CITY OF MAPLE VALLEY, WASHINGTON

ORDINANCE NO. O-13-534

AN ORDINANCE OF THE CITY OF MAPLE VALLEY, WASHINGTON, AMENDING THE TITLE OF TITLE 4, "ENFORCEMENT" TO "CODE COMPLIANCE", ADDING NEW CHAPTERS WITHIN TITLE 4, PROVIDING FOR SEVERABILITY, ESTABLISHING AN EFFECTIVE DATE, AND PROVIDING FOR CORRECTIONS.

WHEREAS, in 2000, the City Council approved Ordinance O-00-129, adopting King County Title 23, Code Compliance; and

WHEREAS, the City Council desires to adopt code compliance provisions within the Maple Valley Municipal Code; and

WHEREAS, upon staff recommendation, most provisions of King County Title 23 are being retained, and are recommended for adoption as new chapters within the municipal code;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MAPLE VALLEY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Title 4, Enforcement, of the Maple Valley Municipal Code is hereby amended, to be known as "Code Compliance".

Section 2. A new Chapter 4.10, Purpose, is hereby adopted**.**

4.10.010 Purpose.

A. The purpose of this title is to provide a uniform civil method of enforcing the City of Maple Valley's regulatory ordinances in a timely fashion. A further purpose of this title is to identify processes and methods to encourage compliance with city laws and regulations that the city has adopted pursuant to Article XI, Section 11 of the Washington Constitution and other state laws to promote and protect the general public health, safety and environment of city residents. This title declares certain acts to be civil violations and establishes non-penal enforcement procedures and civil penalties. This title also declares certain acts to be misdemeanors.

B. It is the intention of the city to pursue code compliance actively and vigorously in order to protect the health, safety and welfare of the general public. This city intention is to be pursued in a way that is consistent with adherence to, and respectful of, fundamental constitutional principles.

C. While this title does authorize the city to take action to enforce city laws and regulations, it shall not be construed as placing responsibility for code compliance or enforcement upon the city in any particular case, or as creating any duty on the part of the city to any particular person or class of persons.

Section 3. A new chapter 4.20, General Provisions, is hereby adopted.

4.20.010 Definitions.

Definitions. The words and phrases designated in this section shall be defined for the purposes of this title as follows:

A. "Abate" means to take whatever steps are deemed necessary by the director to return a property to the condition in which it existed before a civil code violation occurred or to assure that the property complies with applicable code requirements. Abatement may include, but is not limited to, rehabilitation, demolition, removal, replacement or repair.

B. "Abandoned vehicle," shall mean any vehicle left upon the property of another without the consent of the owner of such property for a period of 24 hours or longer, except that a vehicle shall not be considered abandoned if its owner or operator is unable to remove it from the place where it is located and so notifies law enforcement officials and requests assistance.

C. “Activity” as referred to in MVMC 4.60.020.A. and B., includes construction or engaging in business.

D. "Civil code violation" means and includes one or more of the following:

1. Any act or omission contrary to any ordinance or city code provision that regulates or protects public health, the environment or the use and development of land or water, whether or not the ordinance is codified; and

2. Any act or omission contrary to the conditions of any permit, notice and order or stop work order issued pursuant to any such ordinance or city code provision.

E. "Contested hearing" means a hearing requested in response to a citation to contest the finding that a violation occurred or to contest that the person issued the citation is responsible for the violation.

F. "Director" means, depending on the code violated:

1. For enforcement of Title 14 MVMC, Title 15 MVMC, Title 16 MVMC, and Title 18 MVMC, the Community Development Director or his/her designee.

2. For enforcement of Title 3 MVMC, Title 5 MVMC, Title 6 MVMC, and Title 8 MVMC, the City Manager, or his/her designee.

3. For enforcement of Title 12 MVMC, and Title 13 MVMC, the Public Works Director, or his/her designee.

4. For enforcement of Title 7 MVMC, the Parks and Recreation Director, or his/her designee.

5. For enforcement of Title 9 MVMC, and Title 10 MVMC, the City Attorney or his/her designee; or

6. Such other person as the council by ordinance authorizes.

G. "Found in violation" means that:

1. A citation, notice and order or stop work order has been issued and not timely appealed;

2. A voluntary compliance agreement has been entered into; or

3. The hearing examiner has determined that the violation has occurred and the hearing examiner's determination has not been stayed or reversed on appeal.

H. “Illegal dumping" means disposing of solid waste in any manner other than in a receptacle specifically provided for that purpose, in any public place, public road, public park or private property or in the waters of the city, except as authorized by the city or at the official solid waste disposal facility provided by King County.

I. "Hearing examiner" means the Maple Valley hearing examiner, as provided in Chapter 2.65 MVMC.

J. "Mitigate" means to take measures, subject to city approval, to minimize the harmful effects of the violation where remediation is either impossible or unreasonably burdensome.

K. "Mitigation hearing" means a hearing requested in response to a citation to explain mitigating circumstances surrounding the commission of a violation.

L. "Permit" means any form of approval, 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 and their tenants and agents as permit requirements enforceable under this title.

M. "Person" means any individual, association, partnership, corporation or legal entity, public or private, and the agents and assigns of the individual, association, partnership, corporation or legal entity.

N. "Person responsible for code compliance" means either the person who caused the violation, if that can be determined, or the owner, lessor, tenant or other person entitled to

control, use or occupy, or any combination of control, use or occupy, property where a civil code violation occurs, or both.

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

P. "Solid waste" or "wastes" means all putrescible and nonputrescible solid and semisolid wastes, except wastes identified in WAC 173-350-020, including, but not limited to, garbage, rubbish, ashes, industrial wastes, commercial waste, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, contaminated soils and contaminated dredged material, discarded commodities and recyclable materials.

Q. "Wrecked, dismantled or inoperative vehicle," shall mean a vehicle that is certified by the Community Development Director or his/her designee or the Police Department as meeting at least three of the following requirements:

1. Is three years old or older;

2. Is extensively damaged, such damage including but not limited to any of the following: a broken windshield, or missing wheels, tires, motor, or transmission;

3. Is apparently inoperable;

4. Has an approximate fair market value equal only to the approximate value of the scrap in it.

4.20.020 Declaration of public nuisance, misdemeanor.

A. All civil code violations are hereby determined to be detrimental to the public health, safety and environment and are hereby declared public nuisances. All conditions determined to be civil code violations shall be subject to and enforced pursuant to the provisions of this title except where specifically excluded by law or regulation.

B. Any person who willfully or knowingly causes, aids or abets a civil code violation pursuant to this title by any act of commission or omission is guilty of a misdemeanor. Upon conviction, the person shall be punished by either a fine not to exceed one thousand dollars, or imprisonment for a term not to exceed ninety days, or both. Each week (seven days) such violation continues shall be considered a separate misdemeanor offense. As an alternative, or in addition to any other judicial or administrative remedy provided in this title or by law or other regulation, a director may request that the city attorney consider filing, and the city attorney is authorized to file, a misdemeanor complaint against the persons responsible for code compliance when the director has documentation or evidence that the violation was willful and knowing.

4.20.030 Enforcement authority and administration.

A. In order to discourage public nuisances, make efficient use of public resources and otherwise promote compliance with applicable code provisions, a director may, in response to field observations or reliable complaints, determine that civil code violations have occurred or are occurring and may:

1. Enter into voluntary compliance agreements with persons responsible for code compliance, and issue notices of noncompliance if the persons responsible fail to comply with the terms of the voluntary compliance agreement;

2. Issue citations and assess civil penalties as authorized by MVMC Chapter 4.40;

3.Issue notice and orders, assess civil penalties and fines and recover costs as authorized by MVMC Chapter 4.50;

4. Order abatement by means of a notice and order, and if abatement is not completed in a timely manner by the person responsible for code compliance, undertake the abatement and charge the reasonable costs of such work as authorized by MVMC 4.50.050;

5. Order work stopped at a site by means of a stop work order, and if such order is not complied with, assess civil penalties, as authorized by MVMC Chapter 4.60;

6. Suspend, revoke or modify any permit previously issued by a director or deny a permit application as authorized by MVMC 4.50.090 when other efforts to achieve compliance have failed; and

7. For de minimis violations, decide not to take enforcement action.

B. Should violations occur involving multiple departments, the lead department shall be the Community Development Department.

