

ORDINANCE NO. 100

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, ESTABLISHING PROCEDURES TO ENFORCE CITY REGULATIONS, DEFINING A CLASS OF CIVIL VIOLATIONS, SETTING PENALTIES AND PROVIDING FOR CIVIL ABATEMENT OF CIVIL VIOLATIONS OF CITY REGULATIONS AND ESTABLISHING CRIMINAL PENALTIES FOR INTERFERENCE WITH, OBSTRUCTION OF AND WILFUL FAILURE TO COMPLY WITH A CIVIL ABATEMENT ORDER.

WHEREAS, the City Council wishes to encourage voluntary compliance with city regulations; and

WHEREAS, the City Council wishes to establish an efficient and uniform procedure for enforcing city regulations; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Purpose. The purpose of this ordinance is to establish an efficient system to enforce the development and use regulations of the City, to provide an opportunity for a prompt hearing and decision on alleged violations of these regulations, and to establish monetary penalties for violations. This ordinance shall apply to violations of Ordinance No. 49 (Public Nuisance), Ordinance No. 79 (Zoning Code) and other City ordinances making reference to this ordinance.

Section 2. Definitions. As used in this ordinance, unless a different meaning is plainly required:

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.

Act means doing or performing something.

Applicable department director means the director of the department or his or her designee or any designated alternate empowered by ordinance or by the city manager to enforce a city ordinance or regulation including the assigned code enforcement official.

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

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

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.

Hearing examiner means the University Place Hearing Examiner and the office thereof established pursuant to University Place Ordinance No. 64.

Omission means a failure to act.

Person means an individual, firm, association, partnership, corporation or any entity, public or private.

Person responsible for the violation means any person who has an interest in the property.

Regulation means and includes the following, as now or hereafter amended:

1. University Place Ordinance No. 49 (Public Nuisances), Ordinance No. 79;
2. All other City ordinances making reference to this ordinance;
3. All standards, regulations and procedures adopted by the City making reference to this ordinance; and
4. The terms and conditions of any permit or approval issued by the City, or any concomitant agreement with the City pursuant to City ordinances making reference to this ordinance.

Repeat violation means a violation of the same regulation in any location by the same person for which voluntary compliance previously has been sought within two (2) years or a notice of civil violation has been issued within two (2) years.

Violation means an act or omission contrary to a city regulation.

Section 3. Voluntary correction.

A. *Applicability.* This section applies whenever the applicable department director determines that a violation of a regulation has occurred or is occurring.

B. *General.* The applicable department director or designee shall attempt to secure voluntary correction by contacting the person responsible for the violation where possible, explaining the violation and requesting correction.

C. *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 or designee.

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 a 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 and/or a monetary penalty pursuant to this ordinance from the person responsible for the violation if terms of the voluntary correction agreement are not met; 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 hearing examiner under this ordinance 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 waives the right to a hearing before the hearing examiner under this ordinance regarding the matter of the violation and/or the required corrective action. Notice of the waiver must be contained in the Voluntary Correction Agreement.

3. *Extension; 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/or substantial progress in correcting the violation but unforeseen circumstances render correction under the original conditions unattainable.

4. *Abatement by the City.* The City may abate the violation in accordance with Section 6 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 commencing on the date set for correction and thereafter, in accordance with Section 4(E), plus all costs and expenses of abatement, as set forth in Section 6(D).

Section 4. Notice of civil violation.

A. *Issuance.*

1. When the applicable department director determines that a violation has occurred or is occurring and the City is unable to secure voluntary correction, pursuant to Section 3, the applicable department director may issue a notice of civil violation to the person responsible for the violation.

2. The applicable department director may issue a notice of civil violation without having attempted to secure voluntary correction as provided in Section 3 under the following circumstances:

- a. When an emergency exists; or
- b. When a repeat violation occurs; or
- c. When the violation creates a situation or condition which cannot be corrected; or
- d. When the person knows or reasonably should have known that the action is in violation of a city regulation; or
- e. The person cannot be contacted or refuses to communicate or cooperate with the City in correcting the violation.

B. *Content.* The notice of civil 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. 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 Section 6; and
5. The date, time and location of an appeal hearing before the hearing examiner which will be at least ten (10) days but no more than forty-five (45) days from the date the notice of civil violation is issued; and
6. A statement indicating that the hearing will be canceled and no monetary penalty will be assessed if the applicable department director approves the completed, required corrective action at least forty-eight (48) hours prior to the hearing; and
7. A statement that the costs and expenses of abatement incurred by the City pursuant to Section 6(D) and a monetary penalty in an amount per day for each violation as specified in Section 4(E) may be assessed against the person to whom the notice of civil violation is directed as specified and ordered by the hearing examiner.

C. *Service of notice.* The applicable department director or designee shall serve the notice of civil violation upon the person responsible for the violation, either personally or by mailing a copy of the notice of civil violation to such person at their last known address. If the person responsible for the violation cannot be personally served within Pierce County and if an address for mailed service cannot be ascertained, notice shall be served by posting a copy of the notice of civil violation conspicuously on the affected property or structure. Proof of service shall be made by a written declaration 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 that due diligence was used in attempting to serve the person personally or by mail.

D. *Extension.* Extensions of the time specified in the notice of civil violation for correction of the violation may be granted at the discretion of the applicable department director or by order of the hearing examiner.

E. *Monetary penalty.* The monetary penalty for each violation per day or portion thereof shall be five hundred dollars (\$500.00).

F. *Continued duty to correct.* Payment of a monetary penalty pursuant to this ordinance does not relieve the person to whom the notice of civil violation was issued of the duty to correct the violation.

