

*This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0624**

State of Minnesota,  
Respondent,

vs.

James Douglas Hardy,  
Appellant.

**Filed March 25, 2013  
Affirmed  
Hooten, Judge**

Hennepin County District Court  
File No. 27-CR-09-35238

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Alina Schwartz, Campbell Knutson, P.A., Eagan, Minnesota (for respondent)

James D. Hardy, St. Louis Park, Minnesota (pro se appellant)

Considered and decided by Cleary, Presiding Judge; Hooten, Judge; and Collins,  
Judge.\*

**UNPUBLISHED OPINION**

**HOOTEN**, Judge

Appellant challenges three convictions for failure to obtain building permits and inspections for an addition to his residence in violation of the St. Louis Park City Code,

---

\* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

arguing that the city ordinance and Minnesota State Building Code does not apply to his personal residence, that he is not a “person” within the meaning of the city ordinance and state building code, and that he was denied due process because he was unable to pursue an administrative appeal to the City of St. Louis Park. Because the district court correctly concluded that the city ordinance and state building code apply to appellant and his residence, and that he was afforded sufficient opportunity for administrative relief, we affirm.

### **FACTS**

The facts are essentially undisputed. On March 3, 2009, Colby Cartney, a property maintenance inspector with the City of St. Louis Park (the city), received a complaint regarding vehicles being stored on residential property. While investigating the complaint, he noticed that a large addition had been built onto the back of the residence that was not present during previous visits to the property. He described the addition as “a 20 by 20 accessory structure . . . attached to the back . . . of the house.” After discovering that no permits were issued for the addition, Cartney brought the matter to the attention of John Tilton, chief building official for the city. On March 17, 2009, Cartney and Tilton spoke with appellant James Douglas Hardy, owner of the residence, who expressed his opinion that the permit requirement did not apply to private residential construction.

That same day, Tilton sent appellant a “Violation Notice” stating that the addition was constructed in violation of the Minnesota State Building Code (state building code) and St. Louis Park ordinances, and set a compliance deadline of March 30, 2009. On

March 26, 2009, appellant sent a letter to the city inspections department and the Minnesota Department of Labor and Industry (DLI) requesting “reconsideration of the violation notice as purposed [sic] by your administration.” The DLI responded in a letter dated March 30, 2009, that it had no authority over the violation because it was not issued by the DLI commissioner. After failing to comply, appellant received a final violation notice from the city’s attorney dated April 1, 2009, representing that failure to comply would result in criminal prosecution. In response, appellant sent a letter to the DLI, the city inspections department and the city’s attorney requesting discussion of various legal issues in an administrative forum. Appellant sent an additional letter to the city’s attorney and inspections department requesting reconsideration of the violation notice.

Thereafter, appellant received a letter from the DLI dated April 21, 2009, informing him that, unbeknownst to the department as of its letter of March 30, “the City of St. Louis Park does not have a standing Building Code appeals board. . . . Our office will convene an appeals board when the municipality involved does not have one.” Appellant was provided with an appeals application and told that a hearing would be scheduled upon receipt of his appeal. The city’s attorney responded, referencing the lack of the city’s own appeals mechanism and stating that criminal prosecution would be stayed in the event he pursued an appeal through the DLI. However, in a letter dated May 7, 2009, sent to the DLI and the city’s attorney and inspection department, appellant asserted that he was under the impression that Tilton was operating as delegate of the DLI, that he expected a response from Tilton, and that he “had no intention of directing an appeal to [DLI].” The city’s attorney responded by again asserting that the city could

not hear an appeal and that criminal proceedings would be initiated if he failed to comply with the violation notice by May 27, 2009.

On July 10, 2009, appellant was charged with three counts of violating the St. Louis Park City Code (SLPCC).<sup>1</sup> On August 28, 2009, appellant filed a petition for a writ of prohibition to prevent further prosecution of the criminal complaint, which was denied by this court on September 15, 2009. *In re Hardy*, No. A09-1583 (Minn. App. Sept. 15, 2009) (order op.). Appellant then brought a motion to dismiss the charges for lack of probable cause, which was denied by the district court on February 16, 2010. After the district court denied appellant's motion for dismissal for lack of mens rea and due process, appellant moved the district court for reconsideration. Appellant also petitioned this court for a second time on October 24, 2011, requesting a writ of prohibition on the basis that the criminal proceedings violated his right to procedural due process. On November 2, 2011, this court denied appellant's request for a writ of prohibition, and on November 3, 2011, the district court denied appellant's motion for reconsideration and commenced a court trial.

