



Office of the City Manager
5555 Perimeter Drive • Dublin, OH 43017
Phone: 614-410-4400 • Fax: 614-410-4490

Memo

To: Members of Dublin City Council
From: Dana L. McDaniel, City Manager
Date: June 7, 2022
Initiated By: Jennifer M. Rauch, AICP, Director of Planning
Thaddeus M. Boggs, Assistant Law Director
Sarah Tresouthick Holt, AICP, ASLA, Senior Planner
Re: Ordinance 23-22
Amendment to Zoning Code Section 153.999 to update the Penalty Code regarding demolition of historic structures (Case 21-113ADMC).

Summary

Ordinance 23-22 was introduced at the May 23, 2022 City Council meeting for review and approval of amendments to Code Section 153.999 to increase penalties for unauthorized demolitions of historic structures and cultural resources from a minor misdemeanor to a fourth-degree misdemeanor, where all other penalties related to the Historic District will remain as minor misdemeanors.

Update

Following City Council's discussion during the first reading, addition language was included within the proposed Code regarding demolition and partial demolition to help distinguish between these activities and other maintenance activities. Additionally, the word "objects" was added to describe other historic resources that might be affected by demolition, partial demolition, or alteration, which could include stone walls or hitching posts. Both updates have been made to the proposed Code.

Staff was encouraged to reach out to Historic District residents and business owners to ensure that they understand their responsibilities, and the rules, within the District. At the start of 2022, staff began providing information within the City's welcome packet to those new residents within the Historic or identified on Appendix G, as well as an annual reminder letter to historic property owners. Both mailers thank the owners for their stewardship of these valuable resources, provide links to the regulations and guidelines, and provide contact information for staff liaisons. Overall the feedback has been positive.

Recommendation

Approval of Ordinance 23-22.

RECORD OF ORDINANCES

Ordinance No. 23-22

Passed , 20

AMENDMENT TO ZONING CODE SECTION 153.999 TO UPDATE THE
PENALTY CODE REGARDING DEMOLITION OF HISTORIC
STRUCTURES (CASE 21-113ADMC)

WHEREAS, it is necessary from time to time to amend Dublin’s Zoning Code to protect the health, safety and welfare of the citizens of the City of Dublin, and

WHEREAS, the City of Dublin Zoning Code recognizes the value of its historic structures and cultural resources, and

WHEREAS, the City of Dublin Zoning Code sets the fines for unauthorized demolition of such valuable resources, and

WHEREAS, the Planning and Zoning Commission reviewed and recommended adoption of the proposed amendment to Sections 153.999 of the City of Dublin’s Zoning Code on April 7, 2022 because it serves to improve the health, safety and welfare of the citizens of the City of Dublin.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Dublin, of its elected members concurring, that:

Section 1. Sections 153.999 of the Codified Ordinances of the City of Dublin is hereby amended and shall provide as attached to this Ordinance:

Section 2. This ordinance shall be effective on the earliest date permitted by law.

Passed this day of , 2022.

Mayor - Presiding Officer

ATTEST:

Clerk of Council

§ 153.999 PENALTY.

(A) In the event any violation of this chapter is committed, for which no specific penalty is otherwise provided, the owner or owners of the building or premises upon which the violation has been committed, any architect, builder, or contractor who assists in the commission of such violation and any person, firm, or corporation who violates or assists in the violation of any of the provisions of this chapter or who fails to comply herewith or with any requirement hereof, who builds in violation of any statement, plan, submitted and approved hereunder, or whoever constructs, reconstructs, alters, ~~or modifies or demolishes~~ any exterior architectural feature, site, or sign, now or hereafter in the Historic District, in violation of this chapter shall, for each and every violation for noncompliance, be guilty of a minor misdemeanor, ~~subject to a fine of \$100~~. Each day during which a violation or noncompliance occurs shall constitute a separate offense.

(B) Non-Permitted Demolition of Sites, Structures, or Objects Subject to Architectural Review Board. In cases where a violation has occurred that resulted in the non-permitted demolition, partial demolition, or irreparable alteration of historic sites, structures, or objects for which a Board Order of the Architectural Review Board is required, the convicted person shall be guilty of a fourth-degree misdemeanor and subject to a mandatory minimum fine of \$250, which shall not be suspended, for each offense.

(C) Anyone who operates a helicopter, or allows operation of a helicopter in violation of the provisions of § 153.094 shall, upon conviction, pay a fine of not more than \$500 for each violation.

(D) Violation of §§ 153.140 - 153.147 shall constitute a fourth degree misdemeanor punishable per day per occurrence. Nothing herein shall prevent the City from taking such other lawful action, including civil actions at law or equity, including temporary restraining orders, preliminary injunctions and permanent injunctions, as is necessary to prevent or remedy any violations. A separate and distinct violation shall be deemed to have occurred for each protected tree unlawfully removed and/or not replaced in violation of any of the sections aforesaid.

('80 Code, § 1184.05(f)) (Ord. 101-90, passed 11-19-90; Am. Ord. 95-96, passed 10-5-98)



RECORD OF ACTION

Planning & Zoning Commission

Thursday, April 7, 2022 | 6:30 pm

The Planning and Zoning Commission took the following action at this meeting:

2. **Penalty Code Update 21-113ADMC**

Administrative Request – Code Amendment

Proposal: To revise Zoning Code §153.999: Administration and Enforcement - Penalty in regards to unauthorized demolition of and alteration to properties within the Historic District and properties identified on Appendix G.

Request: Review and recommendation of approval to City Council under the provisions of Zoning Code §153.176.

Applicant: Dana L. McDaniel, City Manager, City of Dublin

Planning Contacts: Sarah T. Holt, AICP, ASLA, Senior Planner

Contact Information: 614.410.4662, sholt@dublin.oh.us

Case Information: www.dublinohiousa.gov/pzc/21-113

MOTION: Mr. Supelak moved, Mr. Fishman seconded, to recommend approval to City Council of an amendment (Option 1) to Zoning Code §153.999 – Penalty (21-113ADMC): Administration and Enforcement – Penalty to: Retain a demolition as a fourth degree misdemeanor on a first offense and a first offense modification as a minor misdemeanor.

VOTE: 7 – 0.

RESULT: The Administrative Request to revise the afore-mentioned Administration and Enforcement – Penalty amendment (Option 1) was recommended for approval and forwarded to City Council.

RECORDED VOTES:

Lance Schneier	Yes
Rebecca Call	Yes
Mark Supelak	Yes
Kim Way	Yes
Warren Fishman	Yes
Jamey Chinnock	Yes
Kathy Harter	Yes

STAFF CERTIFICATION

Sarah Tresouthick Holt, AICP, ASLA
Senior Planner



~~22-013WID-DP/SP, Site Plan. She inquired if any Commission member wished to move the case to the regular agenda for discussion. No member requested that the case be moved to the regular agenda.~~ **CONSENT AGENDA**

~~1. 6777 Crosby Court, 22-013WID-DP/SP, Site Plan~~

~~A request for construction of ±140,000-square-foot, flex/industrial building located within the West Innovation District on a 9.34-acre site, zoned ID-3, Research Assembly District, located southwest of the intersection of Crosby Court with Dublin Plain City Road.~~

~~PUBLIC COMMENTS~~

~~No public comments were received on the case.~~

~~Mr. Way moved, Mr. Schneider seconded approval of the Site Plan with two deviations:~~

- ~~1) Parking Location: To permit employee parking forward of the building on Houchard Road, Dublin Plain City Road, and Crosby Court.~~
- ~~2) Parking Count: To permit 171 parking spaces where 63 are required.~~

~~Vote: Mr. Way, yes; Mr. Supalak, yes; Mr. Schneider, yes; Mr. Fishman, yes; Ms. Call, yes; Mr. Chinnock, yes; Ms. Harter, yes.~~

~~[Motion approved 7-0.]~~

TABLED CASE

2. Penalty Code Update, 21-113ADMC, Administrative Request – Code Amendment

A request to revise Zoning Code Section 153.999: Administration and Enforcement - Penalty in regards to unauthorized demolition of and alteration to properties within the Historic District and properties identified on Appendix G.