C. The procedures set forth in this title are not exclusive. These procedures shall not in any manner limit or restrict the city from remedying civil code violations or abating civil code violations in any other manner authorized by law.

D. In addition or as an alternative to using the procedures set forth in this title, a director may seek legal or equitable relief to abate any conditions or enjoin any acts or practices which constitute a civil code violation.

E. In addition or as an alternative to utilizing the procedures set forth in this title, a director may assess or recover civil penalties accruing under this title by legal action filed in King County superior court by the city attorney.

F. The provisions of this title 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 title from any person causing such violation.

G. A director may use the services of a collection agency in order to collect any fines, penalties, fees or costs owing under this title.

H. In administering the provisions for code enforcement, the director shall have the authority to waive any one or more such provisions so as to avoid substantial injustice by application thereof to the acts or omissions of a public or private entity or individual, or acts or omissions on public or private property including, for example, property belonging to public or private utilities, where no apparent benefit has accrued to such entity or individual from a code violation and any necessary remediation is being promptly provided. For purposes of this clause, substantial injustice cannot be based on economic hardship.

I. The provisions of this title detailing city departmental administration of code compliance procedures are not to be construed as creating a substantive basis for appeal or a defense of any kind to an alleged violation.

J. The provisions of this title authorizing the enforcement of non-codified ordinances are intended to assure compliance with conditions of approval on plats, unclassified use permits, zone reclassifications and other similar permits or approvals which may have been granted by ordinances that will never be codified, and to enforce new regulatory ordinances which are not yet codified. Departments should be sensitive to the possibility that citizens may not be aware of these ordinances, and should give warnings prior to enforcing such ordinances, except in high risk cases.

K. The City Attorney is authorized by this chapter to recover all costs and reasonable attorney's fees associated with filing an action in superior court to enforce violations of its ordinances, regulations and codes.

4.20.040 Initial investigation - notice - procedures. This section sets forth guidelines for more specific procedures to be used in implementing this title. The guidelines set forth in this section are not jurisdictional, and failure to meet them in any particular case shall not affect the city's authority to enforce city law with regard to that case.

A. Before conducting a field verification, code enforcement personnel shall notify the owner, occupant, or other person responsible for code compliance of a possible violation through any combination of phone, posting and/or mail, that a field verification is to occur. Code enforcement personnel shall not cross a parcel boundary line onto private property without such prior notification, except in emergencies that pose an imminent threat to environmental health or to the public safety or specifically for the purpose of posting a notice.

B. In cases involving a complaint, the code enforcement agency shall provide notice (prior to or concurrent with a field verification) in the following manner:

1. The owner, occupant and person responsible for code compliance, if not an owner or occupant, shall be advised by personal contact, phone, posting or mail of any complaint; and

4.20.050 Procedures when probable violation identified.

A. The director shall determine, based on information derived from sources such as field observations, the statements of witnesses, relevant documents and data systems for tracking violations and applicable city law, whether or not a violation has occurred. As soon as the director has reasonable cause to determine that a violation has occurred, he/she shall document the violation and promptly notify the owner, occupant or other person responsible for code compliance.

B. Except as provided in subsection D. of this section, a warning shall be issued verbally or in writing promptly when a field inspection reveals a violation, or as soon as the director otherwise determines that a violation has occurred. The warning shall inform the person determined to be responsible for code compliance of the violation and shall include a reference to the applicable permit or zoning condition, ordinance or code related to the violation. The warning shall also allow the person an opportunity to correct the violation or enter into a voluntary compliance agreement as provided for by this title. Verbal warnings shall be logged and followed up with a written warning within fourteen calendar days, and the site shall be reinspected within seven calendar days of the written warning.

C. The guidelines in this section for warnings, notifications and reinspections are not jurisdictional, and failure to meet them in any particular case shall not affect the city's authority to enforce county city law with regard to that case.

D. Nor warning need be issued in cases involving emergencies that pose an imminent threat to environmental health or to the public safety.

E. The director may issue notices and orders in cases where he/she determines that the violation is unlikely be fully corrected in a reasonable period of time.

F. The director shall use all reasonable means to determine and cite the person or persons actually responsible for the violation occurring when the owner has not directly or indirectly caused the violation.

G. If the violation is not corrected or a voluntary compliance agreement is not achieved within a reasonable time period, a citation, notice and order or stop work order should be issued. As a guideline, citations should be issued within thirty days from receipt of a complaint, and notice and orders should be issued within one hundred twenty days from receipt of a complaint. Stop work orders should be issued promptly upon discovery of a violation in progress.

H. Any complainant who provides a mailing address and requests to be kept advised of enforcement efforts should be mailed a copy of all written warnings, voluntary compliance agreements, citations, notice and orders, stop work orders and notices of settlement conferences issued by a department with regard to the alleged violation. A complainant should be advised that the City cannot keep the complainant's name and contact information confidential under most circumstances, due to the City's requirement to comply with the Public Records Act, chapter 42.56 RCW.

4.20.060 Service - citation, notice of noncompliance, notice and order - stop work order.

A. Service of a citation, notice of noncompliance, or notice and order shall be made on a person responsible for code compliance by one or more of the following methods:

1. Personal service of a citation, notice of noncompliance or notice and order may be made on the person identified by the department as being responsible for code compliance, or by leaving a copy of the citation, notice of noncompliance, or notice and order at that person's house of usual abode with a person of suitable age and discretion who resides there.

2. Service directed to the landowner and/or occupant of the property may be made by posting the citation, notice of noncompliance or 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.

3. Service by mail may be made for a citation, notice of noncompliance or a notice and order by mailing two copies, postage prepaid, one by ordinary first class mail and the other by certified mail, to the person responsible for code compliance 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 code compliance. The taxpayer's address as shown on the tax records of the 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 citation, notice of noncompliance or notice and order was placed in the mail.

B. For notice and orders only, when the address of the person responsible for code compliance cannot reasonably be determined, service may be made by publication once in a local newspaper of general circulation.

C. Service of a stop work order on a person responsible for code compliance may be made by posting the stop work order in a conspicuous place on the property where the violation occurred or by serving the stop work order in any other manner permitted by this section.

D. The failure of the director to make or attempt service on any person named in the citation, notice of noncompliance, notice and order or stop work order shall not invalidate any proceedings as to any other person duly served.

4.20.070 Voluntary compliance agreement - authority.

A. Whenever the director determines that a code violation has occurred or is occurring, the director shall make reasonable efforts to secure voluntary compliance from the person responsible for code compliance. Upon contacting the person responsible for code compliance, the director may enter into a voluntary compliance agreement as provided for in this section.