At trial, appellant testified that he never received a response to a letter that he sent to the city, dated July 10, 2006, in which he inquired about the kind of work requiring a permit for remodeling. He testified that he "had no way of knowing that my private

---

<sup>1</sup> Count 1 alleged that appellant "failed to obtain a permit prior to engaging in any activity for which a permit is required" in violation of St. Louis Park, Minn., Code of Ordinances (SLPCC) § 6-31 (2001); count 2 alleged that appellant "failed to obtain the required permits for all work covered by the" state building code and failed to submit plans to the city for review in violation of SLPCC § 6-67(a)(2) (2002); and count 3 alleged that appellant "failed to obtain the required inspections of work governed under the" state building code in violation of SLPCC § 6-35(a) (2001).

home and one that had no corporate interest . . . was regulated under the state building code.” On February 16, 2012, the district court issued an order finding appellant guilty on all three counts. Appellant was ordered to pay \$100. In lieu of continued unsuccessful efforts to bring about compliance, the district court ordered the prosecutor to file a certified copy of the sentencing order with the registrar of titles. This appeal follows.

## D E C I S I O N

### 1. Sufficiency of the Complaint

Appellant first argues that the criminal complaint is insufficient because it was brought in the name of the state and did not cite any state statutes. “All prosecutions for violation of ordinances shall be brought in the name of the city upon complaint and warrant as in other criminal cases.” Minn. Stat. § 412.861, subd. 1 (2008). The complaint lists only the State of Minnesota and Hennepin County, though it was signed by the St. Louis Park city attorney and the city’s chief building official. However, the law does not mandate strict compliance with the requirements of a charging document, and appellant cites no authority requiring dismissal due to this error.

“The complaint is a written signed statement of the essential facts constituting the offense charged.” Minn. R. Crim. P. 2.01 (2008). “A complaint shall be substantially in the form prescribed by Rule 2.” Minn. R. Crim. P. 17.02, subd. 1 (2008). “The Sixth Amendment, applicable to the states through the Fourteenth Amendment Due Process Clause, demands that a defendant be informed of the nature and cause of the accusation.” *State v. Dunson*, 770 N.W.2d 546, 551 (Minn. App. 2009) (quotations omitted), *review*

*denied* (Minn. Oct. 20, 2009). “Likewise, Article 1, section 6, of the Minnesota Constitution guarantees a criminal defendant ‘the right to be informed of the nature and cause of the accusation’ against him or her.” *Id.* (quotation omitted). “The ‘nature and cause’ requirement is satisfied if an indictment contains such descriptions of the offense charged as will enable a defendant to make his defense and to plead the judgment in bar of any further prosecution of the same crime.” *Id.* (quotation omitted). “At the pleading stage, due process requires that ‘an accused . . . be adequately apprised of the charge made against him in order that he may prepare his defense, as well as to insure against jurisdictional defects.’” *Id.* (quoting *State v. Pratt*, 277 Minn. 363, 366, 152 N.W.2d 510, 513 (1967)).

Nothing in the record supports the assertion that the failure to list the city as a party in the complaint prevented appellant from being notified of the charges against him or impeded his ability to prepare a defense and insure against jurisdictional defects. The charging document sets forth a detailed summary of the events leading up to the charges, itemizes the charges and supporting provisions of the SLPCC, and is signed by Tilton and the same attorney for the city with whom he was corresponding regarding impending charges and an administrative appeal. There are no facts implicating any possible confusion between multiple jurisdictions. Appellant did not suffer prejudice due to the erroneous inclusion of the state in the summons and complaint. *See id.* at 552 (“Precedent indicates that a charging document imperfect in form is not fatally defective if it adequately apprises the defendant of the charge against him.”); *see also State v. Graffmuller*, 26 Minn. 6, 7–8, 46 N.W. 445, 445 (1879) (stating that erroneous inclusion

of the city in the docket in prosecution for violation of city charter “did not oust the justice of jurisdiction, nor did it in any manner prejudice the defendant,” was “immaterial,” and “a mere irregularity, not affecting any substantial right of the party”).

There is no merit to appellant’s argument that the district court lacked subject matter jurisdiction because the complaint cited only provisions of the city ordinance, and did not cite Minnesota statutes. Citation to city or municipal ordinances in a criminal complaint is expressly anticipated by law. “It shall be a sufficient pleading of the ordinances or resolutions of the city to refer to them by section and number or chapter.” Minn. Stat. § 412.861, subd. 2 (2008).

