

## **ORDINANCE AMENDMENT**

WHEREAS, the Winona County Board of Commissioners, Winona, Minnesota has on the 27<sup>th</sup> day of February, 2018, amended Winona County Zoning Ordinance Chapter 4.2 Definitions and enacted an ordinance known as the Winona County Zoning Ordinance Chapter 11.9 Buffer Ordinance;

WHEREAS, a Notice of Intention to Consider the Winona County Zoning Ordinance 4.2 Definitions amendment and the Winona County Zoning Ordinance Chapter 11.9 Buffer Ordinance on January 18, 2018, at 7:00 p.m. in the Commissioner's Room, Winona County Government Center, Winona, Minnesota and published in the Winona Daily News on January 7, 2018.

WHEREAS, proof of such publication is now on file;

WHEREAS, the Winona County Board of Commissioners hereby finds that the proposed amendments are required by reason of public necessity and general welfare;

NOW THEREFORE, the Winona County Board of Commissioners hereby amends Winona County Zoning Ordinance Chapter 4.2 Definitions and ordains and adopts Winona County Zoning Ordinance Chapter 11.9 Buffer Ordinance.

### **Chapter 4.2 Definitions**

**APO:** Means the administrative penalty order issued pursuant to Minn. Stat. §103F.48, subd. 7 and Minn. Stat. §103B.101, subd. 12a as described in the annual Winona County Fee Schedule.

**BUFFER:** Has the meaning provided in Minn. Stat. §103F.48, subd. 1(c).

**BUFFER PROTECTION MAP:** Has the meaning provided in Minn. Stat. §103F.48, subd. 1(d) and which are available on the Department of Natural Resources website.

**BWSR:** Means the Board of Water and Soil Resources.

**CULTIVATION FARMING:** Means farming practices that disturb root or soil structure or that impair the viability of perennial vegetation due to cutting or harvesting near the soil surface.

**DRAINAGE AUTHORITY:** Has the meaning provided in Minn. Stat. §103E.005, subd. 9.

**LANDOWNER:** Means the holder of the fee title, the holder's agents or assigns, any lessee, licensee, or operator of the real property and includes all land occupiers as defined by Minn. Stat. §103F.401, subd. 7 or any other party conducting farming activities on or exercising control over the real property.

**PARCEL:** means a unit of real property that has been given a tax identification number maintained by the County.

**PUBLIC DRAINAGE SYSTEM:** Has the meaning given to "drainage system" in Minn. Stat. §103E.005, subd. 12.

**LOCAL WATER MANAGEMENT AUTHORITY:** has the meaning provided in Minn. Stat. §103F.48, Subd. 1(g).

**NORMAL WATER LEVEL:** Means the level evidenced by the long-term presence of surface water as indicated directly by hydrophytic plants or hydric soils or indirectly determined via hydrological models or analysis.

**WC-SWCD:** Means Winona County Soil and Water Conservation District.

**REGENERATIVE PRACTICES:** Means that perennial cover crops such as alfalfa may be managed for health of the perennial crop. If periodic renewal through tilling and re-seeding, the property owner works with the WC-SWCD to ensure continued compliance of perennial crop set-backs at the end of the regenerative process.

## **Chapter 11.9 Buffer Ordinance**

### **11.9.1 Statutory authorization and policy**

This buffer ordinance is adopted pursuant to the authorization and policies contained in Minn. Stat. §103F.48, the Buffer Law, and the County planning and zoning enabling legislation in Minn. Stat. chapter 394.