Staff Presentation

Ms. Holt stated that in 2021, the Architectural Review Board identified a need to address outdated penalties associated with Chapter 151 violations, specifically related to unauthorized demolition and/or modifications of historic structures. The current Code identifies these violations as Minor Misdemeanors with a fine of \$100, which is not a deterrent to violations, although each day may constitute a separate offense. In response, last year staff proposed an increase in the penalties to a Fourth Degree Misdemeanor, with the ability to accrue separate offenses daily. The proposal was to allow a first offense to be subject to a Fourth Degree Misdemeanor and a fine of \$250; a second offense within five years would be subject to a Second Degree Misdemeanor charge and a fine of \$500 to \$750. The proposed Code amendment was reviewed by the ARB in August 2021 and recommended for approval. At their October 14, 2021 meeting, the Planning and Zoning Commission meeting reviewed the proposed amendment to Code Section §153.999 – Penalty. The Commission discussed and identified the following concerns:

- need to not overburden Historic Properties but encourage compliance;
- need to provide a distinction between minor offenses and a demolition;
- need to determine a cap on the number of days for which the penalty could be applicable.

Staff was directed to identify a more tailored approach for the penalty. Subsequently, staff and the Law Director's office have revised the proposed Code amendment, which the Assistant Law Director will review for the Commission.

Thaddeus Boggs, Assistant Law Director, stated that he provided a memo in the meeting packet that reviewed the background for use of these particular criminal penalties for Code Enforcement purposes, as well as the limitations under which the City operates in regard to setting forth penalties as a means of deterrence and punishment for Zoning Code violations. There is a need for the City to have the ability, as a matter of last resort, to issue a citation to Mayor's Court and have a court order imposed as a community-controlled sanction to repair, replace or otherwise remedy a violation in the Historic District. This ability provides the ultimate leverage upon which all prior efforts to obtain compliance rest. It is, therefore, staff's recommendation that the level of some offenses be elevated to a Fourth Degree Misdemeanor; however, to address the concerns raised by the Commission at their previous meeting, it is proposed that some of the less intensive and obtrusive violations in the Historic District be parsed out, such as an unapproved color or replacement of historical hardware with non-historical hardware in the Historic District.

Staff requests the Commission to review and make a recommendation of approval to City Council for an amendment to Code Section §153.999 – Penalty (21-113ADMC) with one of the following two options:

1. Retain demolition as a fourth degree misdemeanor on a first offense and leave a first-offense unauthorized modifications as a minor misdemeanor. The Minor Misdemeanor fine would be increased from \$100 to \$150.
2. Make both modifications and demolitions subject to fourth degree misdemeanor penalties, with the exception of nonstructural modifications, such as painting or staining.

Mr. Boggs stated that, hopefully, the Commission will consider one of the two options workable, although, if needed, they can be refined further. If the Commission can reach consensus on one of the options, the recommendation would proceed to City Council.

Commission Questions and Discussion

Mr. Schneier stated that draft language regarding the demolition offense has been provided, but it has not been provided for alternative offenses.

Mr. Boggs responded that is correct. The intent was that the Commission would make a recommendation incorporating one of the two options, and subsequently, staff would provide that language for Council consideration.

Mr. Fishman stated that the proposed fines are not a deterrent. The fine for demolition of a building would seem minimal to an individual wishing to demolish the structure. Is it possible to place a lien on a building until the required remedy has occurred?

Ms. Call clarified that the proposal is to make a distinction between an unauthorized modification and a demolition – a Minor Misdemeanor versus a Fourth Degree Misdemeanor. She inquired what a violator's experience would be in Mayor's Court with either citation.

Mr. Boggs responded that in either case, the Mayor's Court experience would begin with the filing of a citation. In the case of a Minor Misdemeanor, the maximum penalty available to the Court is \$150 and court costs, or a total of \$225. If disputed, the case could be taken to trial in Mayor's Court. In that case, the Mayor's Court Prosecutor would present evidence to the Magistrate, who would make a decision based on that evidence. In the case of a Fourth Degree Misdemeanor, the person potentially would face both a maximum fine of \$250 and up to 30 days incarceration. Additionally, the person could be subjected to community-control sanctions in lieu of incarceration, such as a requirement to return a property to its original state. They would have a right to a trial in the Mayor's Court. Because of the threat of incarceration with a Fourth Degree Misdemeanor, they would have the right to request a jury

trial, which would be transferred to the Franklin County Municipal Court. If they could not afford legal representation, they would be appointed a public defender. They would have more robust procedural protections for a Fourth Misdemeanor than for a Minor Misdemeanor.

Ms. Call pointed out that, as proposed, the Court has discretion in determining the remedy or punishment.

Mr. Boggs pointed out that before the case would proceed to the point of Mayor's Court, the property owner would have had several informal contacts with the Code Enforcement staff.

Mr. Fishman inquired if staff had considered what other municipalities have in place for similar cases. The intent is not to place anyone in jail but prevent unauthorized demolitions and Code violations. He believes the City of Columbus has these types of regulations in place.

Mr. Boggs responded that most of the Zoning Codes with which he has worked have a Fourth Degree Misdemeanor Offense as a Code Enforcement offense for the purpose of having non-monetary penalties options available.

Mr. Supelak stated that there are two levels of violations with the Fourth Degree Misdemeanor. Does the City experience many of these types of offenses?

Ms. Martin responded that the Penalty Code is enacted infrequently for either historic or non-historic properties. However, with the recent demolition of two historic structures, which, unfortunately, cannot be re-erected, the ARB raised the need for the Penalty section of the Code to be modified to address violations that cannot be addressed in any other way.

Mr. Supelak responded that there was a legitimate triggering event. He inquired what would occur in the instance in which the property owner is an LLC.

Mr. Boggs responded that there are organizational criminal liability provisions. They are monetary penalties imposed on an organization, which are higher than \$250.

Mr. Supelak inquired if they would be sufficiently substantial so as to dissuade redevelopment, regardless of the Fourth Degree Misdemeanor.

Mr. Boggs responded that the penalties exceed \$1,000.

Mr. Supelak stated that from a developer's perspective, if the property value makes it worthwhile, he would not be dissuaded by a few thousand dollars, as the redevelopment would bring in a far greater amount of money. Does the City need to have something in place to address that type of scenario?

Mr. Boggs responded that in that case, it would be worth the City taking a civil enforcement action. If such an offense appears to be proceeding, the City can obtain immediately a Temporary Restraining Order (TRO) from the Court. If said violation were to proceed, the property owner is in contempt of Court, and the Court could impose hefty daily fines and penalties.

Mr. Supelak inquired if that would be true even if the organization were a corporation.

Mr. Boggs responded affirmatively. Ultimately, the corporation can be held in contempt and fined substantially, and the individual officers making the decisions also can be held accountable. Civil enforcement through an Environmental Court is an effective mechanism wherein rapid action is available. With the criminal penalty that has been proposed, the intent is to address the small to medium offenses. As regrettable as the recent demolition of the accessory structures on the previously mentioned property is, it is probably a small to medium offense.

Mr. Way inquired if a structure is demolished, does the Code require that it be replaced. Assuming that every building in the Historic District contributes to the character and quality of the District, does the Code not require the property owner to rebuild it? If they did not comply, this penalty would be imposed

for every day it is not replaced; for every day the structure is not replaced, there would be a financial burden.

Mr. Boggs stated that the current Code does not require a property owner to replace a demolished historic structure. If the proposed Code amendment is enacted making demolition a Fourth Degree Misdemeanor, that option would be available to the Mayor's Court.

Ms. Call noted that, currently, the Court does not have that option, as the offense is only a Minor Misdemeanor.

Mr. Boggs responded affirmatively.

Mr. Way stated that in his opinion, there should be a requirement that the structure be replaced as close as possible to its original appearance. Because of the loss of the aged characteristic, it might be impossible to replace its history and character, but as a contributing building within the Historic District, it still would have value.

Mr. Boggs responded that he would defer to staff on that issue. In their initial discussion, there was a sense that some replacements might be worth doing; others may not be, perhaps because the historical integrity cannot be replaced or replicated.

Ms. Martin stated that the advantage of the Fourth Degree Misdemeanor is that Mayor's Court is able to look at these on a case-by-case basis, realizing that every historical property is unique, whether it is a primary structure, an accessory structure, or even a farmstead on which there are a series of accessory structures. Instead of incarceration, other conditions could be imposed, one of which might be replacement.

Mr. Way responded that action could only happen within the Court system. There is nothing in the City Code that requires that.

Ms. Martin responded that is correct, and it is the reason that the Fourth Degree Misdemeanor is proposed.

Mr. Way inquired the reason that the proposed Code language does not require if a historical structure is demolished, whether accidentally or with intent, that it be replaced; if not replaced, there would be penalties.

