

Summer's Here Or, Code Enforcement Begins to Bloom

By David Wesner

Thankfully, spring finally came to my little neck of the woods in East-Central Illinois. And, with spring having sprung, we were thankful to avoid any late snowstorms (especially me, who still remembers the time it snowed on my birthday at the end of April). While everyone has a smile on their face as they greet the sunshine and warmer days, Code Enforcement officials have a different look ... trepidation. For those officials, early summer means the onslaught of typical code enforcement issues, not the least of which stem from spring cleaning.

While it is understandable to be concerned about how others perform their spring cleaning, code enforcement officials should consider their own version of spring cleaning. My municipality doesn't do it every year, but I do recommend a periodic review of the codes. And, what better time to perform such a task than during spring cleaning. I believe that such a review can be very beneficial. Not only is there an opportunity to determine if any codes should be updated, but it is also an opportunity for code enforcement officials to re-familiarize themselves with the codes that they enforce (especially those that they may not come across everyday). We are currently reviewing our codes and anticipate adopting the current versions of the building code and property maintenance codes. My city council members will comment on a regular basis with the famous line: "Why can't we do something about that?" So, we believe it is beneficial to review the codes to try and ensure they are up-to-date and capable of allowing necessary enforcement of the problems we all face in our communities.

One of the codes we recently reviewed and updated was the provision related to spring cleaning garbage set-outs. Historically, my municipality would pick up any and all amounts of garbage set out at the curb for pick-up. We felt it was important to our community to offer that service to residential customers in conjunction with the amount they paid for such service (which was well below what private haulers charge, and they would rarely pick up everything that might be set out by a customer). One of the bases for providing such service was a hope that it would cut down on illegal dumping and the many dumpsites we would find throughout our community. We seemed to find some success with providing such service. However, with our cutbacks in personnel over the last several years, we do not have enough staff to be able to offer this service in the same fashion. We have also moved away from three-person manual garbage trucks to single-person automatic trucks which require the use of particular toters. As such, we are no longer able to provide the same service in the same way, especially at no additional cost to the residents. An additional problem we were seeing was related to landlords. Once they saw the benefit of the service we were providing, we found landlords hauling large amounts of material from a location not served by the City to locations that were (obviously to avoid the cost to themselves of the private hauling they were required to have for their apartments). We found this occurring typically after an eviction of a tenant.

Currently, my municipality has personnel to staff one truck for special pick-ups. Our ordinance provides for three different types of special pick-ups. The first type is classified as a "large item collection". A "large item" is defined as an item that is larger than the toter and not capable of being broken down in order to fit inside a toter. A "large item collection" allows for up to three "large items" to be set out for pick-up. The ordinance allows for three such collections per year at no cost to the customer. If a fourth or subsequent such collection is necessary, the customer must call at least two working days in advance of their collection date and pay the required fee for such collection. The second type of special collection is classified as a "minor cleanup collection." This type of collection involves more than three "large items" but is not to exceed an area of five feet wide by ten feet long by three feet high. Customers are allowed one such collection per year at no charge. For a second or subsequent "minor cleanup collection", the customer must call in at least two working days in advance and pay the required fee for such type of collection. The third type of special collection is classified as a "major cleanup collection." This type of collection involves a set-out where the dimensions exceed those of a "minor cleanup collection". Customers are not entitled to any such pickup at no additional cost. Any time a customer needs such a pick-up, they are required to call in at least two working days before their scheduled pick-up and paying the required fee. Under a "minor cleanup collection" and a "major cleanup collection", the dimensions of the set-out are determined by the Director of the Public Works Department or his designee.

In conjunction with this change, we have a few other ordinances that could be used to deter illegal dumping to avoid returning to the days when that was rampant within the city. One

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Title VII, 42 USC §2000e-2(a)(1) & (2).
16. Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993).
17. *See* Burlington Indus. v. Ellerth, 524 U.S. 742, 765 (1998); Faragher v. Boca Raton, 524 U.S. 775, 807 (1998).
18. *Harris,* 510 U.S. at 21.
19. See http://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm
20. 548 U.S. 53 (2006) (held, the anti-retaliation protections of Title VII are not limited to actions and harms that are related to employment or occur at the workplace. Title VII's anti-retaliation protections extend to employer actions that would have been materially adverse to a reasonable employee or job applicant).
21. Clark County v. Breeden, 532 U.S. 268 (2001).
22. *E.g.,* Anderson v. U.S.F. Logistics (IMC), Inc., 274 F.3d 470, 476 (7th Cir. 2001).
23. Wilson v. U.S. West Communications, 58 F.3d 1337 (8th Cir. 1995) and Peterson v. Hewlett-Packard Co., 358 F.3d 599 (9th Cir. 2004). ML

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such ordinance provides that anyone hauling garbage or debris within the city must be licensed for such activity and follow certain guidelines. If I were a betting man, I would bet that no landlord or customer has such a license to haul garbage or debris away from their property to another location. The other ordinance that should be more of a deterrent is our vehicle seizure and impoundment ordinance. The offense of illegal dumping is one of the violations that will result in the seizure and impoundment of the vehicle.