**11.9.2 Purpose and intent.** It is the purpose and intent of Winona County to:

1. Provide for riparian vegetated buffers and water quality practices to achieve the following purposes:
  - a. Adherence to the Winona County Zoning Ordinance Chapter 11.3 Shoreland;
  - b. Protection of state water resources from erosion and runoff pollution;
  - c. Stabilize soils, shores and banks;
  - d. Protect or provide riparian corridors; and
  - e. To achieve compliance with State Stat. §103F.48
2. Coordinate the implementation and enforcement of the water resources riparian protection requirements of Minn. Stat. §103F.48 with the Shoreland management rules and ordinances adopted under the authority of Minn. Stat. §103F.201 to 103F.227 (Shoreland Development) and the management of public drainage systems established under Minn. Stat. chapter 103E where applicable; and
3. Provide efficient and effective direction to landowners through work as a partner with State agencies and the Winona County Soil and Water Conservation District toward protection of surface water quality and related land resources.

### **11.9.3 General Provisions**

1. **JURISDICTION.** The provisions of this ordinance apply to all waters, shown on the buffer protection map, excluding public drainage systems for which the County is not the drainage authority under Minn. Stat. chapter 103E.
2. **SEVERABILITY.** If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.
3. **DATA SHARING/MANAGEMENT.**
  - a. The County may enter into arrangements with an SWCD, a watershed district if applicable, BWSR and other parties with respect to the creation and maintenance of, and access to, data concerning buffers and alternative practices under this ordinance.

- b. The County will manage all such data in accordance with the Minnesota Data Practices Act and any other applicable laws.

#### **11.9.4 Buffer Requirements**

1. **BUFFER WIDTH.** Except as provided in 11.9.4(4) & (5) of this Ordinance, a landowner owning property adjacent to a water body identified on the buffer protection map must establish and maintain a buffer area as follows: for waters shown on the buffer protection map, the buffer width will be fifty (50) feet wide as provided in Winona County's Shoreland Ordinance requirements (Chapter 11.3), which satisfies Minn. Stat. 103F.48.
2. **MEASUREMENT.** The width of any required buffer on land adjacent to a water requiring a fifty (50) foot buffer shall be measured from the top or crown of the bank. Where there is no defined bank, measurement must be from the edge of the normal water level as provided in Minn. Stat. §103F.48, subd. 3(c).
3. **USE OF BUFFER AREA.** Except as provided in sections 11.9.4(4) & (5), a buffer, as defined in this ordinance, may not be put to any use which would remove or prevent the permanent growth of perennial vegetation. Regenerative practices to maintain healthy perennial cover are permitted with WC-SWCD oversight.
4. **EXEMPTIONS.** The requirements of section 11.9.4(1) do not apply to land that is exempted from the water resources riparian protection requirements under Minn. Stat. §103F.48, subd. 5.
5. **NONCONFORMITY.** Where the provisions of any State statute, or Winona County Zoning Ordinance such as the Shoreland Ordinance (Chapter 11.3) or other regulations impose greater restrictions than this ordinance, the provisions of such shall be controlling. The continuation of nonconformities provided for by Minn. Stat. §394 and §462 and/or WCZO Shoreland Ordinance (Chapter 11.3) shall not apply to compliance with this ordinance and Minn. Stat. §103F.48.

#### **11.9.5 Compliance Determinations**

1. **Compliance determinations.** Compliance with the buffer requirements set forth in 11.9.4 will be determined by the WC-SWCD on a parcel by parcel basis. The compliance status of a waterbody and buffer on an individual parcel will be determined independently.

The WC-SWCD will evaluate the available documentation and/or inspect the buffer to determine if the parcel is in compliance. Upon completion of the evaluation and/or inspection the WC-SWCD may issue a written compliance determination to the landowner. The WC-SWCD may also issue a Validation of Compliance if requested by the landowner.

2. **INVESTIGATION AND NOTIFICATION OF NONCOMPLIANCE.** When the County, directly or through inspections by the WC-SWCD, identifies a parcel which is potentially noncompliant with the buffer requirements; or receives a third party complaint from a private individual or entity, or from another public agency, it will consult with the SWCD to determine the appropriate course of action to document compliance status.

