

CITY OF MONROE
ORDINANCE NO. 017/2020

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONROE, WASHINGTON, AMENDING CHAPTER 1.04 MMC CODE ENFORCEMENT; UPDATING AND CLARIFYING THE CITY'S STANDARDS, PROCEDURES, REMEDIES AND PENALTIES FOR ENFORCING THE MONROE MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City of Monroe preserves and protects the public health, safety and welfare through the adoption, administration and enforcement of the regulations codified in the Monroe Municipal Code (MMC); and

WHEREAS, with assistance from the Center for Government Innovation of the Washington State Auditor's Office, the City has recently performed a comprehensive review and evaluation of its code enforcement standards, procedures, remedies and penalties; and

WHEREAS, the City desires to update and amend the code enforcement provisions codified at Chapter 1.04 MMC as set forth herein;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONROE, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Amendment of Chapter 1.04 MMC. Chapter 1.04 MMC Code Enforcement is hereby amended to provide in its entirety as contained in Exhibit A, attached hereto and incorporated herein by this reference as if set forth in full.


Section 2. Severability. Should 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 pre-empted by State or federal law or regulation, such decision or pre-emption shall not affect the validity or enforceability of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3. Effective Date. This ordinance shall be in full force and effect five (5) days from and after its passage and approval and publication as required by law.

PASSED by the City Council and APPROVED by the Mayor of the City of Monroe, at a regular meeting held this 8th day of December, 2020.

First Reading: November 10/2020
Adoption:
Published:
Effective:

CITY OF MONROE, WASHINGTON:


Geoffrey Thomas (Dec 9, 2020 18:09 PST)

Geoffrey Thomas, Mayor

ATTEST:

APPROVED AS TO FORM:



Rebecca R. Hasart, City Clerk


Zach Lell (Dec 10, 2020 15:51 PST)

J. Zachary Lell, City Attorney

Exhibit A
Chapter 1.04
CODE ENFORCEMENT

Sections:

- 1.04.005 Alternative methods of enforcement.
- 1.04.010 Definitions.
- 1.04.020 ~~((Voluntary correction))~~**Enforcement.**
- 1.04.030 ~~((Notice and order of code violation))~~**Enforcement actions.**
- 1.04.040 ~~((Appeal of notice and order of code violation))~~**Civil penalty.**
- 1.04.050 ~~((Alternative— Civil infraction))~~**Notice and order of code violation.**
- ~~((1.04.055 Other legal action.))~~
- 1.04.060 ~~((Collection of penalties and costs— Abatement))~~**Voluntary correction agreement.**
- **1.04.080 Order assessing civil penalties.**
- **1.04.090 Right of appeal.**
- **1.04.100 Appeal hearing.**
- **1.04.110 Authority and action of hearing examiner.**
- **1.04.120 Distribution and effect of examiner’s decision.**
- **1.04.125 Civil infractions.**
- **1.04.130 Criminal offenses.**
- **1.04.135 Abatement.**
- **1.04.137 Recovery of penalties and costs.**
- **1.04.140 Limited commission.**
- **1.04.150 Authority of city attorney.**

1.04.005 Alternative methods of enforcement.

~~((A. This chapter establishes a method to enforce civil violations of the Monroe Municipal Code where a civil method is not already specified in the code, unless the remedy for the alternate civil method is abatement. This chapter does not apply to violations that constitute state crimes, as specified in RCW 35A.11.030.~~

~~1. Voluntary correction (MMC 1.04.020).~~

~~2. Notice and order of code violation (MMC 1.04.030 and 1.04.040).~~

~~3. Civil infraction under the provisions of Chapter 7.80 RCW (MMC 1.04.050).~~

~~((B.))~~ The provisions of this chapter are not exclusive and may be used in addition to other enforcement provisions authorized by the Monroe Municipal Code, **the Revised Code of Washington and/or Washington common law** except as precluded by law.