As with any code enforcement ordinance or issue, we are hoping for compliance versus continual enforcement. Our community has come a long way in dealing with litter, garbage and related issues. Our citizens continue to comment that the City looks better now than it ever has. And, with periodically reviewing and updating our ordinances, we are hoping to continue that trend.

Happy Summer Everyone! ML

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9. *Id.; Forrester Research predicted in 2010 that the $250 billion number would be achieved by 2014, but even that forecast was overly conservative:* http://techcrunch.com/2010/03/08/forrester-forecast-online-retail-sales-will-grow-to-250-billion-by-2014/ (last accessed May 12, 2013)
10. N.Y. Tax Law §1101(b)(8)(vi)
11. http://www.boe.ca.gov/lawguides/business/current/btlg/vol1/sutr/1684.html (last accessed May 12, 2013); Cal. Rev. and Tax Code §6203, ch. 313 (6).
12. Overstock.com, Inc. v. New York State Dep't. of Taxation and Fin., no. 33 (N.Y. Mar. 28, 2013) http://www.nycourts.gov/ctapps/Decisions/2013/Mar13/33-34opn13-Decision.pdf (last accessed May 13, 2013)
13. http://www.cbiz.com/page.asp?pid=9111 (last accessed May 13, 2013)
14. A companion bill (H.R. 684), was introduced in the House in February 2013, also with bipartisan sponsorship: Republicans Steve Womack (R-Arkansas) and Kristi Noem (R-South Dakota) joined Democrats Jackie Speier (D-California), John Conyers (D-Michigan) and Peter Welch (D-Vermont).
15. S.743 113rd Cong. (2013); text at http://thomas.loc.gov/cgi-bin/query/D?c113:2:./temp/~c113dUmWNe: (last accessed May 13, 2013
16. National Bellas Hess v. Department of Revenue of Ill., 386 U.S. 753, at 759-60 (1967).
17. http://www.marketplacefairness.org/what-is-the-marketplace-fairness-act/ (last accessed May 10, 2013)
18. http://www.streamlinedsalestax.org/uploads/downloads/Archive/SSUTA/SSUTA%20As%20Amended%205-24-12.pdf (last accessed May 13, 2013)
19. Those states include Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin and Wyoming.
20. http://www.forbes.com/sites/peterferrara/2013/05/02/overreaching-internet-sales-tax-is-obamas-calculated-deception-of-gullible-voters/ (last accessed May 11, 2013) ML

Inside Canada *Cont'd from page 21*

but only to those individuals who do so in pursuance of trade, calling business or occupation. Persons who perform or participate in a performance at a facility while nude or partially nude for reason other than commercial activity related to adult live entertainment are not "entertainers" for the purpose of the licensing provisions. *2211266 Ontario Inc. v. Brantford (City)* (May 8, 2013), Doc. CA C56299, Doherty, Cronk, Lauwers JJ.A. (Ont. C.A.)

Termination of Employment by Municipality During "Lame Duck" Period

Municipalities are prohibited by s. 275 of the Municipal Act, 2001 from taking certain actions during the "lame duck period" unless the power to do so has been properly delegated prior to the nominations day. Among these restricted actions is the hiring and dismissal of employees. The applicant employee was terminated from her employment with the respondent municipality during the 2010 election period. The dismissal was delegated to and conducted by senior staff members in accordance with the respondent county's policy, which was adopted by the respondent's council in 2005 (but not by by-law). The applicant sought a declaration that the termination of her employment violated s. 275 of the Municipal Act, 2001 and was unlawful. The applicant submitted that pursuant to s. 5(3) of the Municipal Act, 2001 the hiring and firing of employee's is a power that must be exercised by by-law unless the municipality is authorized to do otherwise. The applicant argued that while the county had the general power to delegate to hire and fire employees, such delegation must be authorized by by-law. The respondent county's policy under which the power to hire and terminate employees was delegated and was not adopted by by-law. The applicant submitted that only the county council could dismiss an employee. The issue on application was whether the respondent county's policies were properly enacted such that the power to hire and dismiss employees was delegated to senior management prior to the nominations day of September 10, 2010.