Mr. Schneier stated that perhaps we do not want to limit it to replacement. If a property owner tears down a shed, perhaps we do not want to require that it be replaced. The proposed penalty provides more latitude. The best outcome could be that the shed be replaced, but perhaps incarceration or a fine should be other options.

Ms. Call clarified that the Commission is challenged tonight to identify an equitable, graduated application for a Code amendment that protects the historic nature and distinguishes from a minor offense, such as wrong paint color, versus demolition of a historic structure. Currently, a demolition could range from removal of a historic fence to intentional demolition of a historic structure. Although two penalty levels are proposed, the wide range within the demolition offense is a struggle. Staff's suggestion is that due to that range, the penalty could be addressed in Mayor's Court. The Commission is requested to consider penalty language that would separate the modification and demolition offenses, thereby giving the Mayor's Court the ability and latitude to determine the penalty imposed.

Mr. Boggs clarified that he had stated that the Court could require reconstruction, but in reality, that Court order might read that (for example), in 30 days, the property owner must have an application submitted to Planning staff to replace the structure or repair the modification to a historic point; that they must pursue it diligently; and that any conditions imposed by the Architectural Review Board (ARB) be followed. When he states "reconstruction," it is an abbreviated reference for all the procedural steps the property owner must follow, as they would continue to be subject to all the requirements before replacing any structure in the Historic District.

Mr. Supelak stated that the intent is to set a separate threshold for unauthorized modifications. Even though the property owner must pay the Minor Misdemeanor fine and court costs, what is the motivation to remedy the violation? In the example cited earlier of painting an incorrect paint color in the Historic District, the fine and court costs are less than the cost of hiring the job to be repainted. At what threshold is there motivation for the property owner to correct the violation? Are window replacements considered minor modifications? Window replacements are quite costly. He believes the property owners would prefer to pay the fines and courts costs than correct the modification. Is there a need to provide more specificity to the thresholds? That also could better address offenses such as a fence removal versus removal of one wing of a house.

Ms. Call agreed. Is there a way in which to have a Minor Misdemeanor in force until the modification is remedied? Perhaps there should be the option of a fine of \$250 per day until the violation is remedied. There is value in the City's Historic District, and we want to encourage residents who want to live there, want to contribute to it, and want their houses to be as valuable in 100 years as they are today. What language is needed that would retain the historic character, enforces the Code that many have worked diligently to enact, but at the same time provides more deterrent than a minor fee easily paid?

Mr. Boggs responded that the proposed amendment maintains the provision that each day constitutes a separate offense. The property owner could plead guilty and pay the fine for the first offense. If a grace period is permitted to correct the offense, but it is not corrected within that timeframe, a second, separate offense would occur the following day. That offense would then be a Fourth Degree Misdemeanor.

Mr. Supelak inquired if this would be true for the Minor Misdemeanor, i.e. the repeatability of the violation, if not remedied.

Ms. Call stated that time would be permitted for the remedy of the first offense to occur, before the second violation would be cited. If a violation should proceed to a third offense, of course, less leniency would be permitted.

Mr. Boggs reiterated that the City also has the Environmental Court option. When there are repeat players at Code violations, it becomes more tenable to cite them to the Franklin County Environmental Court.

Ms. Martin pointed out that when a property owner unknowingly commits a violation -- for instance, painting their window shutters the wrong color -- staff would contact the property owner and work with them to address the issue. The Penalty Code is rarely employed. If a violation is not corrected, however, a written Notice of Violation is sent. If that also is not heeded, the issue is escalated within the process. It would take approximately a year before a violation is fined.

Mr. Schneier stated that there is a significant difference between a minor modification and a demolition. In regard to the latter, most property owners are aware that removal of structures is not permitted in the Historic District. Even if it is not a person but an entity, there are sufficient regulations in place. However, in the middle area, there are more significant modifications, such as the replacement of historical windows with non-historic windows. How are major modifications handled? He had expected to see some draft language with more definition of minor modifications versus major modifications, which would warrant different procedures. He is uncomfortable with lumping all of the modifications together. If the language makes no distinction, then it becomes staff's discretion to identify the inadvertent versus the deliberate violations. The reason we are here is that the Commission did not want there to be situations in which the full force of the law came down on someone who was unaware of what was required with a modification or alteration. He does not believe the draft language covers that to his satisfaction. It refers to modifications but does not define modifications. If the intent is that

the determination would be deferred to staff, he has no objection, but he requests that it be made clear.

Ms. Call requested Ms. Martin to share an example of such a violation and the process followed by staff. Ms. Martin responded that in the instance that there would be a violation of any section of the Zoning Code, the first step would be to notify the property owner of the violation. Often, the City has had previous interactions with the property owner. If the property owner were unresponsive, staff would send them a written Notice of Violation with a 30-day timeframe for remedy. That is a zoning enforcement act, not a Code Enforcement action. If the first Notice of Violation is ignored, it would be followed with a second Notice of Violation. If both Notices of Violation are unheeded, staff would review the case with Code Enforcement, who would send the property owner a Notice of Code Violation. If Code Enforcement's Notice of Code Violation also is unheeded, staff would engage the Law Director's office and begin to pursue the Penalty Code and citation to Mayor's Court. The Penalty Code is needed for the exceptions; it is not the rule. When such an exception occurs, the penalty process needs to function in a manner aligned with the community's values but is also an effective tool for Code Enforcement and the Law Director's Office. In the particular instance that triggered this proposed Code amendment, that was not the case so there was no available recourse.

Mr. Schneier stated that he would like to see more specificity and clarity so people are aware of the process. It would then be incumbent on them to know what they can/cannot do. Because he recognizes that it may be difficult to include that specificity, he would not object to what has been proposed.

Mr. Fishman stated that key need is that the penalty be a deterrent. Intents to demolish a historic building are required to be submitted to the ARB for consideration, so this penalty would be needed only for those cases deliberately not submitted to ARB for approval. Did such a demolition occur? Mr. Boggs responded affirmatively. That was the experience with the demolition of the accessory structures, which triggered the proposed Penalty Code amendment.

Ms. Martin noted that it was an outlying historic property. One of the greatest values of our outlying historic properties are their accessory structures. The companionship of the accessory structures with the primary structure provides the rural character in which Dublin was established. With the case in question, a historic chicken coop and a well house were demolished without authorization. Staff worked with Code Enforcement and the Law Director's office, but no recourse was available.

Mr. Fishman stated that the first of the two proposed options could address that type of violation with 30 days in jail.

Mr. Boggs responded that, potentially, incarceration could occur. The second option would handle that type of violation, as well, although it would also cover more major modifications, such as window replacements.

Mr. Fishman requested verification that the Court could order the property owner to rebuild the historic structure.

Mr. Boggs responded that the Court would have that option available.

Ms. Harter stated that education is important. It is important that homeowners in the Historic District understand the importance of where they live. When buyers purchase a home in that District, they should be provided information regarding how to make changes or removals. Provision of that information also would provide a tool for the Court. They can indicate that said information was provided to the homeowner at the time they purchased the home, as well as subsequently. At the time of selling their home, an assessment on the seller also could be made.

Ms. Holt responded that is a valuable point, which staff also recognized. Planning has instituted two different ways to reach out to historic property owners:

1. Upon their purchase of the home, staff sends them a flyer with the City Welcome Packet, which defines the responsibilities and the stewardship expected with ownership of a historic property. It also provides staff contact information whereby the homeowner can obtain more information regarding what can/cannot be done with a historic property.
2. Additionally, information is mailed annually to all property owners in the Historic District and Appendix G, which reiterates the Historic District home ownership requirements. There should be no opportunity for property owners not to be aware of the requirements.

Ms. Call inquired if Commission members had further comments.

Mr. Schneier suggested that in the seventh line of Section (A), "... whoever constructs, reconstructs, alters, modifies or demolishes any exterior architectural feature, site, sign now or hereafter in the Historic District...." that a comma be added after the word "sign," and a conjunction between site and sign.

Staff indicated the revision would be made.

Ms. Call stated that the Commission recognizes the work that went into this proposed amendment, and the efforts made to protect the interests of Dublin.

Public Comments

No public comments were received by staff.

Ms. Call invited Mayor Fox to comment, as a member of the public present.

