

ORDINANCE NO. 15-3850

AN ORDINANCE OF THE CITY OF KELSO RELATING TO CODE ENFORCEMENT BY ADOPTING A NEW CHAPTER 1.50 CODE ENFORCEMENT TO THE KELSO MUNICIPAL CODE

WHEREAS, Kelso Municipal Code Chapter 8.24 Abatement of Public Nuisances was adopted in 2003 and contains several outdated enforcement provisions; and

WHEREAS, in conjunction with the revision of Chapter 8.24, the City wishes to consolidate the enforcement provisions of the old Chapter 8.24 with updated enforcement provisions related to the whole of the municipal code to provide a single uniform and efficient enforcement process for code violations throughout the City; and

WHEREAS, the City wishes to update this enforcement process to more clearly describe the enforcement process, include alternatives for voluntary compliance, and provide a progressive enforcement program that utilizes a civil hearing process.

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 1.50 ADDED. That a new Kelso Municipal Code Chapter 1.50—Code Enforcement is hereby adopted as set forth in Exhibit “A” attached hereto and incorporated fully by this reference.

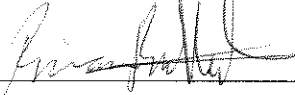
SECTION 2. SEVERABILITY. The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 3. EFFECTIVE DATE. This Ordinance shall be in full force and effect on December 1, 2015 upon its passage and publication of summary as required by law.

ADOPTED by the City Council and SIGNED by the Mayor this 15th day of September, 2015.


MAYOR

ATTEST/AUTHENTICATION:


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY

PUBLISHED: Sept 19, 2015

Exhibit A

**Chapter 1.50
Code Enforcement**

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1.50.010 Purpose and scope.

The purpose of this chapter is to set forth the enforcement procedures for violations of the Kelso Municipal Code, to provide an opportunity for a prompt hearing and decision on alleged violations, and to establish monetary penalties for such violations. This Chapter shall apply to the violations of public nuisance provisions of KMC Chapter 8.24, and such other sections of the Kelso Municipal Code making reference to this Chapter.

1.50.020 Definitions.

Unless otherwise expressly stated, the following terms shall, for the purposes of this code, have the meanings shown in this section. Words stated in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the singular. Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

(1) "Abate" means to repair, replace, remove, destroy or otherwise remedy the condition in question by such means and in such a manner and to such an extent as the authorized representative of the City determines is necessary in the interest of the general health, safety, welfare of the community or the environment. It shall include to stop, discontinue, or do away with a condition on any premises, which is in violation of this chapter or any part of the Kelso Municipal Code.

(2) "Director" means the director of the department or any designated alternate empowered by ordinance or by the City Manager to enforce the applicable city ordinance or regulation.

(3) "Authorized representative or agent" means any person having authority to act on behalf of the City of Kelso within the terms of this chapter, including, but not limited to, the City Manager, City Attorney, applicable Director (or his/her designee), code enforcement officers and any other person granted the authority to act on behalf of the City pursuant to this chapter.

(4) "Civil violation" means a code violation for which a monetary penalty may be imposed.

(5) "City" or "the City" means the City of Kelso, Washington, acting by and through the authorized representatives or agents.

(6) "Code" means the Kelso Municipal Code.

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(7) "Code violation" or "violation" means and includes an act or omission contrary to:

(a) Any ordinance, resolution, regulation or public rule of the City.

(b) The conditions of any permit, notice and order or stop work order issued pursuant to any such ordinance, resolution, regulation or public rule.

(8) "Determination of compliance" means a written statement from the City that evidence to determine that the violation(s) has been sufficiently abated as to the violation(s) stated in the voluntary compliance agreement, warning notice or notice and order.

(9) "Development" means the activity or purpose for which land or structures or a combination of land and structures are designed, arranged, occupied or maintained together with any associated site improvements. This definition includes the construction, erection, placement, movement or demolition of any structure or site improvement and any physical alteration to land itself including any clearing, grading, leveling, paving or excavation. "Development" also means any existing or proposed configuration of land, structures and site improvements, and the use thereof.

(10) "Emergency" means a situation which in the opinion of the Director requires immediate action to prevent or eliminate an immediate threat to the health or safety of people or property.

(11) "Hearing Examiner" or "examiner" means the City of Kelso Hearing Examiner, as provided by Chapter 2.14 KMC, Hearing Examiner, as adopted or hereafter amended.

(12) "High risk case" means where there is an imminent likelihood of actual bodily harm, damage to public resources or facilities, damage to real or personal property, public health exposure or environmental damage or contamination.

(13) "Omission" means a failure to act.

(14) "Permit" means any form of certificate, approval, registration, license or any other written permission issued by the city. All conditions of approval, and all easements and use limitations shown on the face of an approved final plat map which are intended to serve or protect the general public are deemed conditions applicable to all subsequent plat property owners, owners' tenants, and owners' agents as permit requirements enforceable under this chapter.