1.04.010 Definitions.

~~((As used in this chapter, unless a different meaning is plainly required))~~**Words, terms and phrases defined in a title of the Monroe Municipal Code shall apply to enforcement of that title by the city. In addition, as used in this chapter, unless a different meaning is plainly required:**

~~((A. “Abate” means to repair, replace, remove, destroy or otherwise remedy a condition which constitutes a civil violation by such means, in such a manner, and to such an extent as the applicable department director determines is necessary in the interest of the general health, safety and welfare of the community.~~

~~B. “Act” means doing or performing something.~~

~~C. “Applicable department director” means the mayor or her/his designee, including any department director or other designee, empowered by ordinance or by the mayor to enforce a city ordinance or regulation.~~

~~D. “Civil violation” means a violation for which a monetary penalty may be imposed as specified in this chapter. Each day or portion of a day during which a violation occurs or exists is a separate violation.~~

~~E. “Code” means the Monroe Municipal Code (MMC).~~

~~F. “Development” means the erection, alteration, enlargement, demolition, maintenance or use of any structure or the alteration or use of land above, at or below ground or water level, and all acts authorized by a city regulation.~~

~~G. “Emergency” means a situation which in the opinion of the applicable department director requires immediate action to prevent or eliminate an immediate threat to the health or safety of persons or property.~~

~~H. “Omission” means a failure to act.~~

~~I. “Person” means any individual, firm, association, partnership, corporation or any entity, public or private.~~

~~J. “Person responsible for the violation” means any person who has an interest in or resides on the property, whether as owner, lessee, tenant, occupant, or otherwise.~~

~~K. “Repeat violation” means a violation of the same regulation in any location by the same person, for which voluntary compliance previously has been sought or a notice of civil violation has been issued, within the immediately preceding twelve consecutive month period. A repeat violation may involve the same condition, action, or omission as a previous violation.~~

~~L. “Violation” (also referred to herein as “nuisance” or “nuisance violation”) means:~~

~~1. A violation of any city of Monroe ordinance;~~

~~2. Nuisance, as defined in MMC 6.04.020, Public nuisance defined.)~~

A. “Abate” means to repair, replace, remove, destroy, correct or otherwise remedy a condition which constitutes a violation of the Monroe Municipal Code, in such a manner and to such an extent as the department director determines is necessary in the interest of the general health, safety and welfare of the community.

B. “Code enforcement officer” means any city employee taking enforcement action as provided in this chapter.

C. “Department director” means the mayor, the department director or the director’s designee, who is generally responsible for enforcement of the Monroe Municipal Code provision which is the subject of a violation.

D. “Enforcement action” means the use of administrative and/or judicial process to achieve compliance with code provisions, including but not limited to nuisance abatement, notice and order of code violation, imposition of penalties, citation for an infraction and/or citation for a criminal offense.

E. “Emergency” means a situation which, in the determination of the department director, requires immediate action to prevent or eliminate an immediate threat to the health or safety of persons or property.

F. “Public nuisance” means:

1. A violation of any city ordinance;

2. Public nuisances as defined and identified in Chapter 6.04 MMC; or

3. Public nuisance as defined and identified in Chapter 7.48 RCW.

G. “Person” means an individual, corporation, partnership, entity or any other group acting as a unit.

H. “Repeat offender” means the responsible party who has previously received a civil infraction or notice and order of code violation within the last 24 months for a violation of the same or similar code provision.

I. “Responsible party” means any person who has committed or permitted a violation of this code and/or a person who has an interest in or resides on property that is the location of a violation of this code, whether as owner, lessee, tenant, occupant or otherwise, or who by act of commission or omission procures, aids or abets a violation of this code.

J. “Voluntary compliance” means the time allowed for the responsible party to correct violations before penalties are assessed. The allowed time stated within a notice and order of code violation is established by the department director.

1.04.020 (~~Voluntary correction~~)**Enforcement.**

~~((A. Applicability. Whenever the applicable department director determines that a violation of the city code has occurred or is occurring, the applicable department director shall attempt to secure voluntary correction by contacting the person responsible for the code violation and, where possible, explaining the violation and requesting correction. Voluntary correction shall not be required where the delays in securing voluntary correction would be hazardous to the public health, safety and/or welfare.~~

~~B. Issuance of Voluntary Correction Agreement. A voluntary correction agreement may be entered into between the person responsible for the violation and the city, acting through the applicable department director.~~

~~1. Content. The voluntary correction agreement is a contract between the city and the person responsible for the violation under which such person agrees to abate the violation within a specified time and according to specified conditions. The voluntary correction agreement shall include the following:~~

~~a. The name and address of the person responsible for the violation; and~~

~~b. The street address or other description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and~~

~~c. A description of the violation and a reference to the regulation which has been violated; and~~