Mayor Fox stated that as a resident of the Historic District, she would question the lack of definition for a minor modification. With all homes, items will be replaced and repaired continually, and that is not always something that the homeowner can submit to the ARB for review. Consequently, sometimes a door knob may look different, or a paint color is not on the approved Historic District paint palette, but the shade is essentially the same. As a resident of the Historic District, she wants her home to always be well maintained, but she does not want to go before the ARB for every minor modification. From a resident's point of view, there should be flexibility to maintain your home without fear that a minor modification would result in a citation to Mayor's Court.

Ms. Call inquired if resources are available to the residents to identify types of hardware that could be used in the Historic District. Is there a repository or database of which residents are aware and have access to that would offer the needed information?

Ms. Holt clarified that if homeowners are replacing like with like, they are permitted to do so with no approval from City staff or the ARB. However, staff has many resources and information that they can provide to residents and do so on a regular basis. Phone numbers and emails are provided in the flyers distributed to encourage that communication.

Mr. Fishman pointed out that some historic districts permit some historically consistent modifications to be made from an approved color palette. Additionally, some historic hardware and windows are no longer available, so replacements are permitted, but only from a list of items with historically consistent characteristics. Therefore, a homeowner in a historic district would have some flexibility with modifications.

Ms. Holt clarified that the ARB recently approved a color palette for the Historic District, which provides a range of colors to be used that are appropriate not only for the time period of the home but also the style of the home. Any of those approved paint colors may be used without a visit to staff or the ARB. Ms. Call inquired if that resource is available at the City's website.

Ms. Martin responded that it would be posted as soon as the document formatting had been completed.

Ms. Call stated the City will see these types of occurrences in a far greater number than an individual homeowner. As we catalog these instances, the City will be able to aggregate those and expand its database to include hardware, windows and other home elements. This could be a significant service for not only our Historic District, but other municipalities to consider, as well.

Mr. Chinnock stated that there are many resources that are provided and available to the residents of the Historic District, and nearly all residents in that District are aware that they are living in a historic home. If violations still occur, he would encourage that care be taken that the City is not overly compassionate to homeowners who know better. He is not an incompassionate person, but is convinced that most homeowners are aware. There is a need to be very strict when the issue escalates to the point of a deliberate violation.

Ms. Call agreed, noting that is the reason for the proposed Penalty Code amendment. There is a need for a Fourth Misdemeanor penalty, whereas all previous violations were considered minor modifications. In that case, homeowners could prefer not to ask permission. There is a need to ensure staff and the Mayor's Court have the necessary recourse to protect the Historic District.

Mr. Boggs stated that as proposed, the penalty process is reasonable. If it should advance to Mayor's Court, there is no need for compassion at that point. The intent of including the Fourth Misdemeanor penalty in the Code is to incentivize property owners to reconsider their actions before proceeding with a violation.

Ms. Call stated that staff has requested the Commission to make a recommendation for an amendment to Code Section §153.999 – Penalty (21-113ADMC) with one of the following two options:

1. Retain demolition as a fourth degree misdemeanor on a first offense and leave a first-offense modification as a minor misdemeanor.
2. Define a modification subject to fourth degree misdemeanor penalties to not include nonstructural modifications, such as painting or staining.

Commission consensus was preference of Option #1.

Mr. Supelak moved, Mr. Fishman seconded a recommendation for approval to City Council of an amendment to Code Section §153.999 – Penalty (21-113ADMC) to: Retain a demolition as a fourth degree misdemeanor on a first offense and a first offense modification as a minor misdemeanor.

Vote: Mr. Way, yes; Mr. Supelak, yes; Ms. Call, yes; Mr. Schneier, yes; Mr. Chinnock, yes; Ms. Harter, yes; Mr. Fishman, yes.

[Motion approved 7-0.]

~~COMMUNICATIONS~~

~~Ms. Martin reported that:~~

To: Members of the Planning and Zoning Commission
From: Sarah Holt, AICP, ASLA, Senior Planner
Date: April 7, 2022
Re: Penalty Code Amendment (21-113ADMC)

Summary

At the October 14, 2021 Commission meeting, Staff presented an amendment to Code Section §153.999 – Penalty, as a result of non-permitted demolition of two historic outbuildings on an outlying historic property identified in Appendix G (outlying historic properties under the purview of the Architectural Review Board). The existing repercussion, which includes up to a minor misdemeanor charge and a \$100 fine, was determined to be negligible, and therefore was not pursued. The proposed Code change intends to address the penalty for non-permitted demolition or alteration of properties under the purview of the ARB, through a more significant charge and fine.

Upon discussion at the Commission meeting, the members gave Staff direction to create a more-tailored approach, where demolition could be separated from much more minor infractions, such as painting a structure an unapproved color. The attached memo from the Law Office addresses the reasoning, and limitations, to our available options, as well as presents some approaches that would meet the request of the Commission.

Recommendation

Staff requests the Planning and Zoning Commission review the proposed Law Office memo regarding an amendment to Code Section §153.999 – Penalty (21-113ADMC) and make a recommendation of approval, including one of the following two options, to City Council for consideration at a future meeting:

1. Retain demolition as a fourth degree misdemeanor on a first offense and leave a first-offense modification as a minor misdemeanor.
2. Define a modification subject to fourth degree misdemeanor penalties to not include non-structural modifications, such as painting or staining.

MEMORANDUM

To: Members of the Dublin Planning and Zoning Commission

From: Thad Boggs, Assistant Law Director

Date: March 23, 2022

Re: Penalty Code revisions for Zoning Violations

BACKGROUND

In October 2021, Staff presented proposed revisions to the penalty section, Section 153.999 of the Zoning Code, for the Planning and Zoning Commission's consideration and recommendation to Council for passage. The proposals originated from unauthorized demolition of accessory structures that were contributing to a property on the City's historic property schedule. The existing penalty—a \$100 fine—was found to be inadequate to create the desired incentive structure for protection of historic properties from unauthorized demolition or modification. The proposed amendments were first presented to the Architectural Review Board, which recommended their approval.

When the Commission considered the proposed amendments, members expressed reservations about the increased penalties and their potential application to unknowing or relatively trivial violations of architectural standards for historic properties (such as the use of a non-approved paint color or installation of non-approved door hardware). Members also expressed concern about the discretion involved in decisions of enforcement and prosecution.

This memorandum responds to stated concerns and provides further information about the misdemeanor penalties available to the City and which inform the City's approach to code enforcement.

LAW AND ANALYSIS

Ohio law provides a small menu of options for municipalities to define offenses

Ohio law authorizes municipalities to define and prosecute misdemeanors. The law provides for misdemeanors of the first, second, third, and fourth degrees, as well as minor misdemeanors. For each type of misdemeanor, the Ohio Revised Code (R.C.) provides for maximum sentences of confinement and fines that a sentencing court may impose. For example, and germane to the discussion of penalties here, a court may sentence a person convicted of a fourth degree misdemeanor to up to thirty days in jail and up to a two hundred fifty dollar fine. *See*

R.C. 2929.24; 2929.28. For a minor misdemeanor, a court may only sentence the convicted person with a fine of up to one hundred fifty dollars. *See* R.C. 2929.28.

In addition to confinement in jail, or payment of fines, for misdemeanors *other than minor misdemeanors*, a court may sentence a convicted person to complete community control sanctions. *See* R.C. 2929.25. In everyday terms, a “community control sanction” is a term of probation. The Revised Code gives sentencing courts a number of community control sanctions that may be imposed to further the purposes of misdemeanor sentencing; those purposes include deterrence of future misdemeanors by the convicted person (and others), and punishment of the convicted person. In addition to several specifically authorized community control sanctions, such as community service, a sentencing court may “impose any other sanction that is intended to discourage the offender or other persons from committing a similar offense if the sanction is reasonably related to the overriding purposes and principles of misdemeanor sentencing.” R.C. 2929.27(C).

Under the City of Dublin’s current penalty provision, C.O. 153.999, violations of the zoning code (Chapter 153 of the Codified Ordinances) are minor misdemeanors subject to fines of \$100. Each day of noncompliance is a separate offense. While treating each day of violation as a separate offense has the potential to cause fines to accumulate to more deterrent or penalizing levels, in practice there are diminishing returns as each separate day’s offense generates a separate criminal complaint and requires its own proof of the violation occurring on each particular day. Violations of the City’s tree preservation ordinances, at C.O. 153.140 through 153.147, are fourth degree misdemeanors (also punishable for each day of occurrence).