(15) "Person" means any individual, association, partnership, corporation or legal entity, public or private, and the agents, heirs, executors, administrators, contractors, and assigns of such individual, association, partnership, corporation or legal entity.

(16) "Person responsible for a code violation" or "responsible person" means any person, as above defined, who is required by the applicable regulation to comply therewith, or who commits any act or omission which is a civil violation or causes or permits a civil violation to occur or remain upon property in the City, and includes but is not limited to owner(s), lessor(s), tenant(s) or other person(s) entitled to control, use and/or occupy property where a civil violation occurs.

(17) "Property" means any building, lot, parcel, real estate, land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

(18) "Public rule" means any rule, including those policies and procedures of any department of the City, properly promulgated to implement provisions of this code.

(19) "Remediate" means to restore a site to a condition that complies with sensitive area or other regulatory requirements as they existed before the violation occurred; or, for sites that have been degraded under prior ownerships, restore to a condition which does not pose a probable threat to the environment or to the general public health, safety or welfare.

(20) "Repeat violation" means a violation of the same regulation in any location by the same person for which voluntary compliance has been sought within one year or a notice and order has been issued within two years.

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(21) "Resolution," for purposes of this chapter, means any resolution adopted by the City of Kelso City Council.

(22) "Warning" is any notice given verbally or in writing advising a person responsible for a code violation of such code violation.

(23) "Subject Property" means any building, lot, parcel, real estate, land, or portion of land, whether improved or unimproved, including adjacent sidewalks and planter strips whereupon a public nuisance or code violation occurs.

1.50.030 Obligations of person responsible for code violation.

It shall be the responsibility of any person identified as responsible for a code violation to achieve full code compliance, including bringing property into a safe and reasonable condition. Payment of civil penalties, applications for permits, acknowledgement of stop work orders, and compliance with other remedies does not substitute for performing corrective work and/or performance of actions required for code compliance and/or having property brought into compliance to the extent reasonably possible under the circumstances; the department director shall have the final authority to determine what is "reasonably possible under the circumstances."

1.50.040 Enforcement authority and administration

(1) In order to discourage public nuisances and/or otherwise promote compliance with the Kelso Municipal Code, the City may, in response to field observations, investigations or reliable complaints, determine that violations of the Kelso Municipal Code have occurred or are occurring as adopted or hereafter amended. The City may utilize any of the civil or administrative compliance and enforcement provisions contained in this Chapter.

(a) Issue warning notices, notice and orders, assess civil penalties, and/or recover costs as authorized by this chapter and/or other applicable code sections;

(b) Enter into voluntary compliance agreements with a person responsible for code violations;

(c) Require abatement by means of a judicial abatement order, and if such abatement is not timely completed by the person responsible for a code violation, undertake the abatement and charge the reasonable costs of such work as authorized by this chapter;

(d) Forward a written statement providing all relevant information relating to the violation to the office of the City Attorney with a recommendation to prosecute willful and knowing violations as misdemeanor offenses; and/or

(e) Require any other remedy available by law through the Hearing Examiner and/or court of applicable jurisdiction in Cowlitz County.

(2) The procedures set forth in this chapter are not exclusive. These procedures shall not in any manner limit or restrict the City from remedying or abating violations of the Kelso Municipal Code in any other manner authorized by law.

(3) In addition to, or as an alternative to, utilizing the procedures set forth in this chapter, the City may seek legal or equitable relief to abate and/or remedy any conditions or enjoin any acts or practices which constitute a code violation.

(4) In addition to, or as an alternative to, utilizing the procedures set forth in this chapter, the City may assess or recover civil penalties accruing under this chapter by legal action filed in the court of applicable jurisdiction in Cowlitz County by the office of the City Attorney.

(5) The provisions of this chapter shall in no way adversely affect the rights of the owner, lessee, or occupant of any property to recover all costs and expenses incurred and required by this chapter from any person causing such violation.

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(6) In administering the provisions for code compliance, the City shall have the authority to waive any one or more such provisions so as to avoid substantial injustice. Any determination of substantial injustice shall be made in writing supported by appropriate facts. For purposes of this subsection, substantial injustice cannot be based exclusively on financial hardship.

(7) The City may, upon presentation of proper credentials, with the consent of the owner or occupier of a building or property, or pursuant to a lawfully issued court order, enter at reasonable times any building or property subject to the consent or court order to perform the duties imposed by the Kelso Municipal Code.

(8) The City may request that the police, appropriate fire district, Cowlitz Regional Health District, or other appropriate city department or other public agency assist in enforcement of this code.

1.50.050 Transfer of ownership.

It shall be unlawful for the owner of any dwelling unit, building, structure or property who has received a notice and order to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit, building, structure or property to another until the provisions of the notice and order have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any notice and order issued by the community development director, or his authorized agent and shall furnish to the community development director, or his authorized agent a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such notice and order and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order.

1.50.060 Procedures when probable violation is identified.

(1) The City shall determine, based upon information derived from sources including, but not limited to, field observations, the statements of witnesses, relevant documents, and data systems for tracking violations and applicable city codes, regulations and other applicable laws, whether or not a violation has occurred. When the City has reasonable cause to determine that a violation has occurred, the violation should be documented and the person responsible for the code violation notified of such violation.