B. A voluntary compliance agreement may be entered into at any time after issuance of a verbal or written warning.

C. The voluntary compliance agreement is a commitment by the person responsible for code compliance under which the person agrees to do any combination of abating the violation, remediating the site or mitigating the impacts of the violation. The voluntary compliance agreement shall include the following:

1. The name and address of the person responsible for code compliance;

2. The address or other identification of the location of the violation;

3. A description of the violation and a reference to the provision or provisions of the ordinance, resolution or regulation that has been violated;

4. A description of the necessary corrective action to be taken and identification of the date or time by which compliance must be completed. For the purpose of this subsection C.4, the director may either require that compliance be achieved by a specific date or that compliance be achieved by a date to be determined based on the occurrence of some future event;

5. The amount of the civil penalty that will be imposed pursuant to MVMC Chapter 4.70 if the voluntary compliance agreement is not satisfied;

6. An acknowledgment that the voluntary compliance agreement will be recorded against the property in the records and licensing services division, the recording to be accomplished as provided for in notice and order cases;

7. An acknowledgment that if the director determines that the terms of the voluntary compliance agreement are not met, the director may issue a notice of violation and order, and if the notice of violation and order is not successfully appealed pursuant to K.C.C. 20.24.090, that the city may impose any remedy authorized by this title, which includes the assessment of the civil penalties identified in the voluntary compliance agreement, abatement of the violation, assessment of the costs incurred by the county to pursue code compliance and to abate the

violation, including legal and incidental expenses, and the suspension, revocation or limitation of a development permit;

8. An acknowledgment that if any assessed penalty, fee or cost is not paid, a director may charge the unpaid amount as a lien against the property where the civil code violation occurred if owned by the person responsible for code compliance, and that the unpaid amount may be a joint and several personal obligation of all persons responsible for code compliance;

9. An acknowledgment that by entering into the voluntary compliance agreement the person responsible for code compliance thereby admits that the conditions described in the voluntary compliance agreement existed and constituted a civil violation; and that the person responsible waives the right to administratively appeal the existence of the conditions and the fact that they constituted a civil code violation, and that if a notice of noncompliance is issued and not successfully appealed, the person is subject to and liable for any remedy authorized by this title, which includes the assessment of the civil penalties identified in the voluntary compliance agreement, abatement of the violation, assessment of the costs incurred by the city to pursue code compliance and to abate the violation, including legal and incidental expenses, and the suspension, revocation or limitation of a development permit; and

10. An acknowledgment that the person responsible for code compliance understands that he or she knowingly, voluntarily and intelligently waives the right to administratively appeal a citation, notice and order or stop work order for any violation identified in the voluntary compliance agreement.

D. Upon entering into a voluntary compliance agreement, a person responsible for code compliance admits that the conditions described in the voluntary compliance agreement existed and constituted a civil code violation; and agrees that if the director issues a notice of noncompliance, and if the notice of noncompliance is not successfully challenged through administrative appeal, he or she is liable for the civil penalty available under MVMC Chapter 4.70. The person identified in the voluntary compliance agreement is liable for the costs incurred by the city to pursue code compliance and to abate the violation, including legal and incidental expenses as provided for in MVMC Chapter 4.80 and is subject to all other remedies provided for in this title.

E. An extension of the time limit for compliance or a modification of the required corrective action may be granted by the director if the person responsible for code compliance has shown due diligence or substantial progress in correcting the violation, but circumstances render full and timely compliance under the original conditions unattainable.

F. The voluntary compliance agreement is not a settlement agreement.

4.20.080 Failure to meet terms of voluntary compliance agreement - notice - appeal - abatement of violation. If the director determines that terms of the voluntary compliance

agreement are not completely met, the director may issue a notice of violation and order. The person or persons responsible for code compliance may appeal the notice of violation and order as provided by MVMC Chapter 4.80. If the director issues a notice of noncompliance, and the notice of noncompliance is not successfully challenged through administrative appeal, the director may abate the violation in accordance with this title, and the person responsible for code compliance may, without being issued a citation, notice and order or stop work order, be assessed a civil fine or penalty, in accordance with the penalty provisions of the voluntary compliance agreement, plus all costs incurred by the city to pursue code compliance and to abate the violation, including legal and incidental expenses as provided for in this title, and may be subject to other remedies authorized by this title. Penalties imposed when a voluntary compliance agreement is not met accrue from the date that notice of noncompliance was issued.

4.20.090 Right of entry. It is the intention of the chapter that any entry made to private property for the purpose of inspection for code violations be accomplished in strict conformity with constitutional and statutory constraints on entry and the holdings of relevant court cases regarding entry. The right of entry granted by this title shall not supersede those legal constraints. The director is authorized to enter upon any property for the purpose of administering this title only if entry is consistent with the constitutions and laws of the United States and the State of Washington. If required by the constitutions and laws of the United States or the State of Washington, the director shall apply to a court of competent jurisdiction for a search warrant authorizing access to property for the purpose of administering this title. The court may upon such application issue the search warrant for the purpose requested.

4.20.100 Obligation of persons responsible for code compliance.

A. It shall be the responsibility of any person identified as responsible for code compliance to bring the property into a safe and reasonable condition to achieve code compliance. Payment of fines, applications for permits, acknowledgment of stop-work orders and compliance with other remedies does not substitute for performing the corrective work required and having the property brought into compliance to the extent reasonably possible under the circumstances.

B. Persons determined to be responsible for code compliance pursuant to a citation or notice and order shall be liable for the payment of any civil fines, penalties, abatement costs, reasonable attorney’s fees, and other costs associated with city enforcement action, provided, however, that if a property owner affirmatively demonstrates that the action which resulted in the violation was taken without the owner’s knowledge or consent by someone other than the owner or someone acting on the owner's behalf, that owner shall be responsible only for bringing the property into compliance to the extent reasonably feasible under the circumstances. The owners’ affirmative demonstration must set forth as a finding of the hearing examiner, if the owners’ assertion is made in a mitigation hearing or contested hearing. Should the owner not correct the violation, only those abatement costs necessary to bring the property into a safe and reasonable condition, as determined by the director, shall be assessed by the city. No civil fines or penalties shall be

assessed against an owner or his or her property interest if the owner successfully demonstrates that the action which resulted in the violation was taken without the owner's knowledge or consent.

4.20.110 Improper disposal of solid waste prohibited - penalties, restitution.

A. No person shall throw, drop, discard, or otherwise dispose or illegally dump, or cause solid waste to be disposed or illegally dumped upon any public property, including, but not limited to, any right of way, park, beach, campground, forest land, recreational area, highway, road, street or alley, or in surrounding water, or upon private property not owned by that person or for which they are an agent of the property owner or with the authorization of the owner, unless:

1. The property is designated by the city or the county for the disposal of solid waste and the person is authorized to use such property for that purpose; or

2. The waste is placed into an approved waste receptacle in a manner that will prevent litter from being carried away or deposited by the elements upon any private or public property or waters.

B. 1. It is a civil code violation for a person to illegally dump solid waste in any amount.

2. In cases involving illegal dumping in an amount greater than one cubic foot but less than one cubic yard, the person responsible for code compliance shall, in addition to civil penalties, pay an illegal dumping cleanup restitution payment equal to twice the actual cost of cleanup, or fifty dollars per cubic foot of material deposited, whichever is greater. The director shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the enforcement agency investigating the incident if the enforcement agency is other than the city. The director may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove waste material from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The director may suspend or modify the cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the waste.

3. In cases involving illegal dumping in an amount of one cubic yard or more, the person responsible for code compliance shall, in addition to civil penalties, pay a cleanup restitution payment equal to twice the actual cost of cleanup, or one hundred dollars per cubic foot of material dumped, whichever is greater. The director shall distribute one-half of the cleanup restitution payment to the landowner and one-half of the cleanup restitution payment to the enforcement agency investigating the incident if the enforcement agency is other than the city. The landowner and the enforcement agency may be one and the same. The director may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove waste from the property, with prior permission of the legal owner or, in the case

of public property, of the agency managing the property. The director may suspend or modify the cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

4.20.120 Property owner responsible for handling and disposing solid waste. The owner, operator or occupant of any dwelling, business establishment or industry shall be responsible for the satisfactory and legal arrangement for the handling and disposing of all solid waste generated or accumulated on the property. Releasing solid waste to a transporter does not end owner responsibility for solid waste handling.

