including the administrative charge due under subdivision (d) of this Section,

together with interest thereon at the maximum lawful rate permitted under Minnesota Statutes, Chapter 429, against said lot or parcel of land, together with a description of the premises and the name of the supposed owner, shall be certified to the County Auditor and shall be collected in the same manner as taxes and/or special assessments against the premises. The charge shall be a perpetual lien on the premises until paid. Prior to the certification to the County Auditor, the owner shall be given written notice of the proposed assessment and be provided an opportunity to be heard before the Town Board.

3. The Township may impose an administrative charge for having to assess the unpaid civil penalty. The amount of the administrative charge shall be 10% of the unpaid civil penalty or \$100, whichever is greater.

D. Lien. An unpaid civil penalty imposed for a property-related violation may be imposed as a lien on property as a charge for governmental services under Minnesota Statutes, section 514.67 or be imposed under such other law as may apply.

E. Personal Obligation. A personal obligation may be collected by appropriate legal means.

II. Incorporation. The Town Clerk/Treasurer is authorized and directed to incorporate this ordinance into the Township Code. The updated code book shall constitute the official Township Code.

III. Effective Date. This Ordinance shall become effective as of the first day of publication after adoption.

Adopted this ____ day of _____, 2022.

BY THE TOWN BOARD

Supervisor Kauffman questioned whether the language providing the ability to strike the judge would cause delays. Troy Gilchrist responded that all of the other administrative hearing ordinances he reviewed included this language and recommended that it be included.

Supervisor Sauber noted a few spelling/grammar issues, and asked Mr. Gilchrist to elaborate on the difference between a Hearing Officer and a judge. Mr. Gilchrist responded that a hearing officer is appointed by the Town Board and is not an elected/appointed judge.

Supervisor Sauber asked for an example of hearsay evidence. Mr. Gilchrist explained that it is common sense testimony without having to prove chain of evidence.

The Board agreed to an aggressive campaign for a maximum amount of awareness to the residents to include newspaper publication, website posting, newsletter and postcards.

Supervisor Kauffman confirmed that the proposed Resolution will be decided by a majority of the residents who vote at the Special Town Meeting. Zoom attendees are not able to cast a vote.

The Board agreed to schedule the Special Town Meeting for Thursday, September 15, 2022, at 7:00 p.m. at Town Hall.

Adjournment

Motion: Supervisor Sauber moved to adjourn. Supervisor Fredlund seconded. *Motion carried 5-0.*

Meeting adjourned at 6:25 p.m.

Respectfully submitted,

Ranee Solis, Town Clerk

Minutes Officially Approved By: _____ on: _____
Town Supervisor Date