~~d. The necessary corrective action to be taken, and a date or time by which correction must be completed; and~~

~~e. An agreement by the person responsible for the violation that the city may inspect the premises as may be necessary to determine compliance with the voluntary correction agreement; and~~

~~f. An agreement by the person responsible for the violation that the city may abate the violation and recover its costs and expenses (including attorney fees, expert witness fees, and court costs) and impose a monetary penalty pursuant to this chapter from the person responsible for the violation if the terms of the voluntary correction agreement are not satisfied; and~~

~~g. An agreement that by entering into the voluntary correction agreement, the person responsible for the violation waives the right to a hearing before the court under this chapter or otherwise, regarding the matter of the violation and/or the required corrective action.~~

~~2. Right to a Hearing Waived. Upon entering into a voluntary correction agreement, the person responsible for the violation shall have no right to a hearing before the court or hearing examiner under this chapter or otherwise, regarding the matter of the violation and the required corrective action.~~

~~3. Extension and Modification. An extension of the time limit for correction or a modification of the required corrective action may be granted by the applicable department director if the person responsible for the violation has shown due diligence and substantial progress in correcting the violation, but unforeseen circumstances delay correction under the original conditions.~~

~~4. Abatement by the City. The city may abate the violation in accordance with applicable law if the terms of the voluntary correction agreement are not met.~~

~~5. Collection of Costs. If the terms of the voluntary correction agreement are not met, the person responsible for the violation shall be assessed a monetary penalty of two hundred fifty dollars per day for each violation commencing on the date set for correction and thereafter plus all costs and expenses of abatement, in accordance with MMC 1.04.060 and applicable law.))~~

A. Whenever the city has cause to believe that a violation of MMC Titles 5, 6, 10, 12, 13, 14, 15, 16 and 22 has been or is being committed, this code shall be enforced, according to applicable law, by the department director responsible for administering that title, as provided herein. Unless provided otherwise in this chapter, department directors may act through code enforcement officers.

B. Entry. Whenever necessary to make an inspection to enforce or determine compliance with provisions of MMC Titles 5, 6, 10, 12, 13, 14, 15, 16, and 22, or whenever the city has cause to believe that a violation of any provision of the above-referenced titles has been or is being committed, the department director may, if such building, structure, or property is occupied, present credentials to the occupant and request entry. If such structure or premises is unoccupied, the department director shall first make a reasonable effort to locate the owner, owner's authorized agent or other person having charge or control of the structure or premises and request entry. If entry is refused, the department director shall have recourse to the remedies provided by law to secure entry.

C. Each day, or portion thereof, in which a violation continues constitutes a separate offense for which separate civil infractions or notices of violation may be issued or other enforcement actions taken, including without limitation criminal citations.

D. Responsibility for violations of the codes enforced under this chapter is joint and several, and the city is not prohibited from taking action against a person where other persons may also be potentially responsible for a violation; nor is the city required to take action against all persons potentially responsible for a violation.

1.04.030 ((Notice and order of code violation))**Enforcement actions.**

~~((A. Issuance. When the applicable department director determines that a violation of the Monroe Municipal Code has occurred or is occurring, the applicable department director, or designee, may issue a notice and order of code violation to the person responsible for the violation.~~

~~B. Content. The notice and order of code violation shall include the following:~~

- ~~1. The name and address of the person responsible for that violation; and~~
- ~~2. The street address or description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and~~
- ~~3. A description of the violation and a reference to the provision(s) of the city regulation(s) which has been violated; and~~

4. A notice that the order is effective immediately upon posting at the site and/or receipt by the person to whom it is directed; and
5. An order, if applicable, that the violation immediately cease, or that the potential violation be avoided; and
6. An order, if applicable, that the person stop work until correction and/or remediation of the violation as specified in the order; and
7. The required corrective action and a date and time by which the correction must be completed after which the city may abate the unlawful condition in accordance with applicable law; and
8. Instructions on how to appeal the notice and order of code violation; and
9. A statement that the costs and expenses of abatement incurred by the city and a monetary penalty in an amount per day for each violation as specified in subsection (E) of this section, is or may be assessed against the person to whom the notice of code violation is directed; and
10. A notice that failure to comply with the order may result in further enforcement actions, including criminal penalties.