(2) When the City determines a violation has occurred, the City shall issue a written warning violation to the person determined to be responsible for the violation and the owner of the property, if different. The warning shall inform the person of the code violation of the violation and allow the person an opportunity to correct it. In cases of emergency or a high risk case the City may require immediate correction.

(3) The responsible person and the City may enter into a voluntary compliance agreement. If the responsible person does not agree to a voluntary compliance agreement, the City may issue a notice and order not earlier than 10 days from the date of the first warning by the City. Nothing herein is to limit the ability of the City and the responsible person from entering into a voluntary compliance agreement at any time prior to the appeal decision.

(4) The department director shall not be required to issue a warning and may immediately require correction, issue a notice and order, criminal citation, or notice of infraction in the following circumstances:

- (a) High risk cases;
- (b) Cases involving the public right-of-way;
- (c) Repeat violation cases;
- (d) Cases that are already subject to a voluntary compliance agreement;
- (e) When the Director determines, based on the circumstances, that a warning is not appropriate.

(5) The responsible party shall be responsible for advising the department director of his/her compliance with any warning or notice and order. The department director shall make any re-inspections as determined necessary by such department director.

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1.50.070 Service – Warning notice and notice and order.

(1) Service of a written warning notice or notice and order shall be made on a person responsible for a code violation by one or more of the following methods:

(a) Personal service of a warning notice or notice and order may be made on the person identified by the City as being responsible for the code violation, or by leaving a copy of the notice and order at the person's house of usual abode with a person of suitable age and discretion who resides there, or if the violation involves a business, with an employee of the business of a suitable age and discretion;

(b) Service directed to the business owner, landowner and/or occupant of the property may be made by posting the notice and order in a conspicuous place on the property where the violation occurred and concurrently mailing notice as provided for below, if a mailing address is available;

(c) Service by mail may be made for a notice and order by mailing one copy, postage prepaid, by certified mail, five-day return receipt requested, to the person responsible for the code violation at his or her last known address, at the address of the violation, or at the address of the place of business of the person responsible for the code violation. The taxpayer's address as shown on the tax records of Cowlitz County shall be deemed to be the proper address for the purpose of mailing such notice to the landowner of the property where the violation occurred. Service by mail shall be presumed effective upon the third business day following the day upon which the notice and order was placed in the United States mail; or

(d) Service by mail may be made for a warning notice by mailing a copy, postage prepaid, by first class mail to the person responsible for the code violation at his or her last known address, at the address of the violation, or at the address of the place of business of the person responsible for the code violation. The taxpayer's address as shown on the tax records of Cowlitz County shall be deemed to be the proper address for the purpose of mailing such notice to the landowner of the property where the violation occurred. Service by mail shall be presumed effective upon the third business day following the day upon which the warning notice was placed in the mail.

(2) For notice and orders only, when the address of the person responsible for the code violation cannot be reasonably determined, service may be made by publication once in an appropriate regional or neighborhood newspaper or trade journal. Service by publication shall conform to the requirements of Civil Rule 4 of the Rules for the Superior Courts of the State of Washington.

(3) The failure of the City to make or attempt service on any person named in the warning notice or notice and order shall not invalidate any proceedings as to any other person duly served.

1.50.080 Determination of compliance.

After issuance of a warning notice, voluntary compliance agreement or notice and order and after the person responsible for a violation has come into compliance, the City shall issue a written determination of compliance. The City shall mail copies of the determination of compliance to each person originally named in the warning notice, voluntary compliance agreement or notice and order.

1.50.090 Warning notice – Effect.

(1) A warning notice represents a determination that a code violation has occurred and that the noticed party is a person responsible for a code violation and may be subject to penalties.

(2) Issuance of a warning notice in no way limits the City's authority to issue a notice and order to any person responsible for a code violation pursuant to this chapter and/or other applicable code section(s).

1.50.100 Written Warning notice – Contents.

The written warning notice shall contain the following information:

(a) The address, when available, or location of the code violation, when applicable;

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(b) A legal description of the real property or the Cowlitz County tax parcel number where the violation occurred or is located, or a description identifying the property by commonly used locators, when applicable;

(c) A statement that the City has found the named person to have committed a code violation and a brief description of the violation(s) found;

(d) A statement of the specific ordinance, resolution, regulation, public rule, or notice and order provision that was or is being violated;

(e) A statement that the warning notice represents a determination that a code violation has occurred and that the noticed party may be subject to civil and/or criminal penalties;

(f) A statement of the amount of the civil penalty that may be assessed if the violations are not corrected as required;

(g) A statement of the corrective or abatement action required to be taken and that any required permits to perform the corrective action must be obtained from the proper issuing agency;

(h) A statement advising that, if any required action is not completed within the time specified by the warning notice, the City may proceed to seek a judicial or administrative abatement order, or may seek other applicable relief from Cowlitz County Superior Court to abate and/or remedy the violation;

(i) A statement advising the person responsible for a code violation of his/her duty to notify the City of any actions taken to achieve compliance with the warning notice;

(j) A statement advising that a failure to correct the violation(s) cited in the warning notice could lead to the denial of subsequent city permit applications on the subject property, when applicable; and

(k) A statement advising that a willful and knowing violation may be referred to the office of the City attorney for prosecution.

