

Town of Chevy Chase
Ordinance to Clarify the Penalty Provisions of Chapters 4 and 29

Resolution No.: 09-02
Introduced: February 11, 2009
Adopted: March 11, 2009
Effective Date: April 11, 2009

WHEREAS, Article 23A, Section 2(a) of the Maryland Code, as amended, authorizes the legislative body of each municipal corporation in the State of Maryland to pass ordinances that such legislative body deems necessary to assure the good government of the municipality, to protect and preserve the municipality's rights, property and privileges, to preserve peace and good order, and to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality; and

WHEREAS, Article 23A, Section 2(a)(5) of the Maryland Code, as amended, authorizes the legislative body of each municipal corporation in the State of Maryland to make reasonable regulations concerning buildings to be erected within the limits of the municipality, including a building code and the requirement for building permits; and

WHEREAS, Article 23A, Section 3(a) authorizes the legislative body of each municipal corporation in the State of Maryland to provide that violations of any municipal ordinance shall be punishable as misdemeanors, provided no penalty shall exceed a fine of \$1,000.00 and imprisonment for 6 months; and

WHEREAS, Article 23A, Section 3(b) authorizes the legislative body of each municipal corporation in the State of Maryland to provide that violations of any municipal ordinance shall be a municipal infraction unless the violation is declared to be a felony or a misdemeanor by State law; and

WHEREAS, Section 301 of the Town of Chevy Chase Charter authorizes the Town Council to pass ordinances as it may deem necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger and destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare and happiness of the resident(s) of the Town; and for such other police and health matters as it may deem necessary; and

WHEREAS, the Town Council finds that Section 4-2 and Section 29-14 should be clarified to more clearly reflect that the failure to comply with the terms and conditions of an approved building permit, an approved variance, or an approved tree protection plan is a municipal infraction; and

WHEREAS, the Town Council finds that Section 4-47 should be clarified to more clearly reflect who is subject to a fine for a violation of that section, and

WHEREAS, the Town Council finds that said sections, and Section 4-31, should be clarified to improve internal consistency within the Town Code; and

WHEREAS, the Town Council, after proper notice to the public, considered the following Ordinance at a public hearing held on the 11th day of March, 2009; and

WHEREAS, the Town Council finds that the ordinance as hereinafter set forth is necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger and destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare and happiness of the resident(s) of the Town; and for such other police and health matters as it may deem necessary.

NOW, THEREFORE, BE IT ORDAINED AND ORDERED this 11th day of March, 2009, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the authority given to it by Article 23A of the Maryland Code, and Section 301 of the Town of Chevy Chase Charter, the Town Council of the Town of Chevy Chase does hereby adopt the following ordinance:

AN ORDINANCE TO AMEND CHAPTER 4 AND CHAPTER 29 OF THE TOWN OF CHEVY CHASE MUNICIPAL CODE TO CLARIFY THAT THE FAILURE TO COMPLY WITH THE TERMS AND CONDITIONS OF A BUILDING PERMIT, VARIANCE, OR TREE PROTECTION PLAN IS A MUNICIPAL INFRACTION, AND TO CLARIFY WHO IS SUBJECT TO A FINE, AND TO IMPROVE INTERNAL CONSISTENCY WITHIN THE TOWN CODE, BY AMENDING SECTION 4-2, SECTION 4-31, SECTION 4-47, AND SECTION 29-14.

SECTION 1. BE IT ORDAINED AND ORDERED, this 11th day of March, 2009, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the authority granted to it by Article 23A of the Maryland Code and Section 301 of the Town Charter, that Chapters 4 and 29 of the Town Code are hereby amended to read as follows:

* * *

Sec. 4-2. Building permit, in general.

* * *

(g) No person or persons shall proceed with the building of any structure, material alteration or addition, and/or a construction project, except in accordance with the terms and conditions of the building permit and the plans and specifications approved therefor, and the terms and conditions of any applicable approved variance, or in accordance with deviations or alterations approved in advance in writing by the town manager. Each violation of a term or condition of a building permit and the plans and specifications approved therefor, or a term or condition of a variance, shall be a separate infraction.

* * *

(j) Failure to complete all work, in accordance with the terms and conditions of a building permit, by the expiration date of such building permit (as the same may be extended pursuant to subsection (h) above) shall be a violation of this chapter. Each day, after the permit expires, that such work is incomplete shall constitute a separate violation.