C. ~~Service of Notice.~~ The applicable department director shall serve the notice and order of code violation upon the person responsible for the violation, either personally or by mailing a copy of the notice and order of civil violation by first class mail to such person at their last known address. If the person responsible for the violation cannot be personally served within Snohomish County and if an address for mailed service cannot be ascertained, notice shall be served by posting a copy of the notice and order of code violation conspicuously on the affected property or structure. Proof of service shall be made by a written statement under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made, and, if by posting, the facts showing the attempts to serve the person personally or by mail.

D. ~~Extension.~~ Extensions of the time specified in the notice and order of code violation for correction of the violation may be granted at the discretion of the applicable department director.

E. ~~Monetary Penalty.~~ The monetary penalty for each violation per day or portion thereof shall not exceed the penalties specified in Chapter 7.80 RCW for Class 1 infractions, as now or hereafter amended. At the time of the adoption of the ordinance codified in this chapter, the penalty for Class 1 infractions is set at a maximum of two hundred fifty dollars per violation.

F. ~~Abatement.~~ The city may abate conditions which were caused by or continue to be a code violation using lawful means, and recover the costs of abatement.

G. ~~Continued Duty to Correct.~~ Payment of a monetary penalty pursuant to this chapter does not relieve the person to whom the notice of civil violation was issued of the duty to correct the violation.))

A. It is the general policy of the city to attempt to work cooperatively with responsible parties to achieve voluntary compliance. When enforcement action is deemed necessary, it is the general policy of the city to utilize progressive, incremental enforcement measures under which the selected remedies, penalties and actions are appropriately employed in escalating order of severity as set forth in subsection (B). However, except as otherwise expressly provided in this chapter, nothing in this subsection (A) shall be construed as limiting the exclusive discretion of the department director in selecting the appropriate enforcement action for each situation.

B. Enforcement actions may, but are not required to, be taken according to the following order of precedence, as applicable:

1. Voluntary compliance.

2. Civil infraction.

3. Notice and order of code violation according to MMC 1.04.050.

4. Citation for a criminal violation whenever the violator fails to meet the deadline of the Notice and order of code violation, the violation poses an immediate or serious threat to the public health and safety, the department director determines that the violation is sufficiently egregious to warrant a criminal citation, or other situations designated by the code.

C. In addition to or as an alternative to any of the enforcement actions listed above, civil penalties may be imposed against a responsible party.

D. Where a code section designates a violation as a civil infraction, a civil infraction may be issued without regard to the order of precedence in subsection (A) of this section.

E. Where a code section designates a violation as a misdemeanor or gross misdemeanor, the city may issue a criminal citation without regard to the order of precedence in subsection (A) of this section.

F. Where a code section provides for issuance of a stop work order or the right of the city to stop work or activity, the city may issue such stop work order or stop work or activity without regard to the order of precedence in subsection (A) of this section.

G. A department director may take any enforcement action without regard to precedence, or any available legal recourse provided by law, to eliminate, address, end or otherwise respond to an emergency.

1.04.040 ((Appeal of notice and order of code violation))**Civil penalty.**

~~((A. Filing. The hearing examiner shall conduct a hearing and hear appeals of timely filed appeals of a notice and order. Every appeal to the hearing examiner shall be filed with the applicable department director within fifteen working days after the notice and order of code violation was served on the person responsible for the violation.~~

~~B. Contents. The notice of appeal shall contain a concise statement identifying:~~

- ~~1. The decision being appealed;~~
- ~~2. The name and address of the appellants and their interest(s) in the matter;~~
- ~~3. The specific reasons why the appellant believes the decision to be wrong. The appellant shall bear the burden of proving the decision was wrong;~~
- ~~4. The desired outcome or changes to the decision;~~
- ~~5. Appeals fee as set forth in the city's fee resolution.))~~

A. In addition to any other enforcement action, department directors are authorized to order assessment of civil penalties under this chapter or under any other provision of the city code authorizing the assessment of civil penalties.