1.50.110 Warning notice – Modification or revocation.

(1) The City may add to, revoke in whole or in part, or otherwise modify a warning notice by issuing a written supplemental warning notice. The supplemental warning notice shall be governed by the same procedures and time limits applicable to all warning notices contained in this chapter.

(2) The City may revoke or issue a supplemental warning notice.

(3) Such revocation or modification shall identify the reasons and underlying facts for modification or revocation, and shall be served, in conformity with this chapter, on the person responsible for a violation.

1.50.120 Voluntary compliance agreement – Authority.

(1) Whenever the City determines that a code violation has occurred or is occurring, the City shall make reasonable efforts to secure voluntary compliance from the person responsible for the code violation. Upon contacting the person responsible for the code violation, the parties may enter into a voluntary compliance agreement as provided for in this chapter. The City is under no obligation to enter into a voluntary compliance agreement. It is the responsibility of the person responsible for the violation to correct the violation within the time specified in the warning notice or notice and order.

(2) A voluntary compliance agreement may be entered into at any time before an appeal is decided. If an administrative appeal has already been filed, then the voluntary compliance agreement shall require the signature of the department director for approval of the terms of the agreement.

(3) By entering into a voluntary compliance agreement, a person responsible for a code violation admits that the violations described in the voluntary compliance agreement existed and constituted a code violation, waives the right to administratively appeal, and authorizes the City to enter onto the subject property to correct the violation in the event of a default of the voluntary compliance agreement.

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(4) The voluntary compliance agreement shall incorporate the shortest reasonable time period for compliance, as determined by the department director. An extension of the time limit for compliance or a modification of the required corrective action may be granted by the department director. Any such extension or modification must be in writing and signed by the department director and person who signed the original voluntary compliance agreement.

(5) The voluntary compliance agreement is not a settlement agreement.

1.50.130 Voluntary compliance agreement – Contents.

The voluntary compliance agreement is a written, signed commitment by the person responsible for a code violation in which such person agrees to abate the violation, remediate the site, mitigate the impacts of the violation and/or remedy a code violation to achieve code compliance. The voluntary compliance agreement shall include the following:

- (a) The name and address of the person responsible for the code violation;
- (b) The address or other identification of the location of the violation, if applicable;
- (c) A description of the violation and a reference to the provision(s) of, resolution or regulation which has been violated;
- (d) A description of the necessary corrective action to be taken and identification of the date or time by which compliance must be completed;
- (e) The amount of the civil penalty to be paid, if any, and any civil penalty that will be imposed in the event the terms of the voluntary compliance agreement are not satisfied;
- (f) An acknowledgement that if the City determines that the terms of the voluntary compliance agreement are not met, the City may, without issuing any further notice, (1) impose any remedy authorized by this chapter or other applicable code section(s), (2) enter the subject property and perform abatement of the violation by the City (when applicable), (3) assess the costs incurred by the City to pursue code compliance and/or to abate the violation, including reasonable legal fees and costs, and (4) cause the suspension, revocation or limitation of a development permit obtained or to be sought by the person responsible for the code violation;
- (g) An acknowledgement that if a penalty is assessed, and if any assessed penalty, fee or cost is not paid, the City may charge the unpaid amount as a lien against the subject property where the code violation occurred, when applicable, and that the unpaid amount may be a joint and several personal obligation of all persons responsible for the violation;
- (h) An acknowledgement that by entering into the voluntary compliance agreement, the person responsible for the code violation thereby admits that the conditions or factors described in the voluntary compliance agreement existed and constituted a code violation; and
- (i) An acknowledgement that the person responsible for the code violation understands that he or she has the right to administratively appeal any such notice and order, and that he or she is knowingly and intelligently waiving those rights.

1.50.140 Failure to meet terms of voluntary compliance agreement.

(1) If the terms of the voluntary compliance agreement are not completely met, and an extension of time has not been granted, the authorized representatives of the City may take whatever reasonable steps are necessary to gain compliance, including but not limited to entering onto the subject property and abating the violation without seeking a judicial abatement order. The person responsible for the violation may, without being issued a notice and order, be assessed a civil penalty as set forth by this chapter, plus all costs incurred by the City to pursue code compliance, including abating the violation, and may be subject to other remedies authorized by this chapter and/or other applicable code section(s). Penalties imposed when a voluntary compliance agreement is not met accrue from the date that an appeal of any preceding notice and order was to

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have been filed or from the date the voluntary compliance agreement was entered into if there was not a preceding notice and order.

(2) The City may issue a notice and order or proceed with any other legal remedy authorized by law, for failure to meet the terms of a voluntary compliance agreement.