4.20.130 Presumption of responsibility for improperly disposed solid waste containing name. Whenever solid wastes dumped in violation of this chapter or any other provision of city law contains three or more items bearing the name of one individual, there shall be a rebuttable presumption that the individual whose name appears on such items committed the illegal dumping.

Section 4. A new chapter, 4.30, Abandoned, Wrecked, Dismantled, or Inoperative Vehicles, is hereby adopted.

4.30.010 Purpose. The purpose of this chapter is to establish procedures for the abatement and removal as public nuisances of abandoned, wrecked, dismantled or inoperative vehicles pursuant to Chapter 46.55 RCW.

4.30.020 Certification. Any police officer or the director may inspect and certify that a vehicle is a "wrecked, dismantled or inoperative vehicle or an abandoned vehicle". The certification shall be made in writing.

4.30.030 Wrecked, dismantled or inoperative vehicles -- prohibited activity. No person may park, store or abandon a wrecked, dismantled or inoperative vehicle, or part thereof, on private property, except where the following conditions apply:

A. A vehicle or vehicle part is completely enclosed within a building in a lawful manner where it is not visible from the street or from other public or private property; or

B. A vehicle is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, licensed auto repair business or licensed vehicle dealer and is fenced as required by RCW 46.80.130.

4.30.040 Notice required.

A. Whenever a vehicle has been determined to be a wrecked, dismantled or inoperative vehicle or as an abandoned vehicle, the last registered vehicle owner of record and the land owner of record where the vehicle is located shall each be given notice by certified mail that a public

hearing may be requested before the hearing examiner. If no hearing is requested within ten days from the certified date of receipt of the notice, the vehicle shall be removed by the city.

B. If a request for hearing is received within ten days, a notice giving the time, location and date of the hearing on the question of abatement and removal of the vehicle or vehicles shall be mailed by certified mail, with five-day return receipt requested, to the land owner as shown on the last equalized assessment roll and to the last registered and legal owner of record of each vehicle unless the vehicle identification numbers are not available to determine ownership.

4.30.050 Determination of responsibility.

A. The owner of the land on which the vehicle is located may appear in person at the hearing or present a written sworn statement in time for consideration at the hearing. The owner may deny responsibility for the presence of the vehicle on the land stating the reason for such denial. If it is determined by the hearing officer that the vehicle was placed on the land without consent of the land owner and that the land owner has not subsequently acquiesced in its presence, then costs of administration or removal of the vehicle shall not be assessed against the property upon which the vehicle is located nor otherwise be collected from the land owner.

B. Nothing in this chapter shall relieve the landowner of any civil penalties which may accrue from any zoning code violation related to the improper placement, parking or storage of vehicles or parts thereof to which the landowner has consented or acquiesced.

C. In addition to a determination of responsibility as provided for in paragraph A. of this section, the hearing examiner shall receive and examine evidence on other relevant matters, including whether a public nuisance as defined in this chapter exists. The decision of the hearing examiner shall be final.

4.30.060 Abatement and removal authorized. The city may remove any abandoned, wrecked, dismantled or inoperative vehicle, automobile hulk or part thereof, after complying with the notice requirements of this chapter and any hearing, if requested. The proceeds of any such disposition shall be used to defray the costs of abatement and removal of any such a vehicle, including costs of administration and enforcement.

4.30.070 Costs of abatement and removal.

A. The costs of abatement and removal of any such vehicle or remnant part, including costs of administration and enforcement, shall be collected from the last registered vehicle owner if the identity of such owner can be determined, unless such owner in the transfer of ownership thereof has complied with RCW 46.12.650.

If the vehicle owner cannot be established, the costs of abatement and enforcement shall be collected from the land owner on which the vehicle or remnant part is located, unless, consistent

with section 4.30.050.A., the landowner has shown in a hearing that the vehicle or remnant part was placed on such property without the landowner's consent or acquiescence.

B. Costs of administration for the removal and disposal of vehicles or remnant parts may be recovered according to the lien and personal obligation provisions of this Title.

Section 5. A new chapter, 4.40 Citations, is hereby adopted.

4.40.010 Authority. Whenever a director has determined, based on investigation of documents and/or physical evidence, that a civil code violation has occurred, the director may issue a citation to any person responsible for code compliance. The director shall make a determination whether or not to issue a citation within thirty days of receiving a complaint alleging a violation or otherwise discovering that a violation may potentially exist. Subsequent complaints shall be treated as new complaints for purposes of this section.

4.40.020 Effect.

A. A citation represents a determination that a civil code violation has been committed and that the person cited is a person responsible for code compliance. The determination is final unless contested as provided in this title.

B. Subject to MVMC 4.20.100, a citation subjects the person responsible for code compliance to the civil fine prescribed by MVMC Chapter 4.70.

C. Subject to MVMC 4.20.110, a citation may subject the person responsible for code compliance to an illegal dumping cleanup restitution payment.

D. The person issued a citation shall respond to the citation as provided in MVMC 4.40.060 and 4.40.070 within fourteen days of the date of service of the citation.

E. Failure to respond to the citation within fourteen days shall render the citation a final determination that the conditions described in the citation existed and constituted a civil code violation and that the person cited is liable as a person responsible for code compliance.

F. Imposition of a civil fine creates a joint and several personal obligation in all persons responsible for code compliance who are served with the citation. The city attorney may collect the civil fines assessed by any appropriate legal means.

G. Issuance of a citation in no way limits a director's authority to issue a notice and order or stop work order to the same person responsible for code compliance pursuant to this title. Payment of the civil fine assessed under the citation does not relieve a person responsible for code compliance of his or her duty to correct the violation or to pay any and all civil penalties accruing under a notice and order or stop work order issued pursuant to this title.

4.40.030 Contents. A citation shall contain the following:

A. A reasonable description of the location of the property on which the violation occurred;

B. The name and address of the person responsible for code compliance;

C. A brief description of the violation or violations found;

D. A statement of the specific ordinance, city code provision, permit condition, notice and order provision, or stop work order provision that was violated;

E. The date that the citation was served;

F. A statement that the citation represents a determination that a civil code violation has occurred and that the person cited is subject to civil fines;

G. A statement of the amount of the civil fine assessed;

H. A statement of the options provided in this title for responding to the citation and the procedures necessary to exercise these options;

I. A statement that, at any hearing to contest the determination that a civil code violation has occurred, the city has the burden of proving, by a preponderance of the evidence, that the violation was committed;

J. A statement that, at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the violation, the person cited will be deemed to have committed the violation;

K. A statement that the person cited must respond to the citation as provided in this chapter within fourteen days;

L. A statement that failure to respond to the citation or to appear at a requested hearing renders the citation a final determination that the conditions described in the citation existed and constituted a civil code violation and that the person cited is liable as a person responsible for code compliance;

M. A statement advising that a failure to respond to the citation or appear at a requested hearing may be referred to the city attorney for prosecution; and

N. A statement, made under penalty of perjury as provided in RCW 9A.72.085, setting forth facts supporting issuance of the citation.

4.40.040 Revocation. A director may revoke or modify a citation issued under this title if the original citation was issued in error or if a party to a citation was incorrectly named. Such revocation or modification shall identify the reasons and underlying facts for revocation.

4.40.050 Remedy - civil fines. A citation shall carry a civil fine to be determined with reference to the schedule contained in MVMC Chapter 4.70. The payment of civil fines does not relieve a person responsible for code compliance of any obligation to cure, abate or stop a violation.

4.40.060 Response to citation - presumption of violation if no response.

A. A person issued a citation must respond within fourteen days after service of the citation in one of the following ways:

1. If the person issued the citation does not contest the determination, the person shall pay the amount of the civil penalty plus cleanup restitution payment, if applicable, specified in the citation. The record shall show a finding that the person cited is the person responsible for code compliance.