Apart from prosecution in the Dublin Mayor’s Court, which is technically a criminal proceeding, the City also has civil enforcement options. The drawback of the civil enforcement options is that they require filing in the Franklin County court system (either Environmental or Common Pleas) in downtown Columbus. The process typically entails more time and expense for the City as well as for the property owner, although it can be powerful due to the availability of injunctive relief (i.e., the court ordering a person to take action, under threat of punishment for contempt). Civil action can be potent, but due to the time and expense involved it is usually reserved for habitual offenses or nuisances presenting nuisances threatening life or health.

The availability of community control sanctions was motivation for the proposed amendments, because the existing relatively modest monetary penalty proved insufficient to deter the demolition that prompted this exercise.

The availability of community control sanctions for non-minor misdemeanors is one of the chief factors that attracted staff to the proposed penalty revisions. A permissible community control sanction for a non-approved modification could include a requirement to restore the structure to an approved condition. The prospect of this outcome could deter individuals from making non-approved modifications in the first place.

One of the objectives of having a penalty for violation of the Zoning Code in the first place is to create an incentive structure that encourages compliance and discourages non-compliance. Some property owners may make the financially rational decision to install a non-historic material on their property and risk a \$100 fine than pay an extra \$300 for the historic material installation.

If the City has an ability, as a last resort, to require the installation of the historic material as a community control sanction, backed by the prospect of criminal fines or even confinement, then the extra expense of obtaining approval and installing an historic material likely becomes the rational choice.

It is also important to note that the City does not approach prosecution as a first resort. First, it is often the path of least resistance just to inform a property owner of the applicable rules and achieve voluntary compliance. Multiple attempts at voluntary compliance are made before citation and prosecution are considered, because citation and prosecution bring a new level of staff time, expense, and confrontation to bear. Efforts toward voluntary compliance are mandated by administrative order, prior to citation. [CITE]

Even if the decision is made to file a citation in Mayor's Court, the focus is compliance rather than prosecution and punishment; the citation itself is usually enough for the defendant to hear the message and obtain voluntary compliance, resulting in dismissal of the charge. It is rare for a code enforcement prosecution to proceed to the point of conviction and sentencing. Nevertheless, it is this possibility that provides the City's leverage to overcome reluctance and obtain compliance.

To respond to the Commission's previously stated concerns, the proposed amendments could provide further distinction between certain non-approved alterations and demolition.

Examples of concern to the Commission when these amendments were discussed in October 2021 included property owners using a non-approved paint color to repaint an exterior, or that property owners would be reluctant to conduct needed maintenance for fear of prosecution for an inadvertent violation. The proposed amendments could retain only demolition as a fourth degree misdemeanor on a first offense and leave a first-offense modification as a minor misdemeanor. Alternatively, the proposed amendments could define a modification subject to fourth-degree misdemeanor penalties so that it does not include non-structural modifications such as painting or staining.

CONCLUSION

The proposed amendments to the penalties for violation of the Zoning Code are intended to provide greater disincentives for non-compliance, within the narrow scope of options available to the City when defining offenses and sentencing options. The availability of potential community control sanctions, backed by higher fines and potential confinement for violating those sanctions, would provide a further deterrent to violations, and the Commission's previously stated concerns can be addressed by further refinement to define violations that warrant the increased deterrence without chilling routine maintenance activities.

§ 153.999 PENALTY.

- (A) In the event any violation of this chapter is committed, for which no specific penalty is otherwise provided, the owner or owners of the building or premises upon which the violation has been committed, any architect, builder or contractor who assists in the commission of such violation and any person, firm or corporation who violates or assists in the violation of any of the provisions of this chapter or who fails to comply herewith or with any requirement hereof, who builds in violation of any statement, plan, submitted and approved hereunder, or whoever constructs, reconstructs, alters, modifies or demolishes any exterior architectural feature, site, sign now or hereafter in the Historic District in violation of this chapter shall, for each and every violation for noncompliance be guilty of a fourth-degree misdemeanor. Each day during which a violation or noncompliance occurs shall constitute a separate offense.
- (B) *Non-Permitted Demolition or Alteration of Sites or Structures Subject to Architectural Review Board.*
1. In cases where a violation has occurred that resulted in the non-permitted demolition or alteration of sites or structures for which a Board Order of the Architectural Review Board is required, the convicted person shall be guilty of a fourth-degree misdemeanor and subject to a mandatory minimum fine of \$250, which shall not be suspended, for each offense.
 2. Anyone who is convicted of an offense that resulted in the non-permitted demolition or alteration of sites or structures for which a Board Order of the Architectural Review Board is required, and who has been convicted within the preceding five (5) years of a prior offense that resulted in the non-permitted demolition or alteration of sites or structures for which a Board Order of the Architectural Review Board is required, shall be guilty of a second-degree misdemeanor. Each day during which a violation or noncompliance occurs shall constitute a separate offense. In such cases, the convicted person shall be subject to a mandatory minimum fine of \$500, which shall not be suspended, and a maximum fine of \$750, for each offense.
- (C) Anyone who operates a helicopter, or allows operation of a helicopter in violation of the provisions of § 153.094 shall, upon conviction, pay a fine of not more than \$500 for each violation.
- (D) Violation of §§ 153.140 - 153.147 shall constitute a fourth degree misdemeanor punishable per day per occurrence. Nothing herein shall prevent the City from taking such other lawful action, including civil actions at law or equity, including temporary restraining orders, preliminary injunctions and permanent injunctions, as is necessary to prevent or remedy any violations. A separate and distinct violation shall be deemed to have occurred for each protected tree unlawfully removed and/or not replaced in violation of any of the sections aforesaid.
- ('80 Code, § 1184.05(f)) (Ord. 101-90, passed 11-19-90; Am. Ord. 95-96, passed 10-5-98)



RECORD OF ACTION

Planning & Zoning Commission

Thursday, October 14, 2021 | 6:30 pm

The Planning and Zoning Commission took the following action at this meeting:

5. **Penalty Code Amendment 21-113ADMC**

Administrative Request

Proposal: Recommendation on an amendment to Zoning Code Section 153.999: Administration and Enforcement - Penalty for unauthorized demolition of and alteration to properties within the Architectural Review District and outlying historic properties listed on Appendix G and reclassification of the offense associated with violations.

Request: Review and recommendation of approval to City Council for the Administrative Request – Penalty Code Amendment under the provisions of Zoning Code §153.234.

Applicant: Dana L. McDaniel, City Manager, City of Dublin

Planning Contact: Chase J. Ridge, Planner II, AICP Candidate

Contact Information: 614.410.4656, cridge@dublin.oh.us

Case Information: www.dublinohiousa.gov/pzc/21-113

RESULT: The Commission considered an Amendment to Zoning Code Section 153.999, regarding penalties for unauthorized demolition of historic structures. The request originated with the Architectural Review Board, who experienced unauthorized demolition of two outbuildings associated with a property listed on an Appendix G property. The ARB was in favor of the proposed changes, as previously presented. The purpose of the Code revisions is to provide both punishment and deterrence, where the current Code is lacking. The Commission commented that the proposed language is too broad, not taking into account various types of violations. The Commission recommended a tiered approach.

MEMBERS PRESENT:

Jane Fox	Yes
Warren Fishman	Yes
Mark Supelak	Absent
Rebecca Call	Yes
Leo Grimes	Absent
Lance Schneier	Yes
Kim Way	Yes

STAFF CERTIFICATION

DocuSigned by:

Nichole M. Martin

Nichole M. Martin, AICP, Senior Planner



~~Mr. Schneider moved, Mr. Fishman seconded approval of the Amended Final Development Plan with the following three conditions:~~

- ~~1) The applicant work with staff to select final exterior materials that address the comments provided by the Commission, subject to staff approval;~~
- ~~2) The applicant work with staff to finalize the landscape plan and provide additional landscaping to buffer the proposed site from Dublin Road, subject to staff approval; and,~~
- ~~3) The applicant continue to work with staff to identify existing trees that can be preserved on site.~~

~~Vote: Mr. Schneider, yes; Mr. Fishman, yes; Mr. Way, yes; Ms. Fox, yes; Ms. Call, yes.
[Motion approved 5-0.]~~

4. Penalty Code Amendment, Administrative Request, 21-113ADMC

Recommendation of an amendment to Zoning Code Section 153.999: Administration and Enforcement - Penalty for unauthorized demolition of and alteration to properties within the Architectural Review District and outlying historic properties listed on Appendix G and reclassification of the offense associated with violations.