B. Civil penalties shall be cumulative and assessed as follows:

- 1. First day of each violation: \$100.00 per violation;**
- 2. Second day of each violation: \$200.00 per violation;**
- 3. Third day of each violation: \$300.00 per violation;**
- 4. Fourth day of each violation: \$400.00 per violation;**
- 5. Each additional day: \$500.00 per violation.**

C. Civil penalties shall accrue daily until the required corrective action is completed and verified by the city after a request for inspection has been made. Civil penalties shall constitute an obligation of the property owner where the violation exists and any other responsible party. An assessed civil penalty must be paid to

the office of the finance director, city of Monroe, within 30 calendar days of the date of issuance of the order assessing the civil penalty or by such other date stated in the order. If an assessed civil penalty is not paid in full by the due date, the city shall, in addition to any other applicable remedy and/or penalty, have the right to file a lien against the real property on which the violation occurred or is occurring, in the amount of the assessed and unpaid civil penalty, in accordance with MMC 1.04.137.

1.04.050 ((Alternative— Civil infraction))**Notice and order of code violation.**

((As an alternative to the notice of civil infraction issued pursuant to MMC 1.04.030, when the applicable department director determines that a violation has occurred or is occurring, and is unable to secure voluntary correction, pursuant to MMC 1.04.020, the applicable department director may issue a notice of civil infraction pursuant to Chapter 7.80 RCW. The provisions of Chapter 7.80 RCW, including any amendments thereto, are adopted by reference as and for a portion of the code of the city as if set forth herein. Code violations are Class 1 civil infractions.))

A. Whenever a code violation has occurred or is occurring, a department director may, but is not required to, attempt to achieve voluntary correction of that violation by sending to the responsible party a written notice and order of code violation; provided, that an attempt to achieve voluntary correction shall not be required whenever:

- 1. The violation creates conditions that cannot be corrected;**
- 2. The responsible party is a repeat offender for the same and/or similar issue(s);**
- 3. The responsible party cannot be contacted or refuses to communicate or cooperate with the city; or**
- 4. Any other situation for which the department director determines in his/her sole discretion that issuance of a notice and order of code violation would be inappropriate or otherwise unnecessary.**

B. The notice and order of code violation shall contain:

- 1. The name and address of the responsible party;**
- 2. The street address or other description sufficient to identify the premises or property where the violation has occurred or is occurring;**
- 3. A description of the violation and citation to the applicable code provision(s);**
- 4. The necessary corrective action to be taken, and the date by which the corrective action must be completed;**
- 5. A copy of any voluntary correction agreement proposed by the city in accordance with this chapter;**
- 6. Notice that if voluntary correction is not achieved within the deadline, the city may issue a civil infraction, impose civil penalties, issue a criminal citation, and/or commence abatement proceedings;**
- 7. A statement indicating that the city may seek to recover from the person to whom the notice and order of code violation is issued, the costs to the city of any abatement action taken;**
- 8. The signature of the code enforcement officer issuing the notice and order of code violation and contact information for that officer; and**
- 9. Notice of the right to appeal the department director's determination.**

C. The notice and order of code violation shall be served upon the responsible party either by personal service or by mailing a copy of the notice and order by regular U.S. first class mail to the person's last known address. If the responsible party cannot be personally served within Snohomish County and if the address of the responsible party cannot be reasonably ascertained, notice shall be served by posting a copy of the notice

and order of code violation conspicuously on the subject property or a structure located thereon, or in the right-of-way on which the property abuts. Service shall be deemed effective upon personal service, or three business days following placement of the notice and order in the U.S. mail, postage prepaid, or upon posting of the notice upon the property.

D. The department director may grant an extension of the deadline for the required corrective action if the department director determines that (1) the responsible party has demonstrated due diligence or made substantial progress in correcting the violations, or (2) unforeseen circumstances, approved by the department director, render correction unattainable within the deadline stated in the order of corrective action.

E. The original deadline for corrective action or other compliance may be revoked or amended, or immediate corrective action required, where in the opinion of the department director immediate corrective action is necessary to avoid an imminent risk of injury to person or property.

~~((1.04.055 Other legal action.~~

~~Nothing herein contained shall prevent the city from seeking other legal or equitable remedies as available to prevent or resolve any violation, including criminal penalties as authorized by MMC 1.01.110.)~~

1.04.060 ~~((Collection of penalties and costs—Abatement))~~**Voluntary correction agreement.**

~~((A. Monetary Penalty. Any monetary penalty imposed constitutes a personal obligation of the person(s) to whom the notice and order of code violation is directed. Any monetary penalty assessed must be paid to the city within ten calendar days from the date of mailing of the court's decision or a notice from the city that penalties are due. Any such monetary penalty shall further constitute a lien against the affected real property.~~