2. If the person issued the citation does not contest the determination, but wishes to explain the circumstances surrounding the commission of the violation, the person shall request in writing a mitigation hearing and provide a mailing address to which notice of the hearing may be sent; or

3. If the person issued the citation wishes to contest the determination that a violation occurred or that the person issued the citation is responsible for the violation, the person shall request in writing a contested hearing and provide a mailing address to which notice of the hearing may be sent.

B. The person issued the citation shall respond to the citation by mail to the address provided on the citation. The response shall be postmarked no later than fourteen days after the date the citation was served.

C. If a person fails to respond to a citation within fourteen days, the person shall be deemed to have committed the violation stated in the citation. The director may assess the penalty and restitution payment specified in the citation.

4.40.070 Mitigating circumstances hearing - notice - conduct - determination - finding.

A. If a person requests a hearing in response to a citation to explain mitigating circumstances surrounding the commission of the violation the department shall notify the hearing examiner that a mitigation hearing has been requested. The director, working in conjunction with the city attorney, shall:

1. Schedule a hearing to be held within thirty calendar days after the department provides notice of the request; and

2. At least ten calendar days before the date of the hearing, provide notice of the time, place and date of the hearing by first class mail to the address provided in the request for hearing.

B. The hearing examiner shall conduct an informal non-evidentiary hearing. The person cited may produce witnesses, but witnesses may not be compelled to attend. The director may also attend and provide additional information, but no such attendance is required.

C. The hearing examiner shall determine whether the person's explanation justifies reduction of the civil penalty or restitution. In considering whether to reduce the civil penalty or restitution, the hearing examiner may consider mitigating factors necessary to achieve an equitable result and further the legitimate interests of the department.

D. After hearing the explanation of the person cited and any other information presented at the hearing, the hearing examiner shall enter an order finding that the person cited committed the violation and assessing civil penalties and cleanup restitution payment, if applicable, in an amount determined by the hearing examiner. The hearing examiner's decision constitutes the final agency action.

4.40.080 Violation contest hearing - notice - conduct - determination - finding.

A. If a person requests a hearing in response to a citation to contest the finding that a violation occurred or to contest that the person issued the citation is responsible for the violation, the department shall notify the hearing examiner that a contested hearing has been requested. The director, in conjunction with the city attorney shall:

1. Schedule a hearing to be held within thirty calendar days after the department provides notice of the request; and

2. At least ten calendar days before the date of the hearing, provide notice of the time, place and date of the hearing by first class mail to the address provided in the request for hearing.

B. Except as otherwise provided in this section, contested hearings shall be conducted pursuant to Chapter 2.65 MVMC and the rules of procedure of the hearing examiner. The hearing examiner may only issue subpoenas for witnesses (not violators, who, subject to section G, herein, are required to appear), and order limited discovery; however such discovery shall not delay the date set for the contested hearing, nor be grounds for a continuance of the scheduled hearing. Depositions of violators and witnesses shall not be allowed.

C. If the rights of the alleged violator to receive notice that meets due process requirements are not prejudiced:

1. A citation shall not be deemed insufficient by reason of formal defects or imperfections, including a failure to contain a detailed statement of the facts constituting the specific violation which the person cited is alleged to have committed; and

2. A citation may be amended prior to the conclusion of the hearing so as to conform to the evidence presented.

D. The burden of proof is on the city to establish by a preponderance of the evidence that the violation was committed. The hearing examiner shall consider the citation and any other written report made as provided in RCW 9A.72.085, submitted by the person who issued the citation or whose written statement was the basis for the issuance of the citation in lieu of that person's personal appearance at the hearing as prima facie evidence that a violation occurred and that the person cited is responsible. The statement and any other evidence accompanying the report shall be admissible without further evidentiary foundation. Any additional certification or declarations authorized under RCW 9A.72.085 shall also be admissible without further evidentiary foundation. The person cited may rebut the evidence and establish that the violation did not occur or that the person contesting the citation is not responsible for the violation.

E. If the citation is sustained at the hearing, the hearing examiner shall enter an order finding that the person cited committed the violation. If an ongoing violation remains uncorrected, the hearing examiner shall impose the applicable penalty. The hearing examiner may reduce the penalty if the violation has been corrected. If the hearing examiner finds by a preponderance of the evidence that the violation did not occur, an order shall be entered dismissing the citation.

F. The hearing examiner decision is a final agency action.

G. All persons cited as responsible for code compliance are required to appear for a scheduled hearing. An appearance by an attorney representing a cited person shall not be sufficient to satisfy this provision, unless the person cited is domiciled outside of Washington State. A cited person's failure to appear for a scheduled hearing shall result in an order being entered that the person cited is the person responsible for code compliance and said order shall assess the applicable civil penalty and if applicable, cleanup restitution payment.

4.40.090 Hearings open to the public. Hearings held for mitigation purposes pursuant to MVMC 4.40.070 or to contest a citation pursuant to MVMC 4.40.080 are open to the public.

Section 6. A new chapter 4.50, Notice and Order, is hereby adopted.

4.50.010 Authority. Whenever a director has reason to believe, based on investigation of documents and/or physical evidence, that a civil code violation exists or has occurred, or that the civil code violations cited in a citation have not been corrected, or that the terms of a voluntary compliance agreement have not been met, the director is authorized to issue a notice and order to any person responsible for code compliance. The director shall make a determination whether or not to issue a notice and order within one hundred twenty days of receiving a complaint alleging a violation or otherwise discovering that a violation may potentially exist, or within thirty days of the end of a voluntary compliance agreement time period which has not been met. Subsequent complaints shall be treated as new complaints for purposes of this section. Issuance of a citation is not a condition precedent to the issuance of a notice and order.

4.50.020 Effect.

A. Subject to the appeal provisions of MVMC Chapter 4.80, a notice and order represents a determination that a civil code violation has been committed, that the person cited is a person responsible for code compliance, and that the violations set out in the notice and order require the assessment of penalties and costs and other remedies including cleanup restitution payment, if applicable, specified in the notice and order.

B. Failure to correct the civil code violation in the manner prescribed by the notice and order subjects the person to whom the notice and order is directed to the use of any of the compliance remedies provided by this title, including:

1. Additional civil penalties and costs;

2. A requirement that abatement, remediation or mitigation be performed;

3. Permit suspension, revocation, modification or denial as prescribed by this chapter; or

4. Abatement by a director and recovery of the costs of abatement according to the procedures described in this chapter.

C. Any person identified in the notice and order as responsible for code compliance may appeal the notice and order within fourteen days according to the procedures in MVMC Chapter 4.80.

D. Failure to appeal the notice and order within the applicable time limits shall render the notice and order a final determination that the conditions described in the notice and order existed and constituted a civil code violation, and that the named party is liable as a person responsible for code compliance.

E. Issuance of a notice and order in no way limits a director's authority to issue a citation or stop work order to a person previously cited through the notice and order process pursuant to this title. Payment of the civil penalties assessed under the notice and order does not relieve a person found to be responsible for code compliance of his or her duty to correct the violation and/or to pay any and all civil fines or penalties accruing under citations or stop work orders issued pursuant to this title.