Staff Presentation

Ms. Martin stated that the intent of the proposed Code modification is to address unforeseen conditions resulting from an authorized demolition, such as historic structures within Historic Dublin. In review of the associated penalty, it was determined that the existing penalty was inadequate. The proposal is to revise the existing fine for all penalties from a Minor Misdemeanor with a fee of \$100 to a Fourth Degree Misdemeanor, with which an additional penalty could be added every day the offense is occurring. In specific regard to the unauthorized alterations and demolitions in the Historic District, there is an escalation clause, to wit, if the party should offend more than two separate times within five years, the Fourth Degree Misdemeanor would be elevated to a Second Degree Misdemeanor. It is anticipated that any jail time would be suspended in lieu of conditions placed on the property owner. Both staff and the Architectural Review Board recommend the Commission review and forward a recommendation of approval to City Council.

Commission Questions

Ms. Fox stated that she understands the need to avoid demolition of historic structures, but she also does not believe the City should overly burden people who own property in the Historic District to the point that they are afraid to touch the trim on their homes. The requirement is too broad and vague. In addition, there are many historic properties throughout Dublin that are not included in the Historical Cultural Assessment. Some of those are being demolished with no penalty; yet property owners in the Historic District are subject to several penalties and have associated responsibilities. No property can be removed from Appendix G of the Architectural District, but no property owner wants to be included. She is concerned about the oppressiveness of the proposed Penalty Code amendment. She does believe the Commission could address historical properties included in the Historic Cultural Assessment, but if we were to proceed to penalize property owners for destruction of historic properties, it should be Citywide, not targeted to the Historic District. She is not supportive of moving forward with this at this time; it requires further study. As proposed, it is too broad.

Ms. Martin stated they are not proposing to alter any zoning regulations or any other property compliance regulations. This is solely an update to the penalty clause should a property owner anywhere in the City violate a section of the zoning Code. There are some specific regulations related to demolition of historic property, but the revision to the penalty section applies to every part of the City, should the Code be violated.

Ms. Fox inquired if too broad of a brush has been used in this effort to avoid losing an historic structure. Is there a double standard here? The City has historic properties included in Appendix G, and recently, one of those historic properties was demolished. There might be a better way to protect historic properties. We are not doing anything to incentivize the preservation of them, but we will penalize them if the structure is destroyed. She would prefer to take steps to help them save the properties. Historic buildings require a lot of maintenance. She is concerned about actually discouraging property owners from maintaining their historical properties. Property owners would prefer to avoid the ARB review process.

Mr. Schneier stated that he owns property in the Historic District. Does his participation in this discussion present a conflict of interest?

Mr. Boggs responded that it does not because the subject discussed is not unique to his property as opposed to any other property in the District. He sees no way that this penalty provision would have any particular benefit or detriment to his property.

Ms. Call stated that fines are either punitive or to recoup City costs. What is the purpose here?

Ms. Martin responded that this amendment has been proposed for consideration because, unfortunately, there were two unauthorized demolitions this year of Appendix G historical properties. Historic structures cannot be replaced. It is not meant to be punitive. It is meant to provide a penalty equal to the Code violation. A historic chicken coop and an historic spring house were lost. Charges were not pursued because the existing penalty is only a \$100 fine. Revising the penalty would provide the City Law Director more latitude to negotiate favorable resolutions.

Mr. Boggs stated that the fine amounts established are the maximum fine for a Fourth Degree Misdemeanor. Because they are fines for a criminal offense, their purposes are not compensation to the City. If there were a situation wherein the City suffered economic harm, restitution could be sought separately. The fines themselves serve two primary purposes: punishment and deterrence. The current Code is lacking both elements.

Mr. Schneier inquired if changing the classification would increase the fine from \$100 to \$250 per occurrence, and each day would be an occurrence.

Mr. Boggs responded that is correct. Each day would be charged as a separate occurrence, and separate complaints would be processed through Mayor's Court. It would be necessary to provide proof of each day. If a demolition has occurred, every day is an occurrence, indefinitely. Finding a balance would be necessary; perhaps only 10 days would be charged with a total fine of \$2,500.

Mr. Schneier stated that he does not like rules that require later interpretation. Perhaps it would be better to have a different fine for a demolition for a set amount that is higher than \$250, which should be an effective deterrent. He believes unauthorized demolitions should be defined and handled separately. This need has been precipitated by a couple of demolitions, so there is no need to get other property owners caught up in addressing the issue. He believes everyone would know the difference between painting windows incorrectly and tearing down a building – there is a wide

gap between those scenarios. He would suggest language and a definition be added addressing demolitions, along with a heavier fine for that offense.

Ms. Martin stated that is a valid point and it was considered. However, the reason that a finite number was not pursued for a demolition is because the intent is not to recoup costs. The City has lost no monetary value due to the demolition. It is a penalty imposed by the Court. The potential jail time is important, as it allows the Court magistrate to add conditions to their finding. The fine may be negligible but the conditions can be tailored to the particular situation.

Mr. Schneier inquired what might those conditions be in the case of a demolition.

Mr. Boggs responded that it might not be a total demolition; it could be a structural alteration. In addition to the \$250 fine, 15 days in jail could be suspended if the property owner returned the structure to its previous historic state. This type of penalty is common in criminal prosecution of these misdemeanors. The tools are limited for Mayor's Court for misdemeanor offenses to incentivize a change in behavior. In terms of a full demolition, it might be appropriate to require its reconstruction with historic integrity. That is the tool that they would like to provide Code Enforcement, the prosecutor and the Court magistrate.

Ms. Call stated that she is seeing three different situations: (1) minor home alterations, such as painting or window replacements; (2) significant alterations to the structure, such as an addition or expansion; and (3) demolition – tearing down/removing the structure. The third item should have a significant deterrent; the second item should have a less significant deterrent; the first item could have a more significant fine.

Mr. Boggs noted that this amendment is addressing work done in violation of Chapter 153. In the Historic District, making those types of changes to historic structures requires a Board Order. Any maintenance that does not require a Board Order would have the same set of rules that exist today. The issue results when property owners take actions that required a Board Order, but they neglected to obtain it. The City has invested a significant level of time and resources in studying its built environment; having cultural and historical assessments completed, and creating the ARB structure. It is important to ensure that process is respected.

Ms. Martin pointed out that, Citywide, we do not jump to the penalty section, except in the case of a demolition. Staff works with the property owner to find a resolution, both through zoning and code enforcement. She has participated in that effort, and those discussions can sometimes take a year. When negotiations and constructive conversations stall, a viable mechanism is needed to achieve a resolution.

Mr. Schneier stated that Mr. Bogg's example exemplified his concern. In his opinion, the distinction between demolition and an alteration gives too much judicial discretion to Mayor's Court for those types of remedies. In the Historic District, many structural changes require Board approval that do not require a Board approval elsewhere. Painting one's home a different color could be in violation of a Board order, so that property owner would be subject to penalties and judicial discretion. There is the intentional but inadvertent violation versus a demolition. If the Commission agrees with his concern, the direction could be that further work be done on the proposed amendment.

Ms. Call expressed agreement.

Ms. Martin provided an example of a property owner violating a Board order related to a paint color. When the City becomes aware of the violation, education would occur on how to address that paint

change, rather than immediately penalizing them. There might also be an issue where the property owner refuses to acknowledge the situation.

Ms. Call stated that there is a need for both a penalty and a deterrent. We do not want to deter upkeep to a property. The proposed language has required detailed clarification to the Commission members, who are involved in this type of review. It would be more difficult for a property owner to understand, so they may neglect doing some types of property maintenance in the interest of avoiding fines and potential jail time.

Mr. Schneier stated that the discretion staff would use in the process is not codified. In the future, there could be a different staff, discretion, and certified letters from the City. The language used is "alters" and "modifies." That could be a paint color or a door knob. It is important not to rely on discretion to the detriment of the homeowner, but also to the detriment of staff and this Commission. We would be setting precedent on an ad hoc basis.

Mr. Fishman stated that he is aware of the ARB process, and it is different than the Muirfield Association rules for paint colors, for example. The Association provides a palette from which the homeowner can choose a color. With the ARB process, the choices are subjective. Paint is inexpensive; if it is inadvertently painted an incorrect color, it can be repainted. When an update is required, some earlier historical items are no longer available. He agrees with Mr. Schneier. If the City wants to impose penalties it must be for an actual crime, i.e. it is something the property owner intentionally did that was contrary to City Code, specifically within its Historic District. Demolishing a structure is a different scenario. Is the expectation that the structure must be rebuilt from the rubbish, or that the penalty accrues an indefinite number of days?