1.50.150 Notice and order – Authority.

When the City has reason to believe that a code violation exists or has occurred, and the City is unable to secure voluntary correction, pursuant to KMC 1.50.120, or that the terms of a voluntary compliance agreement have not been met, the City is authorized to issue a notice and order to any person responsible for a code violation.

1.50.160 Notice and order – Effect.

(1) A notice and order represents a determination that a violation has occurred, that the party to whom the notice is issued is a person responsible for a code violation, and that the violations set out in the notice and order require the assessment of penalties and other remedies that may be specified in the notice and order.

(2) The City is authorized to impose civil and/or criminal penalties upon a determination by the City that a violation has occurred pursuant to a notice and order.

(3) Issuance of a notice and order in no way limits the City's authority to issue a stop work order to a person previously cited through the notice and order process pursuant to this chapter.

(4) Imposition of a civil penalty creates a joint and several personal obligation in all persons responsible for a code violation who are served with notice of the violation.

(5) Any person identified in the notice and order as responsible for a code violation may appeal the notice and order within 15 days as provided for in this chapter.

(6) Failure to appeal the notice and order within the applicable time limits shall render the notice and order a final determination of the City that the conditions or factors described in the notice and order existed and constituted a violation, and that the named party is liable as a person responsible for a code violation.

1.50.170 Notice and order – Contents.

The notice and order shall contain the following information:

- (a) The address, when available, or location of the violation;
- (b) A legal description of the real property or the Cowlitz County tax parcel number where the violation occurred or is located, or a description identifying the property by commonly used locators, when applicable;
- (c) A statement that the City has found the named person to have committed a violation and a brief description of the violation(s) found;
- (d) A statement that the notice and order represents a determination that a code violation has occurred and that the person responsible may be subject to criminal penalties;
- (e) A statement of the specific provisions of the ordinance, resolution, regulation, public rule, permit condition, or notice and order provision that was or is being violated;
- (f) A statement that a civil penalty is being assessed, including the dollar amount of the civil penalties per separate violation, and that any assessed penalties must be paid within 30 days of service of the notice and order;
- (g) A statement advising that any costs of enforcement incurred by the City shall also be assessed against the person to whom the notice and order is directed;

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- (h) A statement that payment of the civil penalties assessed under this chapter does not relieve a person found to be responsible for a code violation of his or her duty to correct the violation or to pay any and all civil penalties or other cost assessments issued pursuant to this chapter;
- (i) A statement of the corrective or abatement action required to be taken and that all required permits to perform corrective action must be obtained from the proper issuing agency;
- (j) A statement advising that, if any required work is not commenced or completed within the time specified by the notice and order, the City may proceed to seek a judicial abatement order from Cowlitz County Superior Court to abate the violation, when applicable;
- (k) A statement advising that, if any assessed penalty, fee or cost is not paid on or before the due date, the City may charge the unpaid amount as a lien against the subject property where the code violation occurred, when applicable, and as a joint and several personal obligation of all persons responsible for a code violation;
- (l) A statement advising that any person named in the notice and order, or having any record or equitable title in the subject property against which the notice and order may be recorded, may appeal from the notice and order to the Hearing Examiner within 15 days of the date of service of the notice and order; except that, for violations of KMC 10.06 Junk Vehicles, there shall be a statement that the nuisance must be abated within fifteen (15) days or the City will proceed to abate and assess costs of removal against the registered vehicle owner and/or property owner and that the person may request a hearing before the City's Hearing Examiner to contest the City's notice and order.
- (m) A statement advising that a failure to correct the violations cited in the notice and order could lead to the denial of subsequent Kelso permit applications on the subject property, when applicable;
- (n) A statement advising that a failure to appeal the notice and order within the applicable time limits renders the notice and order a final determination that the conditions or factors described in the notice and order existed and constituted a violation, and that the named party is liable as a person responsible for a violation;
- (o) A statement advising the person responsible for a code violation of his/her duty to notify the City of any actions taken to achieve compliance with the notice and order; and
- (p) A statement advising that a willful and knowing violation may be referred to the office of the City attorney for prosecution.

1.50.180 Notice and order – Recording.

- (1) When a notice and order is served on a person responsible for a code violation of a specific piece of real property, the City may record and/or file a copy of the same with the Cowlitz County Auditor's office.
- (2) In the event notice and order is recorded as set forth in section 1 above, when all violations specified in the notice and order have been corrected or abated to the satisfaction of the City, the City shall record a certificate of compliance with the Cowlitz County Auditor's office within 15 days of receiving evidence of abatement. The certificate shall include a legal description of the property where the violation occurred and shall state whether any unpaid civil penalties for which liens have been filed are still outstanding and, if so, shall continue as liens on the property.
- (3) After all liens have been satisfied, the City shall file a notice of satisfaction of lien with the Cowlitz County Auditor's office within 15 days of final payment to the City.