~~B. Costs. The costs, including incidental expenses, of correcting the violation shall be billed to the person responsible for the violation and the owner of the property and shall become due and payable to the city within ten calendar days. The term "incidental expenses" includes, but is not limited to, personnel costs, both direct and indirect and including attorney's fees; costs incurred in documenting the violation; hauling, storage and disposal expenses; and actual expenses and costs of the city in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work; and the costs of any required printing and mailing. All such costs and expenses shall constitute a lien against the affected property.~~

~~C. Abatement. The city may abate a condition which was caused by or continues to be a code violation when:~~

~~1. A notice and order of code violation or notice of civil infraction, or abatement violation order, or other lawful order has been issued pursuant to applicable law and the required correction has not been completed by the date specified in the notice and/or order; or~~

~~2. The condition is subject to summary abatement.~~

~~D. Summary Abatement. Whenever any code violation causes a condition, the continued existence of which 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. No right of action shall lie against the city or its agents, officers, or employees for action reasonably taken to prevent or cure any such immediate threats, but neither shall the city be entitled to recover any costs incurred for summary abatement, prior to the time that actual notice of same is provided to the person responsible for the violation.~~

~~E. The city attorney is authorized to take appropriate action to collect the monetary penalty and costs.~~

~~F. Lien Authorized. The city of Monroe shall have a lien for any monetary penalty imposed, the cost of any abatement proceedings, and all other related costs including attorney and expert witness fees, against the real property on which the monetary penalty was imposed or any of the work of abatement was performed. The lien 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 be on a parity.

1. The applicable department director shall cause a claim for lien to be filed for record within ninety days from the later of the date that the monetary penalty is due or the date the work is completed or the nuisance abated.

2. The claim of lien shall contain sufficient information regarding the notice of civil violation, as determined by the applicable department director, a description of the property to be charged with the lien and the owner of record and the total amount of the lien.

3. Any such claim of lien shall be verified by the applicable department director and may be amended from time to time to reflect changed conditions.

G. Notice of Assessment for Nuisance Abatement. Notice of any monetary penalty imposed pursuant to applicable law, the cost of any abatement proceedings imposed and all other related costs imposed in the enforcement of the city code shall be filed with the Snohomish County treasurer for entry on the property tax roll for the real property upon which the costs and penalties were imposed.)

A. When the department director deems it appropriate, the notice and order of code violation may include a proposed voluntary correction agreement and the date by which the agreement must be signed.

B. The voluntary correction agreement shall be a contract, in a form approved by the city attorney, between the city and the responsible party under which such person agrees to correct and abate the violation within a specified time, according to specified conditions. The department director is hereby authorized to execute voluntary correction agreements on behalf of the city. The voluntary correction agreement may provide for:

1. Correction and/or abatement of the violation by a date certain;

2. Accrual of the applicable civil penalties from the date of the agreement and continuation of penalties until the violation is corrected and abated, if the responsible party breaches the agreement;

3. The responsible party's admission of the violation;

4. Remedies for breach of the agreement, including without limitation City authority to enter upon the subject property for the purpose of inspection, verification and/or abatement of the violation, judicial and/or administrative proceedings, and recovery of the city's costs and expenses (including attorney fees, staff time, contractor and consultant costs, expert witness fees and court costs);

5. Other terms deemed appropriate by the department director; and

6. A waiver of all rights to administratively and/or judicially appeal the department director's determination of violation, the required corrective action and the assessment of accrued civil penalties.

C. Upon execution of a voluntary correction agreement by the responsible party and the department director, the city's enforcement action relating to the violation shall be tolled for the term of the agreement. If the responsible party fully satisfies the terms of the voluntary correction agreement and corrects and abates the violation as required by the agreement, no further civil penalties shall accrue to the responsible party, and no further enforcement proceedings on the violation shall be pursued by the city against the responsible party.

D. Upon execution of a voluntary correction agreement, the responsible party shall be deemed to have waived the right to appeal the determination of violation and/or order of corrective action.

E. If the responsible party breaches the voluntary correction agreement and/or fails to fully satisfy its terms by the deadlines set forth in the agreement, the civil penalties set forth in the agreement shall begin to accrue as of the date of execution of the agreement, and shall continue to accrue until such violation is fully corrected and abated.