Ms. Martin responded that the fines would not accrue infinitely. The Law Director's office would have to prove that each day the homeowner took a deliberate action in violation of the Code.

Mr. Fishman stated that the property owner might not have deliberately taken an action in violation of Code. It may have seemed apparent to him that the building needed to be demolished, so he took that deliberate action. When do the fines stop accruing? Does it end up with jail time?

Mr. Boggs stated that from a practical standpoint, neither the Code Enforcement nor Prosecutor want to document several daily violations, so it could be capped at a certain number of days. There are prescribed levels of misdemeanor offense available to the City. Civil action could also be taken, if preferred. However, that would involve a different court process and level of expense. A balance between an inadvertent offense and a repeated, deliberate offense is needed. The proposed Code amendment is written for the latter; the existing Code is written for the former, although the \$100 fine is out-of-date.

Mr. Fishman stated that he agrees with addressing the inadvertent and deliberate offenses separately and with a different degree of penalty.

Ms. Call stated that, as mentioned previously, she believes there are three categories of offenses. Does the existing Code address minor violations adequately?

Ms. Martin responded that in most cases, staff works with the property owner collaboratively to bring them into compliance, and no penalty is pursued. No Minor Misdemeanor charge has been pursued for anyone, and staff has observed that the existing penalty provisions may incentivize noncompliance. Based on tonight's discussion, staff will be able to revise the proposed amendment per the Commission's input.

Ms. Call invited any additional input from Commissioners.

Ms. Fox stated that the ARB Code provides criteria for demolition. It does not provide a penalty for Code violation. What makes it difficult for Historic District property owners is that the pertinent Code sections are in different places. There are Historic Design Guidelines in addition to that Code. It is difficult for them to know and find what is applicable to them. It is important that the City begin to educate the owners of any historic properties. They should be provided educational pamphlets and a handbook with the Code and Guidelines. Otherwise, the property owners may make mistakes and be subject to penalty. She would prefer to focus on demolition of all historic properties within the City. The Appendix G listing is smaller than the total number of historic structures.

Public Comments

Ms. Martin stated that one public comment in support of the proposed amendment was received in advance of this meeting, which was included in the Commissioners' packets. No additional public comments were received.

Staff will revise the proposed Code amendment reflective of the Commission's guidance.

~~5. Solar Panel Code Amendment, Administrative Request, 21-152ADMC~~

~~Introduction of a Code Amendment to establish general regulations in regard to solar panels for residential and commercial properties.~~

Staff Presentation

~~Ms. Martin stated that requests for solar energy components have been increasing, both with commercial and residential applications. Existing City Code addresses renewable energy equipment and solar energy in a very limited manner. In reviewing the Code, it was found that solar panels are explicitly regulated only in the West Innovation District (WID) and Bridge Street District (BSD). The City of Dublin Zoning Code permits solar panels in the WID and BSD. In the WID, Renewable Energy is permitted as an accessory use in all districts with use-specific standards. In the BSD, Renewable Energy Equipment is permitted as an accessory use in all districts with use-specific standards. The Accessory Structures section of the Code identifies solar panels, but they are defined as an accessory structure and have no use-specific standards. To inform the discussion, Planning staff contacted municipalities in Ohio and Indiana regarding each city's current regulation of REE (solar panels, geothermal units, and wind turbines). Most of the cities contacted have specific sections within their code that provides details on if, and where, REE may be installed. The communities contacted include Blue Ash, Mason, Grove City, Westerville, Worthington, Upper Arlington, and Montgomery, Ohio, and Carmel, Indiana. Approximately 50% of the jurisdictions allowed a variety of alternative energy solutions, including solar, wind and geothermal. The discussion tonight will focus solely on solar. All of the benchmark research was provided in the meeting packet.~~

~~[Representative images shown.] Ms. Martin stated there are a variety of options available for commercial buildings. On a flat roof, the solar panels can be treated as a mechanical structure and be fully screened behind a parapet. On a commercial building with a pitched roof, the solar panels cannot be screened as a mechanical, so judgments must be made according to location on a street-facing façade, sustainability, and the community's character. Additionally, there are architecturally integrated panels available for commercial applications. These could be appropriate in the BSD and the West Innovation District. In regard to commercial sites, there are a variety of site and implementation considerations and options. Two examples are solar farms and solar vehicular~~



BOARD ORDER

Architectural Review Board

Wednesday, August 25, 2021 | 6:30 pm

The Architectural Review Board took the following action at this meeting:

4. **Penalty Code Amendment 21-113ADMC**

Administrative Request – Code Amendment

Proposal: Amendment to Zoning Code §153.999: Administration and Enforcement - Penalty for unauthorized demolition of and alteration to properties within the Architectural Review District and outlying historic properties listed on Appendix G.

Request: Review and recommendation of approval to the Planning and Zoning Commission for an Administrative Request – Penalty Code Amendment under the provisions of Zoning Code §153.999 and the *Historic Design Guidelines*.

Applicant: Dana L. McDaniel, City Manager, City of Dublin

Planning Contacts: Sarah T. Holt, AICP, ASLA, Senior Planner and Chase J. Ridge, AICP Candidate, Planner II

Contact Information: 614.410.4662, sholt@dublin.oh.us or 614.410.4656, cridge@dublin.oh.us

Case Information: www.dublinohiousa.gov/arb/21-113

MOTION: Ms. Kramb moved, Ms. Cooper seconded, to recommend approval to the Planning and Zoning Commission for the Administrative Request for an Amendment to the Penalty Code.

VOTE: 3 – 0

RESULT: The Administrative Request to amend the Penalty Code was recommended for approval and forwarded to the Planning and Zoning Commission.

RECORDED VOTES:

Gary Alexander	Yes
Amy Kramb	Yes
Sean Cotter	Absent
Martha Cooper	Yes

STAFF CERTIFICATION

DocuSigned by:

Chase J. Ridge

9A45F751698D466

Chase J. Ridge, AICP Candidate, Planner II



Architectural Review Board
Meeting Minutes of August 25, 2021
Page 11 of 16

- 7) ~~That the applicant shall demonstrate the preservation, to the maximum extent possible, of the stone wall, at the next submittal.~~

~~*The applicant, Dan Morgan, agreed to the seven conditions of approval.~~

~~Vote: Mr. Alexander, yes; Ms. Kramb, yes; and Ms. Cooper, yes.
[Motion carried 3-0]~~

~~Ms. Cooper moved, Ms. Kramb seconded, to approve the Parking Plan to permit 32 off-site parking spaces to be combined with the 9 spaces on-site, to fulfill the minimum parking requirement of 41 spaces.~~

~~Vote: Mr. Alexander, yes; Ms. Kramb, yes; and Ms. Cooper, yes.
[Motion carried 3-0]~~

~~Ms. Martin stated the Waiver is important at this stage, as the site layout is predicated on it. If the motion was made in the affirmative and failed, it would be disapproved and the applicant not eligible to bring back another Lot Coverage Waiver. Ms. Martin and the Board agreed the applicant could table the Waiver this evening, if he wanted to.~~

~~Mr. Morgan requested to table the Lot Coverage Waiver as written to move along in this process.~~

~~Ms. Cooper clarified that earlier in the Board's conversation, there was not enough information demonstrating the applicant needed the Waiver to make a determination at this time. She asked if the Waiver could be stricken as a request.~~

~~Ms. Martin affirmed the Waiver should be tabled.~~

~~Ms. Kramb moved, Ms. Cooper seconded, to table the following Waiver at the request of the applicant:~~

- ~~1. §153.173A – Historic Zoning Districts – General Development Standards – Requirement: 85% of lot coverage is permitted. Requested: 89% lot coverage.~~

~~Vote: Mr. Alexander, yes; Ms. Kramb, yes; and Ms. Cooper, yes.
[Motion carried 3-0]~~

4. Penalty Code Amendment, 21-110ADMC, Administrative Request – Code Amendment

The Chair said this application is a request for an Amendment to Zoning Code §153.999: Administration and Enforcement - Penalty for unauthorized demolition of and alteration to properties within the Architectural Review District and outlying historic properties listed on Appendix G.

Staff Presentation

Mr. Ridge stated there was an opportunity to address outdated penalties associated with violations to Chapter 153; and specifically, unauthorized modifications to or demolition of historic sites/structures. The current penalty is as follows:

Any violation to Chapter 153 is subject to a Minor Misdemeanor and a fine of \$100.