1.50.190 Notice and order – Supplementation, revocation, modification.

- (1) The City may add to, revoke, in whole or in part, or otherwise modify a notice and order by issuing a written supplemental notice and order. The supplemental notice and order shall be governed by the same procedures and time limits applicable to all notice and orders contained in this chapter.

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(2) The City may issue a supplemental notice and order, or revoke a notice and order issued under this chapter.

(3) Such revocation or modification shall identify the reasons and underlying facts for modification or revocation, and shall be served on the person responsible for a violation in conformity with this chapter.

1.50.200. Notice and order – Administrative conference.

An informal administrative conference may be conducted by the City at any time for the purpose of facilitating communication among concerned persons and providing a forum for efficient resolution of any violation. Interested parties shall not unreasonably be excluded from such conferences.

1.50.210 Notice and order – Remedies – Abatement.

In addition to, or as an alternative to, any other judicial or administrative remedy, the City may use the notice and order provisions of this chapter to order any person responsible for a code violation to abate the violation and to complete the work at such time and under such conditions as the City determines reasonable under the circumstances. If the required corrective work is not commenced or completed within the time specified, the City may seek a judicial abatement order or other legal remedy pursuant to this chapter.

1.50.220 Notice and order – Remedy – Civil penalties.

(1) In addition to any other judicial or administrative remedy, the City may assess civil penalties for the violation of any notice and order or voluntary correction agreement according to any other applicable code section(s) or the civil penalty schedule established in KMC 1.50.230.

(2) Violation of a notice and order shall be a separate violation from any other code violation.

1.50.230 Civil penalties – Assessment schedule.

(1) Civil penalties for code violations shall be imposed for remedial purposes and shall be assessed for each violation, pursuant to applicable code section(s) and/or the following schedule:

(a) The monetary penalty for each violation shall be \$200.00. In the event the violation is not corrected within 15 days of the date set by the Director for correction of the violation in the Notice and order or the Voluntary Correction Agreement, the penalty shall be increased by one hundred fifty percent (150%) of the initial penalty. For each additional 15 day period thereafter that the violation is not corrected, the penalty shall be increased by two hundred percent (200%) of the initial penalty.

(b) In determining the monetary penalty assessment, the Director or the Hearing Examiner shall consider the following factors and may decrease the assessment of penalties based on these factors:

- (i) Whether the person responded to staff attempts to contact the person and cooperated with efforts to correct the violation.
- (ii) Whether the person showed due diligence and/or substantial progress in correcting the violation
- (iii) Whether a genuine code interpretation issue exists; and
- (iv) Any other relevant factors.

(c) In determining the monetary penalty assessment, the Director or the Hearing Examiner shall consider the following factors and may increase the assessment of penalties to an amount not to exceed double the assessed penalty amount based on these factors:

- (i) Whether the violation is a repeat violation or the person has a history of similar violations;
- (ii) Whether the violation is intentional;

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- (iii) Whether the violation creates significant environmental or property damage;
- (iv) Whether there is economic benefit to the person responsible for the violation; and
- (v) Any other relevant factors.

(2) Civil penalties shall be paid within 30 days of service of the notice and order if not appealed. Payment of the civil penalties assessed under this chapter does not relieve a person found to be responsible for a code violation of his or her duty to correct the violation and/or to pay any and all civil penalties or other cost assessments issued pursuant to this chapter.

(3) Civil penalties assessed create a joint and severable personal obligation in all persons responsible for a code violation.

(4) In addition to, or in lieu of, any other state or local provision for the recovery of civil penalties, the City may file record and/or file with the Cowlitz County Auditor to claim a lien against the real property for the civil penalties assessed under this chapter if the violation was reasonably related to the real property. Any such lien can be filed under this chapter if, after the expiration of 30 days from when a person responsible for a code violation receives the notice and order (excluding any appeal), any civil penalties remain unpaid in whole or in part.

(5) The City shall state in writing the basis for a decision to waive, reduce or increase penalties, and such statement shall become part of the record.

1.50.240 Civil penalties – Duty to comply.

A person responsible for a code violation has a duty to notify the City in writing of any actions taken to achieve compliance with the warning notice or notice and order. For purposes of assessing civil penalties, a violation shall be considered ongoing until the person responsible for a code violation has come into compliance with the warning notice, notice and order, or voluntary compliance agreement, and has provided sufficient evidence, as determined by the City, of such compliance. Proof of sufficient evidence may require right of entry by the code official to verify compliance.

1.50.250 Cost recovery.

(1) In addition to the other remedies available under this chapter and those authorized by law, upon issuance of a notice and order the City shall charge the costs of pursuing code compliance and abatement incurred to correct a code violation to the person responsible for a code violation. These charges include:

(a) Reasonable Legal Fees and Costs. For purposes of this section, "reasonable legal fees and costs" shall include, but are not limited to, legal personnel costs, both direct and related, incurred to enforce the provisions of this chapter as may be allowed by law;

(b) Administrative Personnel Costs. For purposes of this section, "administrative personnel costs" shall include, but are not limited to, administrative employee costs, both direct and related, incurred to enforce the provisions of this chapter;

(c) Abatement Costs. The City shall keep an itemized account of costs incurred by the City in the abatement of a violation under this chapter. Upon completion of any abatement work, the City shall prepare a report specifying a legal description of the real property where the abatement work occurred, the work done for each property, the itemized costs of the work, and interest accrued; and

(d) Actual expenses and costs of the City in preparing notices, specifications and contracts; in accomplishing or contracting and inspecting the work; and the costs of any required printing, mailing, or court filing fees.