* * *

(Res. No. 06-10, 7-12-06; Res. No. 07-01, 1-10-07; Res. No. 08-01, § 1, 4-16-08, eff. 5-17-08; Res. No. 09-02, eff. 4-11-09)

* * *

Sec. 4-31. Penalties.

Any person who violates any provision of this article or directs or allows another to commit an act that would violate any provision of this article or, the person's employer if the person acted in the course of his or her employment, and any property owner who allows a violation of any provision of this article on his or her property, ~~or any person's employer if the person acted in the course of his or her employment,~~ shall be guilty of a municipal infraction and ~~upon conviction,~~ shall be jointly and severally subject to punishable by a fine of one hundred dollars (\$100.00) ~~for each offense.~~ Each ~~sign found to violate~~ violation of a provision of this article shall constitute a separate ~~offense~~ infraction. Each day that a violation ~~of this article~~ exists shall constitute a separate ~~offense~~ violation.

(Res. No. 86-005, § 11, 10-8-86; Res. No. 08-14, 11-12-08; Res. No. 09-02, eff. 4-11-09)

* * *

Sec. 4-47. Penalties

Any person who violates any provision of this article or directs or allows another to commit an act that would violate any provision of this article, the person's employer if the person acted in the course of his or her employment, and any property owner who allows a violation of any provision of this article on his or her property shall be guilty of a municipal infraction and, ~~upon~~

~~conviction~~, shall be jointly and severally subject to punishable by a fine of ~~not more than~~ one hundred dollars (\$100.00). If a violation occurs, there shall be a rebuttable presumption that all owners of the property allowed the violation. Each violation of a provision of this article shall be a separate ~~offense~~ infraction. Each day that a violation exists shall constitute a separate violation.

(Res. No. 86-006, § 9, 10-8-86; Ord. No. 90-004, 4-5-90; Res. No. 09-02, eff. 4-11-09)

* * *

Sec. 29-14. Penalties.

(a) Violation of any provision of this chapter, including but not limited to removing, destroying, or impairing the health of a canopy tree without obtaining a permit (section 29-4) ~~or~~, undertaking any activity that poses a potential risk to any canopy tree without filing a tree protection plan (section 29-11), or failing to comply with any part or provision of an approved tree protection plan, shall be a municipal infraction unless otherwise specifically provided. Any person or persons guilty of a municipal infraction shall be subject to a fine ~~in the maximum amount permitted by the Town Charter for each tree~~ of one hundred dollars (\$100.00).

* * *

(d) A Repeated second violation of this chapter within a two-year period, or a violation of a stop work order, ~~will constitute~~ shall be a misdemeanor and upon conviction shall be punishable by a fine ~~in the maximum amount permitted by the Town Charter~~ not exceeding one thousand dollars (\$1,000.00) and or imprisonment for the maximum period permitted by State law for violation of a municipal code not exceeding six (6) months or both.

(e) Any person who violates any provision of this chapter, or directs or allows another to commit an act that would violate any provision of this chapter, such ~~the~~ the person's employer if such ~~the~~ the person acted in the course of his or her employment, and any property owner who allows a violation of any provision of this chapter on his or her property shall be guilty of a violation and shall be jointly and severally subject to the penalties provided in subsections (a) and (d) above. If a violation occurs, there shall be a rebuttable presumption that all owners of the property allowed the violation. Each violation of a provision of this chapter shall be a separate infraction. Each day that a violation exists shall constitute a separate violation.

* * *

(Res. No. 06-01, 1-11-06; Res. No. 09-02, eff. 4-11-09)

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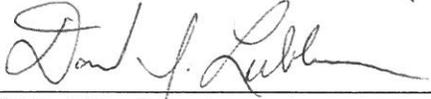
SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, this 11th day of March, 2009, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the authority granted to it by Articles 23A of the Maryland Code and Section 301 of the Town Charter, that:

(1) If any part or provision of this ordinance is declared by a court of competent jurisdiction to be invalid, the part or provision held to be invalid shall not affect the validity of the ordinance as a whole or any remaining part thereof; and

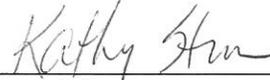
(2) This ordinance shall take effect on the 11th day of April, 2009.

ATTEST:

TOWN OF CHEVY CHASE



David Lublin, Secretary



Kathy Strom, Mayor
Town of Chevy Chase

Bold and Underline indicates new material

~~Bold and Strikethrough~~ indicates material deleted

* * * indicates material unchanged