4.50.030 Contents. The notice and order shall contain the following information:

A. The address, when available, or location of the civil code violation;

B. A legal description of the real property or the King County tax parcel number where the violation occurred or is located, or a description identifying the property by commonly used locators;

C. A statement that the director has found the named person to have committed a civil code violation and a brief description of the violation or violations found;

D. A statement of the specific provisions of the ordinance, city code provision, permit condition, notice and order provision or stop work order that was or is being violated;

E. The dollar amount of the civil penalty per separate violation;

F. A statement advising that any costs of enforcement that exceed the amount of the penalty may also be assessed against the person to whom the notice and order is directed;

G. A statement advising that the notice and order will be recorded against the property in the records and licensing services division subsequent to service;

H. A statement of the corrective or abatement action required to be taken and that all required permits to perform the corrective action must be obtained from the proper issuing agency;

I. A statement advising that, if any required work is not commenced or completed within the time specified by the notice and order, a director may proceed to abate the violation and cause the work to be done and charge the costs thereof as a lien against the property and as a joint and several personal obligation of any persons responsible for code compliance;

J. A statement advising that, if any assessed penalty, fee or cost is not paid on or before the due date, a director may charge the unpaid amount as a lien against the property where the civil code violation occurred if owned by a person responsible for code compliance and as a joint and several personal obligation of all persons responsible for code compliance;

K. A statement advising that any person named in the notice and order or having any record or equitable title in the property against which the notice and order is recorded may appeal from the notice and order to the hearing examiner within fourteen days of the date of service of the notice and order;

L. A statement advising that a failure to correct the violations cited in the notice and order could lead to the denial of subsequent city permit applications on the subject property;

M. 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 described in the notice and order existed and constituted a civil code violation, and that the named party is liable as a person responsible for code compliance; and

N. A statement advising the person responsible for code compliance of his or her duty to notify the director of any actions taken to achieve compliance with the notice and order.

4.50.040 Recording.

A. Whenever a notice and order is served on a person responsible for code compliance, the director shall record a copy of the notice and order with the King County records and licensing services division, or its successor agency.

B. When all violations specified in the notice and order have been corrected or abated, the director shall record a certificate of compliance with the records and licensing services division, or its successor agency. The certificate shall include a legal description of the property where the violation occurred and shall state that any unpaid civil penalties for which liens have been recorded are still outstanding and continue as liens on the property.

4.50.050 Supplementation, revocation, modification.

A. Whenever there is new information or a change in circumstances, a director may add to, rescind in whole or part or otherwise modify a notice and order by issuing a supplemental notice and order. The supplemental notice and order shall be governed by the same procedures applicable to all notice and orders contained in this title.

B. A director may revoke or modify a notice and order issued under this title if the original notice and order was issued in error or if a party to an order was incorrectly named. The revocation or modification shall identify the reasons and underlying facts for revocation and shall be recorded with the records and licensing services division, or its successor agency.

4.50.060 Administrative conference. An informal administrative conference may be conducted by a director 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.

4.50.070 Remedies - civil penalties - authority and general provisions.

A. Failure to correct a civil code violation in the manner and within the time frame specified by the notice and order subjects the person responsible for code compliance to civil penalties calculated with reference to the schedule contained in MVMC Chapter 4.70.

B. Civil penalties assessed create a joint and several personal obligation in all persons responsible for code compliance. The city attorney may collect the civil penalties assessed by any appropriate legal means.

C. Civil penalties assessed also authorize the city to take a lien for the value of civil penalties imposed against the real property of the person responsible for code compliance.

D. The payment of penalties does not relieve a person responsible for code compliance of any obligation to cure, abate or stop a violation.

4.50.080 Remedies - cost recovery.

A. In addition to the other remedies available under this title, a director may charge the costs of pursuing code compliance and abatement incurred to correct a code violation to the person responsible for code compliance, including legal and incidental expenses to the extent these costs

exceed the amount of the penalty paid. Such costs are due and payable thirty days from mailing of the invoice.

B. For purposes of this section, "legal and incidental expenses" shall include but are not limited to:

1. personnel costs, both direct and indirect, including attorney's fees and costs incurred to document the violation as soon as the violation occurs;

2. hauling, storage and disposal expenses;

3. Actual expenses and costs of the city in preparing notices, specifications and contracts and in accomplishing or contracting and inspecting the work and the costs of any required printing or mailing; and

4. Interest on the costs of abatement incurred by the city.

C. 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 code compliance. The city attorney may collect the costs of code compliance efforts by any appropriate legal means.

D. The city may take a lien for the value of the costs of pursuing code compliance against the real property of the person responsible for code compliance.

4.50.090 Remedies - suspension, revocation or limitation of permit - suspension of review.

A. A director may suspend, revoke or limit any permit issued by the City whenever:

1. The permit holder has committed a code violation in the course of performing activities subject to that permit;

2. The permit holder has interfered with a director in the performance of his or her duties relating to that permit;

3. The permit was issued in error or on the basis of materially incorrect information supplied to the city;

4. Permit fees or costs were paid to the city by check and returned from a financial institution marked nonsufficient funds (NSF) or canceled;

5. For a permit or approval that is subject to critical areas review, the applicant has failed to disclose a change of circumstances on the development proposal site which materially affects an applicant's ability to meet the permit or approval conditions or which makes inaccurate the critical areas study that was the basis for establishing permit or approval conditions; or

6. For a permit or approval for which fees that have been billed are sixty days or more past due.

B. A suspension, revocation or modification authorized by subsection A of this section shall be carried out through the notice and order provisions of this chapter and shall be effective upon the compliance date established by the notice and order. The revocation, suspension or cancellation may be appealed to the hearing examiner using the appeal provisions of this title.

C. Notwithstanding any other provision of this title, a director may immediately suspend operations under any permit by issuing a stop work order pursuant to MVMC Chapter 4.60.

4.50.100 Remedies - denial of permit.

A. The city may deny a development proposal permit, when, with regard to the site or project for which the permit application is submitted:

1. Any person has been found in violation and remains in violation of any ordinance, city code provision or permit that regulates or protects the public health or the use and development of land or water, whether or not such ordinance or city code provision is codified;

2. Any person has been found in violation and remains in violation of the conditions of any permit, notice and order or stop work order issued pursuant to any such ordinance or city code provision; or

3. Any combination of the above.

B. In order to further the remedial purposes of this title, such denial may continue until the violation is cured by restoration and accepted as complete by the city and by payment of any civil penalty imposed for the violation, except that permits or approvals shall be granted to the extent necessary to accomplish any required restoration or cure.

4.50.110 Remedies - abatement - authorized. In addition to or as an alternative to any other judicial or administrative remedy, a director may use the notice and order provisions of this title to order any person responsible for code compliance to abate the violation and to complete the work at such time and under such conditions as a director determines reasonable under the circumstances. If the required corrective work is not commenced or completed within the time specified, a director may proceed to abate the violation.

4.50.120 Remedies - abatement cost recovery.

A. Abatement costs may be recovered pursuant to this chapter.

B. The director shall keep an itemized account of costs incurred by the city in the abatement of any violation under this title. Upon completion of any abatement work, the director shall prepare a case 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, including legal and incidental expenses, and interest accrued.

4.50.130 Code compliance and abatement fund - authorized. All moneys collected from the assessment of civil penalties, from cleanup restitution payments to the city, from the recovery of the costs of pursuing code compliance and abatement, and from the recovery of abatement costs, both retroactively and prospectively, shall be allocated to support expenditures for abatement and code enforcement administrative costs, including, but not limited to, personnel costs, and shall be accounted for through either creation of a fund or other appropriate accounting mechanism to be administered by the Finance Director.

Section 7. A new chapter, 4.60 Stop Work Orders, is hereby adopted.

4.60.010 Authorized. A director is authorized to issue a stop work order to a person responsible for code compliance. Issuance of a citation or a notice and order is not a condition precedent to the issuance of the stop work order.

4.60.020 Effect.

A. A stop work order represents a determination that a civil code violation has occurred and that any work or activity that is causing or contributing to the violation on the property where the violation has occurred or is occurring must cease.

B. A stop work order requires the immediate cessation of the specified work or activity on the named property. Work or activity may not resume unless specifically authorized by the director issuing the stop work order.