The indictment or complaint shall state for each count the citation of the statute, rule, regulation *or other provision of law* which the defendant is alleged to have violated. Error in the citation or its omission shall not be ground for dismissal or for reversal of a conviction if the error or omission did not prejudice the defendant.

Minn. R. Crim. P. 17.02, subd. 3 (2008) (emphasis added). It is well settled that a city ordinance is a provision of law. *See Builders Ass’n of Minn. v. City of St. Paul*, 819 N.W.2d 172, 181–82 (Minn. App. 2012) (“An ordinance is commonly defined as an ‘authoritative law or decree,’ especially ‘a municipal regulation.’” (quoting *Black’s Law Dictionary* 1208 (9th ed. 2009))); *Oakman v. City of Eveleth*, 163 Minn. 100, 106, 203 N.W. 514, 516 (1925) (“An ordinance is a local law.”); *Bott v. Pratt*, 33 Minn. 323, 328, 23 N.W. 237, 239 (1885) (“An ordinance which a municipal corporation is authorized to make, is as binding on all persons within the corporate limits as any statute or other laws of the commonwealth . . .”).

## 2. Applicability of the Building Code

The SLPCC is a codification of the ordinances of the city. The relevant ordinances provide: “It is unlawful for any *person* to engage in any activity for which a permit is required by any provision of this chapter or any other law or ordinance of the city without first obtaining the permit required under this section.” SLPCC § 6-31 (emphasis added). “Permits are required for all work covered by the state building code including plumbing, electrical, private sanitary sewer, storm sewer, water service and fire service piping from the public main to the place of termination.” *Id.* § 6-67(a)(2). “All work regulated by this chapter is required to be inspected. The permit holder must notify the city and request an inspection when work is ready for inspection. The request for inspection must be made in advance and during normal city business hours.” *Id.* § 6-35(a). The Minnesota State Building Code, Minn. Stat. §§ 326B.101–194 (2008), was adopted and fully incorporated into the city code by SLPCC § 6-66 (2007).

Appellant argues that these ordinances do not apply to him because he is not a “person” for purposes of the SLPCC, and that the SLPCC does not apply to his private dwelling. We disagree. The SLPCC defines a “person” as “an individual, proprietorship, partnership, corporation, association or other legal entity.” *Id.* § 6-1 (2001). “[W]ords, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning[.]” *Id.* “‘Individual’ means a human being.” Minn. Stat. § 326B.01, subd. 6 (2008). “‘Person’ means any individual, limited liability company, corporation, partnership, incorporated or

unincorporated association, sole proprietorship, joint stock company, or any other legal or commercial entity.” *Id.*, subd. 7 (2008).

Appellant asserts that the various words used in SLPCC § 6-1 actually mean “privileged legal entities,” as opposed to a “human being.” In support of this argument, he cites Minn. Stat. § 645.08 (2008) and the canon of interpretation *eiusdem generis*, arguing that the word “individual” appears distinct from the remaining particular words and the general reference to legal entities in SLPCC § 6-1 and Minn. Stat. § 326B.01, subd. 7. However, appellant ignores the requirement that canons of interpretation apply “unless their observance would involve a construction inconsistent with the manifest intent of the legislature, or [are] repugnant to the context of the statute.” Minn. Stat. § 645.08; *see also Westerlund v. Kettle River Co.*, 137 Minn. 24, 28, 162 N.W. 680, 682 (1917); *State v. Anderson*, 370 N.W.2d 703, 706 (Minn. App. 1985) (“The standard for interpreting general words is not to be applied inflexibly, and will be used to determine the intent of the legislature.”), *review denied* (Minn. Sept. 19, 1985). “[T]he effect [of *eiusdem generis*] should not be permitted to confine the operation of the statute within narrower limits than intended by the lawmakers.” *Westerlund*, 137 Minn. at 28, 162 N.W. at 682. “[W]hen it appears that the Legislature intended to go beyond the specifications, effect must be given that intent and the statute construed accordingly.” *Id.*

Section 326B.01, subdivision 6, plainly states that an “individual” means a “human being.” Appellant’s interpretation of section 326B.01, subdivision 7, and SLPCC § 6-1 eviscerates section 326B.01, subdivision 6, which manifests the legislature’s intent to include human beings in the definition of a “person” as distinct

from legal entities. *See* Minn. Stat. § 645.16 (2008) (“Every law shall be construed, if possible, to give effect to all its provisions.”). The district court did not err in concluding that appellant is a “person” for purposes of the SLPC and the state building code.