1.04.080 Order assessing civil penalties.

A. The department director may issue an order assessing civil penalties against a responsible party in accordance with MMC 1.04.040, either as part of a notice and order of code violation, or as a separate enforcement action.

B. The order assessing civil penalties shall contain:

1. The name and address of the responsible party;

2. The street address or other description sufficient to identify the premises or property where the violation has occurred or is occurring;

3. A description of the violation and citation to the applicable code provision(s);

4. Notice of the civil penalty assessed for such violation and that each day the violation continues or is permitted to continue shall result in the assessment of daily civil penalties;

5. Notice of the right to appeal the department director's determination;

6. A statement that payment of a monetary penalty does not relieve the person named in the notice and order of the duty to abate a violation, and that failure to abate may result in the issuance of additional notices of violation and/or criminal citations, with additional civil and/or criminal penalties;

7. The date and the signature of the department director;

C. The order assessing civil penalties shall be served as provided in MMC 1.04.050(C).

1.04.090 Right of appeal.

A. A notice and order of code violation, and/or an order assessing civil penalties, may be appealed in writing to the city's hearing examiner within 15 calendar days of the issuance of notice and order of code violation or the order assessing civil penalties; otherwise, the decision is the final decision of the city and the hearing examiner shall be without jurisdiction to hear an appeal. The appeal shall identify the appellant, provide appellant's address and telephone number, and state the grounds of appeal. The notice of appeal shall be accompanied by the fee for filing an appeal established pursuant to Chapter 3.34 MMC.

B. Civil penalties shall continue to accrue during the pendency of an appeal, unless the appellant posts with the city a supersedes bond in an amount set by the hearing examiner sufficient to protect the interests of the city.

C. Upon timely appeal and after consultation with the hearing examiner, the department director shall prepare a written notice setting the date, time and location of the hearing.

D. The department director shall prepare the record of appeal as provided in the rules of the city's hearing examiner.

E. The notice of hearing shall be sent to the appellant, at the address given in the appellant's notice of appeal, by certified mail, return receipt requested, and by first class U.S. mail, postage pre-paid.

1.04.100 Appeal hearing.

A. The appellant, city staff, any witnesses called by the appellant or city staff, and any other person, as deemed appropriate by the hearing examiner, may participate in an appeal hearing.

B. The appellant must prove by a preponderance of the evidence that the department director's decision is erroneous. Provided, that with respect to any interpretation of city regulations, the appellant must demonstrate that the department director's decision is clearly erroneous.

C. An electronic sound recording of each hearing shall be made.

1.04.110 Authority and action of hearing examiner.

A. The hearing examiner shall conduct a hearing according to the rules of procedure adopted for administrative appeals. Within 10 days following the conclusion of all testimony and hearings, the hearing examiner shall issue a written decision affirming or overruling the department director, with supporting findings of fact and conclusions of law, and notice of the right to appeal.

B. Whenever the hearing examiner affirms the decision of the department director, the city attorney shall file any necessary legal proceedings to enforce the notice of violation and corrective action and to collect assessed civil penalties. If legal action to enforce the order is required, the city shall, to the fullest extent allowed by law, be entitled to recover all expenses incurred by the city in such enforcement action, including but not limited to the city's attorney fees, staff time, court filing fees and related court costs, and costs of abatement.

1.04.120 Distribution and effect of examiner's decision.

A. The hearing examiner's decision shall be distributed by the department director to the appellant and any other interested party who appeared at the hearing within three city working days of its issuance.

B. A hearing examiner's decision on the appeal is the final decision of the city, subject to any applicable right of reconsideration.

1.04.125 Civil infractions.

A. In accordance with Chapter 2.06 MMC, a limited commission code enforcement officer may issue a citation for a civil infraction and, in accordance with the Infraction Rules for Courts of Limited Jurisdiction, file and prosecute the citation in the Monroe municipal court.

B. As an alternate to any other enforcement provision or penalty stated in the city code, a violation of the following provisions of the Monroe Municipal Code shall be a civil infraction: MMC Titles 5, 6, 10, 12, 13, 14, 15, 16, and 22.

C. Unless stated otherwise in this code or provided by law, the penalty for a civil infraction shall be as follows:

1. First offense: \$125.00 per violation; and

2. Second and any additional offense: \$250.00 per violation.

D. A responsible party to whom five violations of the same code provision that would otherwise be a civil infraction shall be charged with a misdemeanor and shall be referred to the city prosecutor for prosecution.