On the basis of the evidence gathered in this process, which may include communication with the landowners, inspection of the property, review of aerial photography, or other documentation, those parcels found to be potentially non-compliant by the WC-SWCD will be transferred to Winona County through the issuance of a Notification of Noncompliance from the WC-SWCD. The Board of Water and Soil Resources will receive a copy of all Notifications of Noncompliance as issued by the WC-SWCD. The properties will be added to an annual summary to be sent to the County from the WC-SWCD on Nov. 1st each year. If the WC-SWCD does not issue a Notification of Non-Compliance to the County, the County will not pursue a compliance or enforcement action under Minnesota Statutes §103F.48 and 11.9.6(2).

At any time during the process set forth in 11.9.5(2) & (3), the landowner may provide documentation of compliance to the WC-SWCD. On the basis of the evidence gathered in this process, which may include communication with the landowners, inspection of the property, review of aerial photography or other evidence, Winona County will make a determination on the parcel's compliance.

3. CORRECTIVE ACTION NOTICE OF VIOLATION.

- a. On receipt of a WC-SWCD Notification of Noncompliance, the County will issue the landowner a Corrective Action Notice of Violation that will:
  - I. Include the requirements for compliance with Minn. Stat. §103F.48, Winona County Zoning Ordinance Shoreland Chapter 11.3 and this ordinance and to provide the landowner with Winona County Planning and Environmental Services staff contact information;
  - II. Provide a timeline for complying with the Corrective Action Notice prior to APO penalty assessment from the Winona County Fee Schedule;
  - III. Include a statement that failure to respond to this Notice may result in administrative penalties as detailed in the Winona County Fee Schedule and possible civil and/or criminal prosecution.
- b. The County may send the landowner a combined Corrective Action Notice and APO as provided in 11.9.6(2) so long as the combined Notice/APO includes all the required elements of both.
- c. The County shall transmit the corrective action notice by either personal service to the landowner or by depositing the same in the U.S. Mail. If service is made by U.S. mail, the document is deemed received three business days after the notice was placed in the U.S. mail. Failure of actual receipt of a corrective action notice that has either been personally served or served by depositing the same in the U.S. Mail shall not be deemed a defense in an enforcement proceeding under Chapter 11.9.6. The County shall also send a copy of the Corrective Action Notice to the WC-SWCD and BWSR.
- d. After receipt of a Corrective Action Notice, the landowner may provide documentation of compliance to the County. In addition, the landowner may supply information to the County in support of a request to modify a corrective action or the timeline for compliance. On the basis of any such submittal or at its own discretion, or by recommendation by the WC-SWCD, the County may make a written modification to the Corrective Action Notice or timeline for compliance.
- e. Reporting and documentation. The County shall maintain the following records for any potential violation of the riparian protection and water quality practices requirements. Said records shall include but are not limited to the following:
  - I. Efforts by the WC-SWCD, County or BWSR to inform and assist the responsible party or parties to become compliant, including written communications with the responsible party or parties;
  - II. The cause of the violation; mapping, inspections and other exhibits associated with the non-compliant parcel;
  - III. The magnitude and duration of the violation;
  - IV. Documentation showing whether the violation presents an actual or imminent risk to public health and safety;
  - V. Documentation showing whether the violation has the potential to harm to the natural resources of the state;
  - VI. A record of past violations; and
  - VII. Past and present corrective action efforts by the responsible party or parties.
- f. The WC-SWCD may, after an evaluation of the evidence documenting compliance submitted by the landowner, issue a written Validation of Compliance if requested by the landowner. Upon receipt by the County of a written compliance determination issued by the SWCD, the Corrective Action Notice will be deemed withdrawn for the purpose of Chapter 11.9.6, and the subject property will not be subject to enforcement under that section.
- g. Right to appeal. Within 30 days of receipt, a landowner may appeal Winona County's issuance of a Corrective Action Notice for lack of compliance. The appeal must be in writing and must include a description of the basis for the appeal and any supporting evidence. The appeal may be submitted personally, by U.S. mail, or electronically, to Winona County Planning & Environmental Services. The Winona County Board of Adjustment shall have the authority to hear and decide appeals pursuant to Chapter 5.3.3(1) of the Winona County Zoning Ordinance. The time period for compliance and the initiation of a penalty will be put on hold while any appeal is pending.