There is also no merit to appellant’s assertion that the state building code only applies to state-owned buildings or public facilities. “The State Building Code governs the construction, reconstruction, alteration, and repair of buildings and other structures to which the code is applicable.” Minn. Stat. § 326B.101. The DLI commissioner “shall . . . establish a code of standards for the construction, reconstruction, alteration, and repair of buildings, governing matters of structural materials, design and construction, fire protection, health, sanitation, and safety, including design and construction standards regarding heat loss control, illumination, and climate control.” Minn. Stat. § 326B.106, subd. 1. Neither section 326B.101, nor section 326B.106, subdivision 1, limits the applicability of the state building code to public or state-owned buildings.

Minnesota law sets forth broad applicability of the state building code. “The State Building Code is the standard that applies statewide for the construction, reconstruction, alteration, and repair of buildings and other structures of the type governed by the code.” Minn. Stat. § 326B.121, subd. 1. Minn. R. 1300.0030, subp. 2(A) (2009), states that the state building code “applies statewide.” “The code applies to the construction, alteration, moving, demolition, repair, and use of *any building, structure, or building service equipment in a municipality*, except work located primarily in a public way, public utility towers and poles, mechanical equipment not specifically regulated in the code, and hydraulic flood control structures.” Minn. R. 1300.0040 (2009) (emphasis added).

In support of his argument, appellant merely notes that the state building code only defines two types of buildings: a “[p]ublic building” as defined in section 326B.103, subdivision 11, and a “[s]tate licensed facility” as defined in section 326B.103, subdivision 13. He also notes that the definition of “[r]emodeling” pertains to the “deliberate reconstruction of an existing public building” pursuant to section 326B.103, subdivision 12. However, none of these terms appear in provisions setting forth the broad applicability of the state building code,<sup>2</sup> but are instead used in provisions addressing the application of the state building code in certain specific circumstances.<sup>3</sup>

Appellant further argues that the city does not have authority to enforce the state building code. He correctly notes that the council of a statutory city has the authority to “construct or acquire structures needed for city purposes, to control, protect, and insure the public buildings, property, and records,” Minn. Stat. § 412.221, subd. 3 (2008), and “to regulate the construction of buildings,” Minn. Stat. § 412.221, subd. 28 (2008). Appellant argues that these provisions do not include the authority to regulate private property. However, these powers “are not exclusive and other provisions of law granting additional powers to cities or to classes of cities shall apply except where inconsistent with this chapter.” Minn. Stat. § 412.211 (2008).

---

<sup>2</sup> See Minn. Stat. § 326B.121.

<sup>3</sup> See, e.g., Minn. Stat. § 326B.106, subd. 2 (providing that “[t]he commissioner shall administer and enforce the State Building Code as a municipality with respect to public buildings and state licensed facilities in the state” and referencing agreements between municipalities and the commissioner “for code administration and enforcement service for public buildings and state licensed facilities”); Minn. Stat. § 326B.106, subd. 8 (requiring the commissioner or municipality under contractual agreement to approve plans of construction for remodeling on public buildings or state-licensed facilities).

Appellant ignores the plain language of Minn. Stat. § 326B.121, subd. 2(a), which provides that “[i]f, as of January 1, 2008, a municipality has in effect an ordinance adopting the State Building Code, that municipality must continue to administer and enforce the State Building Code within its jurisdiction.” “A municipality may enforce the State Building Code by any means that are convenient and lawful . . . .” *Id.*, subd. 2(f). A person who violates the state building code is guilty of a misdemeanor. *See* Minn. Stat. §§ 326B.081, subd. 3 (including provisions of chapter 326B in the definition of “[a]pplicable law”); .082, subd. 16 (“Except as otherwise provided by law, a person who violates an applicable law is guilty of a misdemeanor.”) (2008). The district court did not err by concluding that the state building code applies to appellant’s private residence.