E. The Infraction Rules for Courts of Limited Jurisdiction shall apply to the prosecution of a civil infraction established by this chapter.

1.04.130 Criminal offenses.

A. Subject to subsection (D), if another section of the city code provides that a violation of a provision of the code is a misdemeanor, nothing in this chapter prevents the city from citing and prosecuting a violation of that provision as a misdemeanor, as an alternative to any applicable civil or other penalty authorized herein. The city may enforce such violations as either a civil violation, as a criminal misdemeanor, or both, to the fullest extent allowed by law.

B. In accordance with Chapter 2.06 MMC, a limited commission code enforcement officer may issue a citation for criminal violation, and cause the citation to be filed and prosecuted in the Monroe municipal court.

C. Unless another misdemeanor penalty is designated for a violation in another section of this code, each misdemeanor violation shall be punishable by imprisonment in the county jail for a maximum term fixed by the court of not more than 90 days, or by a fine in an amount fixed by the court of not more than \$1,000, or both such imprisonment and fine.

D. The provisions of this chapter shall be construed in a manner consistent with applicable state law. Without limitation of the foregoing, no act which is a state crime shall be enforced by the city as a civil violation.

1.04.135 Abatement.

A. Abatement by City. The city may perform the abatement required upon noncompliance with the terms of an unappealed notice and order of code violation, a voluntary correction agreement, a final order of the hearing examiner, or a final order of a court requiring corrective action and authorizing the city to abate the same; provided, that nothing in this chapter shall prohibit the city from pursuing abatement of a violation pursuant to any other laws of the state of Washington or the city. The city may utilize city employees or a private contractor under city direction to accomplish the abatement. The city, its employees and agents using lawful means are expressly authorized to enter upon the property of the violator for such purposes to the fullest extent allowed by law.

B. Summary Abatement. Whenever any violation causes a condition the continued existence of which 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. No right of action shall lie against the city or its agents, officers, or employees for actions reasonably taken to prevent or cure any such immediate threats, but neither shall the city be entitled to recover any costs incurred for summary abatement, before the time that notice thereof is served on the responsible party as stated in MMC 1.04.050.

C. Obstruction of Work Prohibited. No person shall obstruct, impede or interfere with the city, its employees or agents, or any responsible party, in the performance of any necessary act preliminary or incidental to carrying out the requirements of a notice and order of code violation, voluntary correction agreement, or order of the hearing examiner issued pursuant to this chapter.

1.04.137 Recovery of penalties and costs.

A. Payment of Monetary Penalties and Costs. Any monetary penalties or costs assessed pursuant to this chapter constitute a personal obligation of the responsible party. In addition, the monetary penalties or costs assessed pursuant to this chapter may be assessed against the property that is the subject of the enforcement action. The city attorney is authorized to collect the monetary penalty or costs by use of appropriate legal remedies, the seeking or granting of which shall neither stay nor terminate the accrual of additional per diem monetary penalties so long as the violation continues. The city may incorporate any outstanding penalty or cost into an assessment lien, if the city incurs costs of abating the violation.

B. Recovery of Costs. The city shall bill its costs, including incidental expenses, of pursuing code compliance and/or of abating a violation to the responsible party and/or against the subject property. Such costs shall become due and payable 30 calendar days after the date of the bill. The term “incidental expenses” shall include, but not be limited to, personnel costs, both direct and indirect, including attorneys’ fees incurred by the city; costs incurred in documenting the violation; the actual expenses and costs to the city in the preparation of notices, specifications and contracts, and in inspecting the work; hauling, storage and disposal expenses; the cost of any required printing and mailing; and interest. The department director, or the hearing examiner, may in their discretion waive in whole or part the assessment of any costs upon a showing that abatement has occurred or is no longer necessary.

C. Lien. If penalties or costs assessed against a property are not paid within 30 calendar days, the city shall, to the fullest extent allowed by law, have the right to file a lien against the real property on which the violation occurred or is occurring, in the amount of the assessed and unpaid civil penalties and costs.

1.04.150 Authority of city attorney.

At the direction of the mayor, the city attorney shall represent the city in all administrative code enforcement proceedings, and shall take appropriate legal actions to collect fines imposed under this chapter or to abate nuisances.









ATT1 Code Enforcement Ordinance

Final Audit Report

2020-12-10

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