(2) Such costs are due and payable 30 days from mailing of the invoice unless otherwise stated in a written agreement with the City. The City reserves the right to collect interest at the statutory set rate on any outstanding balance not paid within 30 days.

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(3) All costs assessed by the City in pursuing code compliance and/or abatement create a joint and several personal obligation in all persons responsible for a violation.

(4) In addition to, or in lieu of, any other state or local provision for the recovery of costs, the City may, after abating a violation pursuant to this chapter, file and/or record with the Cowlitz County Auditor to claim a lien against the real property for the assessed costs identified in this chapter if the violation was reasonably related to the real property, in accordance with any lien provisions authorized by state law.

(5) Any lien filed shall be subordinate to all previously existing special assessment liens imposed on the same property and shall be superior to all other liens, except for state and county taxes, with which it shall share priority. The City may cause a claim for lien to be filed and/or recorded within 90 days from the later of the date that the monetary penalty is due or the date the work is completed or the nuisance abated. The claim of lien shall contain sufficient information regarding the notice and order, a description of the property to be charged with the lien, the owner of record, and the total of the lien. Any such claim of lien may be amended from time to time to reflect changed conditions. Any such lien shall bind the affected property for the period as provided for by state law.

1.50.260 Collection of civil penalties, fees, and costs.

In addition to the remedies available under this chapter and those authorized by law, the City may use the services of a collection agency, or any other legal means, in order to collect any civil and/or criminal penalties, fees, costs, and/or interest owing under this chapter.

1.50.270 Abatement.

(1) Emergency Abatement. Whenever a condition constitutes an immediate threat to the public health, safety or welfare or to the environment, the City may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it, shall be given to the person responsible for the violation as soon as reasonably possible after the abatement.

(2) Upon failure to comply with a final unappealed notice and order, or final disposition of any appeal therefrom of a violation of KMC 10.06, the vehicle, automobile hulk, junk vehicle or parts thereof shall be removed at the request of the chief of police and disposed of to a registered tow truck operator, with notice to the Washington State Patrol and the Washington State Department of Motor Vehicles that such a vehicle, automobile hulk, or junk vehicle has been wrecked.

(3) Judicial Abatement. The City may seek a judicial abatement order from Cowlitz County Superior Court, to abate a condition which continues to be a violation of this code where other methods of remedial action have failed to produce compliance.

(4) The City shall seek to recover the costs of abatement as authorized by this chapter.

(5) No person shall obstruct, impede or interfere with the City or its authorized agents, or with any person who owns or holds any interest or estate in any property in performing any tasks necessary to correct the violation.

1.50.280 Administrative appeals – Standing – Filing requirements.

(1) Any person issued or named in a notice and order, and any owner of the land where the violation for which a notice and order is issued, shall have standing to appeal and may file a notice of appeal of the order.

(2) Any person filing an appeal under this chapter shall do so by obtaining the appeal form from the City and filing the completed appeal form along with the appeal fee as identified in the City's Master Fee Schedule within 15 days of service of the notice and order.

(3) Any administrative appeal considered under this chapter will be determined by the Hearing Examiner pursuant to the procedures set forth in this chapter and Chapter 2.14 KMC, unless in conflict with specific provisions of this chapter, in which case the specific provisions of this chapter shall control.

1.50.290 Administrative appeal – Notice of hearing.

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Upon receipt of a notice of appeal, the City shall provide a hearing notice stating the time, location and date of the hearing on the issues identified in the appeal. Such date shall not be less than ten days nor more than sixty days from the date of the appeal filing with the City. Written notice of the time and place of the hearing shall be given at least ten days prior to the date of the hearing to each appellant by the examiner's office either by causing a copy of such notice to be delivered to the appellants personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address showing on the appeal.

1.50.300 Administrative appeal – Procedures.

(1) The appeal hearing shall be conducted as provided for this chapter and in Chapter 2.14 KMC, as adopted or hereafter amended.

(2) Enforcement of any notice and order of the City issued pursuant to this chapter shall be stayed during the pendency of any administrative appeal except when the City determines that the violation poses a significant threat of immediate and/or irreparable harm and so states in any notice and order issued.

(3) When multiple notice and orders or stop work orders have been issued simultaneously for any set of facts constituting a violation, only one appeal of all the enforcement actions shall be allowed.

(4) Except in the case of a repeat violation or a violation which creates a situation or condition which cannot be corrected, the hearing will be canceled if the department director approves the completed required corrective action and payment of penalties, if any, at least 48 hours prior to the scheduled hearing.