### **3. Sufficiency of Administrative Remedy**

Appellant argues that he was denied due process because of procedural irregularities associated with his violation of the state building code. He first asserts that he was not afforded the opportunity to exhaust administrative remedies because of the city’s failure to respond to his letter of July 10, 2006. This letter references a correction notice from the city dated June 13, 2006, and appears to assert, similar to his argument on appeal, that he is a private citizen and a “live being,” and not “an entity created or organized by [ ] state or federal legislation.” Further down, the letter states: “I have some questions I would like to ask. I am asking these questions because I am trying desperately to understand your power under the law, so that I may acknowledge that power and embrace it as a noble function of government.” He then states that he has “been considering doing repairs and it has been unclear to me what type of repairs are

those for which [the city] might believe that I am required to get [a] permit for remodeling; how is remodeling defined?”

The city argues that there is no law requiring a response “to this vague and indefinite request for information.” While “the state may be precluded from prosecuting a person who acts because of reliance on the state’s representations,” *Whitten v. State*, 690 N.W.2d 561, 565 (Minn. App. 2005), there is no authority supporting appellant’s argument that the lack of a reply from a governmental entity to an inquiry about the applicability or interpretation of law also results in preclusion. See *Northernair Prods., Inc. v. Crow Wing Cnty.*, 309 Minn. 386, 389, 244 N.W.2d 279, 282 (1976) (holding that county officials, “solely by virtue of their offices and in the absence of other facts evidencing an intent to assume such an obligation, owe no fiduciary duty to members of the public when giving advice”). “[U]nder well-established principles of law [individuals] are conclusively presumed to be aware of existing statutes and of the fact that revisions in them occur from time to time.” *Albrecht v. Sell*, 260 Minn. 566, 569–70, 110 N.W.2d 895, 897 (1961). “All members of an ordered society are presumed either to know the law or, at least, to have acquainted themselves with those laws that are likely to affect their usual activities.” *State v. King*, 257 N.W.2d 693, 697–98 (Minn. 1977).

Appellant also argues that the city’s failure to have its own board of appeals constitutes a lack of a “jurisdictional prerequisite” to prosecute him for violating the city and state building codes. The rules regulating the application and interpretation of the state building code provide in relevant part that a board of appeals is “to hear and decide appeals of orders, decisions, or determinations made by the building official relative to

the application and interpretation of this code.” Minn. R. 1300.0230, subp. 1 (2009). “The board of appeals shall be designated by the governing body.” *Id.* However, this rule also provides that “[f]or jurisdictions without a board of appeals, the appellant may appeal to an appeals board assembled by the [DLI’s] Construction Codes and Licensing Division.” *Id.* “Appeals hearings must occur within ten working days from the date the municipality receives a properly completed application for appeal” and “[i]f an appeals hearing is not held within this time, the applicant may appeal directly to the State Building Code Appeals Board.” *Id.* Here, appellant was given written notice of his right to pursue an appeal of the building official’s decision through the DLI, but he declined to avail himself of this administrative remedy.<sup>4</sup> He cannot now claim that there was an administrative insufficiency created by his own lack of diligence in exhausting administrative remedies.

As a matter of law, the SLPCC and the state building code apply to appellant as an individual person and to his residence. Appellant was afforded sufficient opportunity for

---

<sup>4</sup> Appellant raises a number of constitutional arguments that were not properly preserved for appellate review, including the assertion that section 326B.101 is void for vagueness. There is no reference to this particular issue in the district court record. *See Mullins v. Churchill*, 616 N.W.2d 764, 769 (Minn. App. 2000) (noting that failure to raise constitutional issues to district court waives issues on appeal), *review denied* (Minn. Nov. 15, 2000). Appellant also appears to argue that the city does not have a compelling government interest or a rational basis to adopt and enforce the state building code relative to his private residence. This issue was not addressed by the district court. It is mentioned, albeit unclearly, in appellant’s motion for reconsideration. However, the record contains no evidence that appellant notified the state attorney general of any constitutional challenge as required by Minn. R. Civ. P. 5A. *See Erickson v. Fullerton*, 619 N.W.2d 204, 208 (Minn. App. 2000) (refusing to consider constitutional equal protection challenge on appeal after party failed to notify the attorney general of the claims in district court and the record was insufficient to compare different classifications of individuals). The current record is similarly insufficient.

administrative relief with regard to the violation notice for his failure to obtain the required permits and inspections, but he declined to exhaust his administrative rights. In light of our resolution of these legal issues, we conclude that the district court's finding that appellant was guilty of all three misdemeanor counts under SLPCC §§ 6-31, 6-67(a)(2), and 6-35(a) is not clearly erroneous.

**Affirmed.**