C. A stop work order may be appealed according to the procedures prescribed by MVMC Chapter 4.80.

D. Failure to appeal the stop work order within the applicable time limits renders the stop work order a final determination that the civil code violation occurred and that work was properly ordered to cease.

E. Failure to comply with the terms of a stop work order subjects the person responsible for code compliance to civil penalties and costs.

4.60.030 Remedy - civil penalties.

A. In addition to any other judicial or administrative remedy, a director may assess civil penalties for the violation of any stop work order according to the civil penalty schedule established in MVMC Chapter 4.70.

B. Civil penalties for the violation of any stop work order shall begin to accrue on the first day the stop work order is violated and shall cease on the day the work is actually stopped.

C. Violation of a stop work order shall be a separate violation from any other civil code violation. Civil penalties assessed create a joint and several personal obligation in all persons responsible for code compliance. The city attorney may collect the civil penalties assessed by any appropriate legal means.

D. Civil penalties assessed also authorize the city to take a lien for the value of civil penalties imposed against the real property of the person responsible for code compliance.

Section 8. A new chapter, 4.70, Fines and Penalties, is hereby adopted.

4.70.010 Assessment schedule.

A. 1. Civil fines and civil penalties for civil code violations shall be imposed for remedial purposes and shall be assessed for each violation identified in a citation, notice and order, voluntary compliance agreement or stop work order pursuant to the following schedule:

a. citations:

(1) With no previous similar code violations $100

(2) With one or more previous similar code violations $500

(3) With two or more previous violations Double the rate of the previous penalty

b. notice and orders and stop work orders:

(1) Stop work order basic penalty $500

(2) Voluntary compliance agreement and notice and order basic penalty $500

c. additional initial penalties may be added in the following amounts for violations where there is:

(1) public health risk $15

(2) environmental damage risk $15

(3) damage to property risk $15

(4) one previous similar code violation $25

(5) two previous similar code violations $50

(6) three or more previous similar code violations $75

(7) economic benefit to person responsible for violation $25

d. cleanup restitution payment - as specified in MVMC 4.20.110.

e. reinspection following the issuance of a notice and order, if the violation has not been abated in accordance with the notice and order:

(1) first reinspection, which shall occur no sooner than the day following the date compliance is required by the notice and order $150

(2) second reinspection, which shall occur no sooner than fourteen days following the first reinspection $300

(3) third reinspection, which shall occur no sooner than fourteen days following the second reinspection $450

(4) reinspection after the third reinspection, which shall only be conducted immediately preceding an administrative or court ordered abatement or at the direction of the city attorney for the purpose of presenting evidence in the course of litigation or administrative hearing against the person responsible for code compliance $450

2. For the purposes of this section, previous similar code violations that can serve as a basis for a higher level of civil penalties include violations of the same chapter of city code. Any citation, stop work order or notice and order previously issued by the director shall not constitute a previous code violation for the purposes of this section if that stop work order or notice and order was appealed and subsequently reversed.

B. The penalties assessed pursuant to this section for any failure to comply with a notice and order or voluntary compliance agreement shall be assessed daily, according to the schedule in subsection A of this section, for the first thirty days following the date the notice and order or voluntary compliance agreement required the code violations to have been cured. If after thirty days the person responsible for code compliance has failed to satisfy the notice and order or voluntary compliance agreement, penalties shall be assessed daily at a rate of double the rate for the first thirty days. Penalties may be assessed daily until the person responsible for code compliance has fully complied with the notice and order.

C. Penalties based on violation of a stop work order shall be assessed, according to the schedule in subsection A of this section, for each day the director determines that work or activity was done in violation of the stop work order.

D. Citations and cleanup restitution payments shall only be subject to a one-time civil penalty.

E. The director may suspend the imposition of additional civil penalties if the person responsible for code compliance has entered into a voluntary compliance agreement. If the person responsible for code compliance enters into a voluntary compliance agreement and cures the code violations, the director may also waive all or part of the accrued civil penalties. Penalties

shall begin to accrue again pursuant to the terms of the voluntary compliance agreement if any necessary permits applied for are denied, canceled or not pursued, or if corrective action identified in the voluntary compliance agreement is not completed as specified.

F. The civil penalties in this section are in addition to, and not in lieu of, any penalties, sanctions, restitution or fines provided for in any other provisions of law.

4.70.020 Duty to comply.

A. Persons responsible for code compliance have a duty to notify the director of any actions taken to achieve compliance with the notice and order. For purposes of assessing civil penalties, a violation shall be considered ongoing until the person responsible for code compliance has come into compliance with the notice and order, voluntary compliance agreement, or stop work order and has notified the director of this compliance.

4.70.030 Civil penalty - critical areas.

A. The code compliance provisions for critical areas are intended to encourage compliance with MVMC Chapter 18.60, to protect critical areas and the general public from harm and to further the remedial purposes of this title. To achieve this, persons responsible for code compliance will not only be required to restore damaged critical areas, insofar as that is possible and beneficial, but will also be required to pay a civil penalty for the redress of ecological, recreation, and economic values lost or damaged due to their unlawful action.

B. The provisions in this section are in addition to and not in lieu of any other penalty, sanction or right of action provided by law for other related violations.

C. Where feasible, the owner of the land on which the violation occurred shall be named as a party to the notice and order. In addition to any other persons who may be liable for a violation, and subject to the exceptions provided in MVMC 4.20.100, the owner shall be jointly and severally liable for the restoration of a site and payment of any civil penalties imposed.

D. For the purposes of this section, violation of the critical area ordinance means:

1. The violation of any provision of MVMC Chapter 18.60 or rules adopted thereunder;

2. The failure to obtain a permit required for work in a critical area; or

3. The failure to comply with the conditions of any permit, approval, terms and conditions of any critical area tract or setback area, easement or other covenant, plat restriction or binding assurance or any notice and order, stop work order, mitigation plan, contract or agreement issued or concluded pursuant to the above-mentioned provisions.

E. Any person in violation of the critical areas ordinance may be subject to civil penalties, costs and fees assessed as follows:

1. According to the civil penalty schedule included in this chapter of this title, provided that the exact amount of the penalty per violation shall be determined by the department based on the physical extent and severity of the violation; or

2. The greater of

a. An amount determined to be equivalent to the economic benefit that the person responsible for code compliance derives from the violation measured as the total of:

(1) the resulting increase in market value of the property;

(2) the value received by the person responsible for code compliance; and

(3) the savings of construction costs realized by the person responsible for code compliance as a result of performing any act in violation of the chapter; or

b. Code compliance costs not to exceed $25,000.00 incurred by the city to enforce the critical areas ordinance against the person responsible for code compliance.

4.70.040 Waivers.

A. Civil fines and civil penalties, in whole or in part, may be waived or reimbursed to the payer by the director, under the following circumstances:

1. The citation, notice and order or stop work order was issued in error;

2. The civil fines or civil penalties were assessed in error; or

3. Notice failed to reach the property owner due to unusual circumstances.

B. Civil fines and civil penalties, in whole or in part, may be waived by the director, under the following circumstances:

1. The code violations have been cured under a voluntary compliance agreement;

2. The code violations which formed the basis for the civil penalties have been cured, and the director finds that compelling reasons justify waiver of all or part of the outstanding civil penalties; or

3. Other information warranting waiver has been presented to the director since the citation, notice and order or stop work order was issued.

C. The director shall document the circumstances under which a decision was made to waive penalties and such a statement shall become part of the public record unless privileged.

4.70.050 Civil penalty - invoice - appeal - notice.

A. The invoice for civil penalties imposed under this title shall include a statement advising the person responsible for code compliance that there is a right to appeal any civil penalties assessed for any time period after achieving compliance with a notice and order, stop work order or voluntary compliance agreement.