1.50.310 Administrative appeal hearing – Procedure.

The Hearing Examiner shall conduct a hearing on the appeal of notice and order pursuant to the rules of procedure of the Hearing Examiner. The authorized representative of the City and the appellant may participate as parties in the hearing and each party may call witnesses. The City shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action, if applicable, is reasonable. The determination of the authorized representative of the City as to the need for the required corrective action shall be accorded substantial weight by the Hearing Examiner in determining the reasonableness of the required corrective action.

1.50.320 Administrative appeal – Final order.

(1) Decision of the Hearing Examiner.

(a) The Hearing Examiner shall determine whether the City has established by a preponderance of the evidence that a violation has occurred and that the required correction is reasonable and shall affirm, vacate, or modify the City's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions;

(b) The Hearing Examiner shall issue an order, within 20 days of the hearing. A copy of the decision shall be delivered to the City and to the appellant personally or sent by certified mail, postage prepaid, return receipt requested which contains the following information:

(i) The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;

(ii) The required corrective action;

(iii) The date and time by which the correction must be completed;

(iv) The monetary penalties assessed based on the criteria section 1.50.230 of this chapter; and

(v) The date and time after which the City may proceed with abatement of the unlawful condition or other action if the required correction is not completed.

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(c) Notice of Decision. The Hearing Examiner shall mail a copy of the decision to the appellant and to the department director within 20 working days of the hearing.

(d) Failure to Appear. If the person to whom the notice and order was issued fails to appear at the scheduled hearing, the Hearing Examiner will enter an order finding that the violation occurred and assessing the appropriate monetary penalty. The City will carry out the Hearing Examiner's order and recover all related expenses, plus the cost of the hearing and any monetary penalty from that person.

(2) The Hearing Examiner's final order shall be final and conclusive unless a request for reconsideration is made in accordance with subsection (4) of this section or proceedings for review of the decision are properly commenced in Cowlitz County Superior Court within the time period specified in subsection (5) of this section.

(3) Any aggrieved person upon good cause that the decision of the Hearing Examiner is based on erroneous procedure, error of law or fact, error in judgment, or the discovery of new evidence which could not have been reasonably available at the hearing, may make a written request for reconsideration by the Hearing Examiner within 10 days of the date the written decision of the Hearing Examiner was mailed to the person to whom the notice and order was directed. The request must set forth in writing the specific errors or new information relied upon by such person. The Hearing Examiner, within 10 days of the written request for reconsideration being filed with the City, after review of the record and materials, will issue a written decision of whether there will be any changes to the original decision. The time to file an appeal to the Cowlitz County Superior Court shall be stayed from the date the reconsideration is filed with the City to the date the decision on the reconsideration is mailed to the person requesting the reconsideration.

(4) An appeal of the decision of the Hearing Examiner must be filed with Cowlitz County Superior Court 30 calendar days from the date the Hearing Examiner's decision was mailed to the person to whom the notice and order was directed, or is thereafter barred.

(5) If, after any order of the City or Hearing Examiner made pursuant to this code has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the City may (1) cause such person to be prosecuted as provided for in this chapter, or (2) institute any appropriate action to abate such building or nuisance and assess the costs of abatement to the property owner as provided for in this chapter.

1.50.330 Judicial enforcement – Petition for enforcement.

(1) In addition to any other judicial or administrative remedy, the office of the City attorney, on behalf of the City, may seek enforcement of the City's order by filing a petition for enforcement in Cowlitz County Superior Court.

(2) The petition must name as respondent each person against whom the City seeks to obtain civil enforcement.

(3) A petition for civil enforcement may request monetary relief, declaratory relief, temporary or permanent injunctive relief, and any other civil remedy provided by law, or any combination of the foregoing.

1.50.340 Criminal Penalty.

After any notice and order, stop work order, any other compliance order of the building official or Director, or any decision of the Hearing Examiner made pursuant to this Chapter shall have become final, no person to whom any such order or decision is directed shall fail, neglect or refuse to obey any such order or decision. Any such person who fails to comply with any such order is guilty of a misdemeanor.

1.50.350 Citations – Authority.

Whenever the City has determined, based upon investigation of documents, statements of witnesses, field observations, data system(s) for tracking violations and/or physical evidence, that a code violation has occurred, the City may in lieu of the enforcement procedures of this chapter issue a citation of civil infraction to any person responsible for the violation.

1.50.360 Chapter not exclusive.

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The provisions of this chapter are in addition to any other provisions of this code and may be enforced separately from such other provisions or in combination therewith.

1.50.370 Application with other codes.

To the extent other codes adopted by reference conflict with the provisions of this chapter, the latter shall control, unless otherwise determined by an administrative code interpretation.

1.50.380 General duty.

None of the provisions of this chapter are intended to create a cause of action or provide the basis for a claim against the City, its officials, or employees for the performance or failure to perform a duty or obligation running to a specific individual or specific individuals. Any duty or obligation created herein is intended to be a general duty or obligation running in favor of the general public.