### 11.9.6 Enforcement

#### 1. Failure to comply with a Corrective Action Notice of Violation issued under Chapter 11.9.5.

The County has elected to pursue the failure to comply with a Corrective Action Notice Violation through an Administrative Penalty Order (APO) as detailed in the Winona County Fee Schedule.

- a. The County may issue an APO as provided for in Minn. Stat. §§103F.48, subd. 7(b) and (c) and 103B.101, subdivision 12a to a landowner who has failed to take the corrective action set forth in the Corrective Action Notice of Violation. For the APO to be effective it must be served on the landowner together with a copy of the Corrective Action Notice of Violation or alternatively the County may serve the landowner with a combined Corrective Action Notice and APO. Service is effective either by personal service or by depositing the documents set forth herein in the U.S. Mail.
- b. Any penalty assessed in the APO shall continue to accrue until the violation is corrected as provided in the Corrective Action Notice and APO.
- c. Failure to comply with a corrective action notice and any associated Administrative Penalty Orders through the Winona County Fee Schedule issued under 11.9.5 constitutes a misdemeanor and shall be punishable as defined by law.

#### 2. Administrative Penalty Order (APO).

- a. Initial violation. The penalty for a landowner on a single parcel that has not previously been the subject of an APO issued by the County shall be subject to Administrative Penalties as detailed in the Winona County Fee Schedule. Penalties are assessed per parcel.
- b. Repeat violation. The penalty for a landowner on a *single parcel* that has previously been the subject of an Administrative Penalty Order issued by the County shall be detailed in the Winona County Fee Schedule, Repeat Violation Penalties and assessed per parcel.
- c. Ongoing penalty assessment. Any penalty assessed under this section through the Winona County Fee Schedule shall continue until the corrective action notice has been satisfied.
- d. APO. The process leading to assignment of Administrative Penalties through this ordinance as detailed in the Winona County fee schedule shall include, at a minimum:

The facts constituting the violation of the riparian protection and water quality practices requirements set forth in Chapter 11.9.4 of this ordinance or Minn. Stat. §103F.48;

- I. Minn. Stat. §103F.48 and/or Chapter 11.3 of the Winona County Shoreland Ordinance and this ordinance has/have been violated;
  - II. A written description of prior efforts to work with the landowner to resolve the violation; any maps, exhibits or documentation which demonstrate a lack of compliance compiled by Winona County or WC-SWCD staff;
  - III. The amount of the penalty to be imposed;
  - IV. The date the penalty will begin to accrue;
  - V. The date that payment of the penalty is due;
  - VI. The date by which all or part of the penalty may be forgiven if the landowner has/have complied with the Corrective Action Notice of Violation; and
  - VII. A statement of the landowner's right to appeal the APO.
- e. All or part of the penalty may be forgiven based on the correction of the noncompliance by the date specified in the APO by the landowner as provided in Minn. Stat. §103F.48, subd. 7(d). Any penalty that is forgiven shall have documentation for the reasons for the forbearance kept in the permanent parcel records, along with the amount of the penalty forgiven.
  - f. A copy of the APO notification letter shall be sent to the WC-SWCD and BWSR.

- g. An APO issued under this section may be appealed to the BWSR within 30 days of receipt by the landowner in accordance with the requirements set forth in Minn. Stat. §103F.48, subd. 9. Any APO that is not appealed within the 30 day period shall be deemed final.