B. The person billed in an invoice for civil penalties who believes that civil penalties were assessed for a time period after achieving compliance may file an appeal. In order to be effective, a written notice and statement of appeal must be received within fourteen days from the date of the invoice. The statement of appeal must include:

1. The identity of the person filing the appeal;
2. The address of the property where the violations were determined to exist;
3. A description of the violations for which civil penalties were assessed; and
4. A description of the actions taken to achieve compliance and the date of compliance.

C. Failure to effectively appeal the assessment of civil penalties within the applicable time limits renders the invoiced amount final.

4.70.060 Civil penalty - appeal - hearing - decision. The hearing examiner shall conduct a hearing on the appeal of the assessment of civil penalties. The burden is on the appellant to demonstrate by a preponderance of the evidence that civil penalties were assessed after achieving compliance. If the hearing examiner grants the appeal, the examiner shall modify the assessment of civil penalties accordingly. If the hearing examiner denies the appeal, the assessed civil penalties shall be reinstated in full. The hearing examiner's decision is final.

4.70.070 Civil penalty - appeal - scope governing law - tolling and application.

A. In an appeal of the assessment of civil penalties, the appellant may only challenge whether civil penalties were assessed for any time period after achieving compliance. The hearing examiner's determination is limited to finding whether civil penalties were assessed for any time period after achieving compliance and to establishing the proper penalty dates if the appeal is granted.

B. The appeal of the assessment of civil penalties to the hearing examiner shall be governed by MVMC Chapters 2.65 and 18.100, except that where specific provisions in this chapter conflict with Chapters 2.65 and 18.100, the provisions of this chapter shall govern.

C. Upon the timely receipt of a statement of appeal, the assessment of civil penalties shall be tolled pending the hearing examiner's decision. Should the hearing examiner deny or dismiss the appeal, the civil penalties shall be applied retroactively from the date that compliance was required in the notice and order, stop work order, voluntary compliance agreement or the compliance dates set in the hearing examiner's decision on an appeal of a notice and order.

Section 9. A new chapter, 4.80 Appeals and Judicial Enforcement, is hereby adopted.

4.80.010 Administrative appeal - filing requirements.

A. Any person named in a notice and order or stop work order and any owner of the land where the violation occurred for which a notice and order or stop work order is issued may file a notice of appeal of the notice and order or stop work order. The notice of appeal shall be filed within fourteen (14) calendar days of the service of the notice and order or stop work order. The date of issuance of the City's notice and order or stop work order shall not be included in the computation of time. Any appeal deadline that falls on a Saturday, Sunday or legal holiday not be included, and the deadline shall instead be the next day which is not a Saturday, Sunday or legal holiday. All appeals are due by 5:00 PM on the last day on which an appeal can be filed.

B. 1. If a notice of appeal has been filed within the time period provided in this section, the appellant shall file a statement of appeal within twenty-one (21) days of the service of the notice and order or stop work order.

C. A notice of appeal shall contain the following:

1. Appellant's name, address and phone number;

2. Identification of City decision being appealed;

3. Appellant's statement of grounds for appeal and the facts upon which the appeal is based; and

4. The relief sought.

D. Effect. The timely filing of an appeal shall stay the effective date of the decision until such time as the appeal is decided or is withdrawn except when a director determines that the violation poses a significant threat of immediate and/or irreparable harm and so states in any notice and order issued.

E. Dismissal. The requirements of this section 4.80.010 are jurisdictional. On his/her own motion, or on the motion of any party, the Examiner shall dismiss an appeal for failure of an appellant to satisfy all the requirements of this section. Any such dismissal shall mean the person named in the notice and order or stop work order is deemed to have committed the violation and any penalties and costs associated with such violation shall be assessed against by the Examiner against the person.

4.80.020 Administrative appeal - procedures.

A. The appeal hearing shall be conducted as provided for in the rules adopted for such hearings by the examiner. Where specific provisions in this title conflict with such adopted rules, the provisions of this title shall govern.

B. Enforcement of any notice and order of a director issued pursuant to this title shall be stayed as to the appealing party during the pendency of any administrative appeal under this title, except when a director determines that the violation poses a significant threat of immediate and/or irreparable harm and so states in any notice and order issued.

C. Enforcement of any stop work order of a director issued pursuant to this title shall not be stayed during the pendency of any administrative appeal under this title.

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

E. Hearings open to the public. Appeal hearings are open to the public.

4.80.030 Administrative appeal - final order.

A. Following review of the evidence submitted, the hearing examiner shall make written findings and conclusions and shall affirm or modify the notice and order or stop work order previously issued if the examiner finds that a violation has occurred. The examiner shall uphold the appeal and reverse the order if the examiner finds that no violation has occurred.

B. If an owner of property where a violation has occurred has affirmatively demonstrated that the violation was caused by another person or entity not the agent of the property owner and without the property owner's knowledge or consent, the property owner shall be responsible only for abatement of the violation. Strict compliance with permit requirements may be waived regarding the performance of such an abatement in order to avoid doing substantial injustice to a non-culpable property owner.

C. The hearing examiner's final order shall be final and conclusive unless proceedings for review of the decision are properly commenced in superior court within the time period specified by state law.

D. A final order by the hearing examiner affirming or reinstating a citation, notice and order or stop work order renders such citation, notice and order or stop work order a final agency order.

4.80.040 Judicial enforcement - petition for enforcement.

A. In addition to any other judicial or administrative remedy, the city attorney may seek enforcement of a director's order by filing a petition for enforcement in King County superior court.

B. The petition must name as respondent each alleged person against whom the director seeks to obtain civil enforcement.

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

4.80.050 Judicial enforcement - limitation on defenses. A respondent in a proceeding by petition for enforcement may not assert as a defense any fact or issue that the respondent had an opportunity to assert before the hearing examiner and did not, or upon which the final determination of the hearing examiner was adverse to the respondent.

Section 10. A new chapter 4.90, Liens, is hereby adopted.

4.90.010 Filing and contents.

A. Within ninety days from the date any civil penalty, civil fine, abatement cost, or enforcement cost is due pursuant to this title, a director may record a lien against the property of a person responsible for code compliance for the amount owing with the King Councy records and licensing services division, or its successor agency.

B. The lien shall contain the following information:

1. The city ordinance or code provision violated;

2. A brief description of the violation and its duration at the date of recording;

3. A brief description of the abatement work done, if any, and who performed the abatement work;

4. The owner of the property, if known, or a statement that the owner is not known;

5. A legal description of the property;

6. The amount of penalties, fines or costs that are owing; and

7. A sworn statement signed by a director that the director believes the claim is legally due and owing.

4.90.020 Lien - supplemental. A director may record supplemental liens with the records and licensing services division, or its successor agency, to update information regarding penalties, fines, costs or fees contained in any existing lien.

4.90.030 Lien - limitation of action - duration.

A. No lien created by this title binds the property subject to the lien for a period longer than ten years after the lien claim has been recorded, unless an action to enforce that lien is commenced in the proper court within ten years after the recording.

B. When all penalties or abatement costs, or both, assessed against the property owner have been paid, the director shall expeditiously record a satisfaction of lien with the records and licensing services division, or its successor agency. The satisfaction shall include a legal description of the property where the violation occurred.

Section 11. Severability. If any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 12. Effective Date. A summary of this ordinance shall be published in the official newspaper of the City, and this ordinance shall take effect and be in full force five days after adoption and publication pursuant to RCW 35A.13.190.

Section 13. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 13th DAY OF MAY, 2013.

_____
William T. Allison, Mayor

ATTEST:

_____
Shaunna Lee-Rice, City Clerk

APPROVED AS TO FORM:

_____
Patricia Taraday, City Attorney

Date of Publication: May 21, 2013

Effective Date: May 25, 2013