- Each day during which a violation or noncompliance occurs constitutes a separate offense.

The proposed regulations increase the minimum charge to a 4th-degree misdemeanor, maintaining the current language that "Each day of noncompliance constitutes a separate offense." The amendment establishes a new section, which addresses violations specific to properties requiring a Board Order from the Architectural Review Board (ARB). Historic properties and those identified on Appendix G would be involved. Additionally, the first offense is subject to a 4th-degree misdemeanor with a fine of \$250 and possible jail time of ≤30 days. A second offense, within 5 years of the first, is subject to a 2nd-degree

Architectural Review Board
Meeting Minutes of August 25, 2021
Page 12 of 16

misdemeanor with a minimum fine of \$500, a maximum fine of \$750, and maximum jail time ≤ 90 days. The current penalty and the proposed amendments were summarized in a table [shown.] The process for each of these offenses will be reviewed in the Mayor's Court.

Staff requests the Architectural Review Board review the proposed amendment to Code Section 153.999 – Penalty (21-113ADMC) and make a recommendation of approval to the Planning and Zoning Commission for consideration at a future meeting.

Board Questions for Staff

Ms. Kramb stated if an element or structure is demolished, the Board cannot charge the offender every day for something that does not exist anymore. The offender would still be out just \$250, which is cheaper than following the law. She asked if there was a way to increase the amount. Yes, it is better than the current \$100 but \$250 is still not worth chasing after an offender. She did not believe this increase was enough to keep people from offending in the first place.

Ms. Martin stated Staff felt similarly regarding the monetary values but they are determined in the Ohio Revised Code by class of offense. The community does not get to decide the monetary values. The main point here is to increase the offense from a minor misdemeanor to a misdemeanor that has a degree associated with it and it becomes a criminal offense with potential jail time, appearing on a criminal record. A large portion of those days may be suspended but with suspension of some jail time, the court can impose conditions and those conditions can be particularly helpful when a property had been altered without authorization. Demolition is very problematic.

Board Discussion

Ms. Kramb said it would be at the judge's discretion. If 30 days of jail time could be imposed, the offender could negotiate a penalty more to his/her liking.

Ms. Martin stated the Law Director's office, in advancing the case, would make a recommendation to the seriousness of the offense to have the appropriate penalty imposed.

Mr. Alexander stated the legal language for this offense is very broad.

Ms. Cooper said one of the other benefits of the new language and penalty, as vague as it may be, could be used in a letter to be a deterrent. The Law Director should determine the appropriate language. The case that prompted this action, involved a homeowner that demolished a structure without first requesting approval. The City believed that action was bold, and questioned whether the property owner knew he was permitted to do that or not.

Ms. Holt stated, at the Board workshop last month, solutions were sought to avoid this from happening in the future. One of the solutions was the Code Revision being reviewed tonight; another was a flyer that the Planning Department would send out on an annual basis, reminding Historic District property owners that they are subject to special rules in addition to the other zoning laws. Taking this step of giving notice to people of the requirements they have to follow in the Historic District is a proactive solution. The flyer is getting finalized right now. A flyer will also be included in the City's Welcome Packet, alerting new property owners to their responsibilities to uphold as business owners or residential property owners.

Ms. Cooper stated it is important that we welcome new property owners and advise them about who to reach out to for guidance.

Ms. Kramb inquired about another solution discussed, whereas Staff puts together an extensive inventory of all of the additional outbuildings or structures that count under the use provisions so when a letter is sent, it is specific to what is on their particular property such as an outhouse, chicken coop, springhouse or shed, etc.

Ms. Holt said that project will not be started until the first general flyers have gone out so the City is not surprising people about their property and Staff has a process in mind.

Architectural Review Board
Meeting Minutes of August 25, 2021
Page 13 of 16

Mr. Alexander asked if the City has documentation on the significant number of stone walls, (some may not be original). That distinction should be included.

Public Comment

Tom Holton, 5957 Roundstone Place, Dublin, OH, stated he did not know how to apply a date of installation for the stone walls.

There was a site on Riverside Drive, where the log cabin was discovered and taken apart by the City. The house was later demolished. There was a smoke house, intact and in very good condition (unsure of date) on the same property. According to the property owner, during the excavation for the new build, a contractor backed into the smoke house and destroyed it. Under these rules, the property owner would have been responsible, even though they did not do the damage, themselves. That is a real case he wanted to point out.

Ms. Kramb moved, Ms. Cooper seconded, to recommend approval to the Planning and Zoning Commission for the Administrative Request for an Amendment to the Penalty Code.

Vote: Ms. Cooper, yes; Ms. Kramb, yes; and Mr. Alexander, yes.

[Motion carried 3-0]

5. ~~Historic Paint Colors, 20-130ADM, Administrative Request~~

~~The Chair said this informal review application is a proposal to establish pre-approved paint colors for the Architectural Review District and outlying historic properties listed on Appendix G.~~

Staff Presentation

~~Ms. Martin stated this was a re-introduction of this particular Administrative Request; it was brought before the ARB, August 2020. At the time, Staff and the Board discussed paint colors, the Historic District Code Amendments, and the *Historic Design Guidelines*.~~

~~The ARB decided it was best to prioritize the Code Amendments and the *Historic Design Guidelines* as an immediate need. After the adoption of those two documents in Feb 2021, the ARB had another opportunity to look at the Historic District paint color document. There are now new members on the Board, and all have had time to reflect. The Historic District Code provides an opportunity for the ARB to establish a set of approved paint colors. The intent is to create clarity, streamline the process, and make it user-friendly for both residential and commercial property owners, provided they are able to select a paint color that is on the list and architecturally appropriate for their structure. This evening, Staff is requesting the Board's affirmation on how this document should be reorganized, specifically, in regard to time period versus organizing the list by architectural style, which was the way it was presented at the August 2020 meeting. The way the document was structured [shown] was reviewed. The document was intended to be a companion document to the Historic District Code and the *Historic Design Guidelines*. That intent would continue to remain the same. The architectural design section of the *Historic Design Guidelines* that were ultimately adopted, de-emphasized architectural styles while acknowledging them, as well as acknowledging all building types. The paint color document was predicated on the original structure of the guidelines that prioritized architectural styles to provide a road map. That document no longer emphasizes architectural styles and the companion to the paint colors document, no longer exists. The paint colors document includes architectural styles through a period of time, and also includes history about what would be traditional to an architectural style or indicative of that period of time, due to technology and trends. Body, trim, door, shutter and outbuilding color recommendations are listed for a particular style period of time. The document specifies paint colors from historic paint palettes obtained from three different manufacturers. A property owner would not be required to purchase paint from one of these manufacturers but would be required to use the color code, in order to purchase an alternate brand. Staff has considered what some of these opportunities may be to reassess the structure of this document and organize it by~~

§ 153.999 PENALTY.

(A) In the event any violation of this chapter is committed, for which no specific penalty is otherwise provided, the owner or owners of the building or premises upon which the violation has been committed, any architect, builder or contractor who assists in the commission of such violation and any person, firm or corporation who violates or assists in the violation of any of the provisions of this chapter or who fails to comply herewith or with any requirement hereof, who builds in violation of any statement, plan, submitted and approved hereunder, or whoever constructs, reconstructs, alters, modifies or demolishes any exterior architectural feature, site, sign now or hereafter in the Historic District in violation of this chapter shall, for each and every violation for noncompliance be guilty of a minor misdemeanor, subject to a fine of \$100. Each day during which a violation or noncompliance occurs shall constitute a separate offense.

('80 Code, §§ 1123.99, 1183.04(e), 1191.99) (Ord. 45-89, passed 6-19-89; Ord. 25-93, passed 9-13-93)

(B) Anyone who operates a helicopter, or allows operation of a helicopter in violation of the provisions of §53.094 shall, upon conviction, pay a fine of not more than \$500 for each violation.

(C) Violation of §§ 153.140 - 153.147 shall constitute a fourth degree misdemeanor punishable per day per occurrence. Nothing herein shall prevent the City from taking such other lawful action, including civil actions at law or equity, including temporary restraining orders, preliminary injunctions and permanent injunctions, as is necessary to prevent or remedy any violations. A separate and distinct violation shall be deemed to have occurred for each protected tree unlawfully removed and/or not replaced in violation of any of the sections aforesaid.

('80 Code, § 1184.05(f)) (Ord. 101-90, passed 11-19-90; Am. Ord. 95-96, passed 10-5-98)