### 3. Administrative Penalty Order Procedures

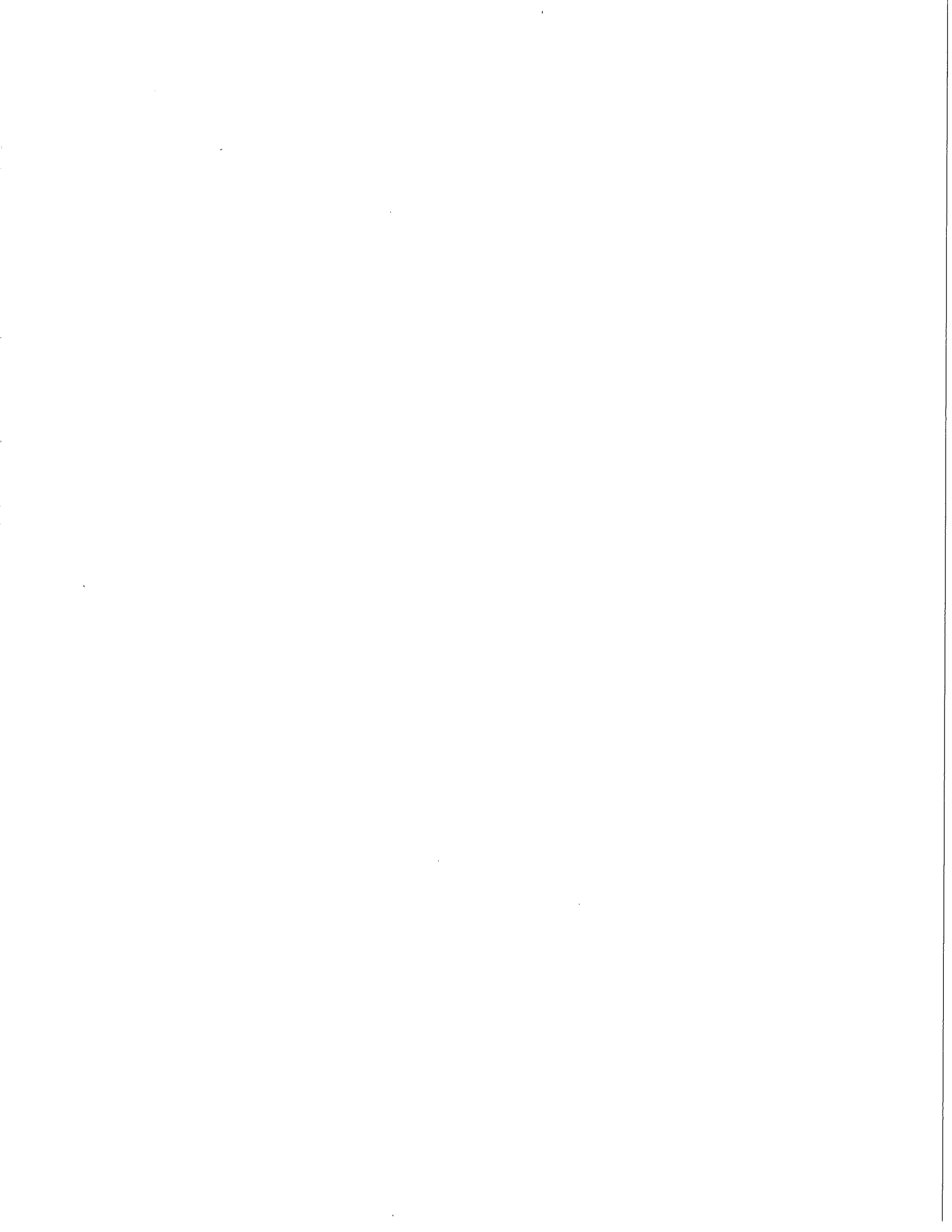
- a. **STATUTE OF LIMITATIONS.** Any civil enforcement action undertaken pursuant to 11.9.6(1) of this ordinance must be undertaken within two years after the alleged violation was discovered or reasonably should have been discovered by the County. According to Minn. Stat. §541.07, the County has two years in which to commence an APO action after the date the violation is discovered. The goal is to complete the action as soon as reasonably practical, recognizing that situations for which data must be gathered, field investigations must be completed and/or modeling must be performed will require adequate time to complete the work and communicate with the landowner involved.
- b. **COMPLIANCE VERIFICATION.** Once a landowner has submitted written evidence of correction of the violation set forth in the notice of compliance, compliance must be verified. The County will:
  - I. Review and evaluate all information related to the APO to determine if the violation has been corrected;
  - II. Verify compliance by site visit, re-inspection, aerial verification, examination of documentation, or other means as may be reasonable under the facts of the case; and
  - III. Document compliance verification.

The County may consult with the SWCD when conducting compliance verification.

- c. **RIGHT TO APPEAL.** Within 30 days after receipt of the APO, a landowner may appeal the terms and conditions of an APO issued by Winona County to BWSR as provided in Minn. Stat. §103F.48, subd. 9. The appeal must be in writing and must include a copy of the APO that is being appealed, the basis for the appeal and any supporting evidence. The appeal may be submitted personally, by U.S. mail, or electronically, to the Executive Director of BWSR *and* a copy of the appeal sent to Winona County Planning & Environmental Services.
- d. **PENALTY DUE.** Unless the landowner appeals the APO as provided in 11.9.6(3)(c) the penalty specified in the APO becomes immediately due and payable to the County as set forth in the APO Buffer section in the annual Winona County Fee Schedule. If the landowner submits written documentation that the violation(s) has/have been corrected prior to the time the penalty becomes due and payable, the County shall verify compliance and adjust the penalty to an amount the landowner would have owed had the penalty been paid on the date the landowner submitted documentation of compliance. Documentation of compliance may include a written validation of compliance issued by the WC-SWCD. The County will make a written determination documenting whether the noncompliance has been fully corrected. Any such modification of a compliance determination will be served on the landowner in the manner provided for in 11.9.5(3). The County shall provide the WC-SWCD and BWSR a written copy of any modification made pursuant to this provision.

However, if the County or WC-SWCD determines the violation was not fully corrected, the County shall notify the landowner in writing through the U.S. Mail. Any letter of determination sent by U.S. Mail shall be deemed received three business days after deposition in the U.S. Mail. The landowner shall have an additional 20 days after receipt of the letter of determination to pay the penalty or the time period specified in the APO as issued, whichever is later. The penalty will continue to accrue until the violation is corrected as provided in the Corrective Action Notice of Violation and APO.

- e. **REFERRAL FOR COLLECTION OF PENALTY.** All penalties and interest assessed under an APO must be paid by the landowner within the time specified in this section. All payments shall be made payable to Winona County. Any penalty or interest not received in the specified time may be collected by the County using any lawful means.

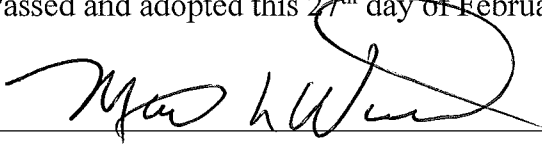


The County may adopt amendments to the official controls in relation to both land uses within a particular district or to the location of the district lines. Such amendments shall not be issued indiscriminately, but shall only be used as a means to reflect changes in the goals and policies of the County as reflected in the Comprehensive Plan or changes in County conditions.

A complete copy of this ordinance marked "Official Copy" is on file in the County Auditor's Office for review and use by the public during normal business hours.

This ordinance is hereby ordered effective February 27, 2018.

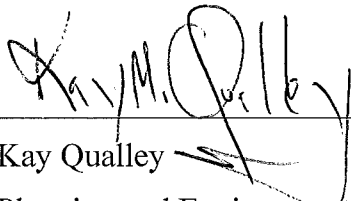
Passed and adopted this 27<sup>th</sup> day of February, 2018.



Marcia Ward, Chairperson  
Winona County Board of Commissioners



Ken Fritz  
Winona County Administrator



Kay Qualley  
Planning and Environmental Services Director