G. *Collection of monetary penalty.*

1. The monetary penalty constitutes a personal obligation of the person to whom the notice of civil violation is directed. Any monetary penalty assessed must be paid to the City within ten (10) calendar days from the date of mailing of the hearing examiner's decision or a notice from the City that penalties are due.

2. The City Attorney is authorized to take appropriate action to collect the monetary penalty.

Section 5. Hearing before the hearing examiner.

A. *Notice.* A person to whom a notice of civil violation is issued will be scheduled to appear before the hearing examiner not less than ten (10) calendar days but no more than forty-five (45) days after the notice of civil violation is issued. Extensions may be granted at the discretion of the applicable department director.

B. *Prior correction of violation.* The hearing will be canceled and no monetary penalty will be assessed if the applicable department director approves the completed required corrective action at least forty-eight (48) hours prior to the scheduled hearing.

C. *Procedure.* The hearing examiner shall conduct a hearing on the civil violation pursuant to the rules of procedure of the hearing examiner. The applicable department director and the person to whom the notice of civil violation was directed may participate as parties in the hearing and each party may call witnesses. The City shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action will correct the violation. The determination of the applicable department director as to the need for the required corrective action shall be accorded substantial weight by the hearing examiner in determining the reasonableness of the required corrective action.

D. *Decision of the hearing examiner.*

1. The hearing examiner shall determine whether the City has established by a preponderance of the evidence that a violation has occurred and that the required correction will correct the violation and shall affirm, vacate, or modify the City's

decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.

2. The hearing examiner shall issue an order to the person responsible for the violation which contains the following information:

- a. The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision;
- b. The required corrective action;
- c. The date and time by which the correction must be completed;
- d. The monetary penalties assessed based on the criteria in Section 5(D)(3);
- e. The date and time after which the City may proceed with abatement of the unlawful condition if the required correction is not completed.

3. *Assessment of monetary penalty.* Monetary penalties assessed by the hearing examiner shall be in accordance with the monetary penalty in Section 4(E).

a. The hearing examiner shall have the following options in assessing monetary penalties:

- (1) Assess monetary penalties beginning on the date the notice of civil violation was issued and thereafter; or
- (2) Assess monetary penalties beginning on the correction date set by the applicable department director or an alternate correction date set by the hearing examiner and thereafter; or
- (3) Assess less than the established monetary penalty set forth in Section 4(E) based on the criteria of Section 5(D)(3)(b).
- (4) Assess no monetary penalties.

b. In determining the monetary penalty assessment, the hearing examiner shall consider the following factors:

- (1) Whether the person responded to staff attempts to contact the person and cooperated with efforts to correct the violation;
- (2) Whether the person failed to appear at the hearing;
- (3) Whether the violation was a repeat violation;
- (4) Whether the person showed due diligence and/or substantial progress in correcting the violation;
- (5) Whether a genuine code interpretation issue exists; and
- (6) Any other relevant factors.

c. The hearing examiner may double the monetary penalty schedule if the violation was a repeat violation. In determining the amount of the monetary

penalty for repeat violations the hearing examiner shall consider the factors set forth in Section 5(D)(3)(b).

4. *Notice of decision.* The hearing examiner shall send by certified mail return receipt requested a copy of the decision to the person to whom the notice of a civil violation was issued and to the applicable department director within ten (10) working days of the hearing.

E. *Failure to appear.* If the person to whom the notice of civil violation was issued fails to appear at the scheduled hearing, the examiner will enter an order with findings pursuant to Section 5(D)(2) and assess the appropriate monetary penalty pursuant to Section 5(D)(3). The City will enforce the hearing examiner's order and recover all related expenses, plus the cost of the hearing and any monetary penalty from that person.

F. *Appeal to Superior Court.* An appeal of the decision of the hearing examiner must be filed with Superior Court within thirty (30) calendar days from the date the hearing examiner's decision was personally served upon or was mailed to the person to whom the notice of civil violation was directed, or is thereafter barred.

Section 6. Abatement by the City.

A. The City may abate a condition which was caused by or continues to be a civil violation when:

1. The terms of voluntary correction agreement pursuant to Section 3 have not been met; or
2. A notice of civil violation has been issued pursuant to Section 4 and a hearing has been held pursuant to Section 5 and the required correction has not been completed by the date specified in the hearing examiner's order; or
3. The condition is subject to summary abatement as provided for in Section 6(B).

B. *Summary abatement.* Whenever any violation of a regulation causes a condition the continued existence of which constitutes an immediate and emergent 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.

C. *Authorized action by the City.* Using any lawful means, the City may enter upon the subject property and may remove or correct the condition which is subject

to abatement. The City may seek such judicial process as it deems necessary to effect the removal or correction of such condition.

D. *Recovery of costs and expenses.* The costs, including incidental expenses, of correcting the violation shall be billed to the person responsible for the violation and/or the owner, lessor, tenant or other person entitled to control, use and/or occupy the property and shall become due and payable to the City within ten (10) calendar days. The term "incidental expenses" includes but is not limited to personal costs, both direct and indirect, 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.

Section 7. Criminal Penalties

1. Any person who knowingly and unlawfully obstructs, hinders, or delays a City official in the enforcement of this ordinance shall be guilty of a misdemeanor.
2. Any person who knowingly and unlawfully violates a decision and ordinance issued by the Hearing Examiner shall be guilty of a misdemeanor.
3. Any person who knowingly and unlawfully hinders, delays or obstructs the enforcement of an agreement between the City of University Place and a person responsible for a violation shall be guilty of a misdemeanor.

Section 8. Alternative abatement procedure. Any property on which violations of this ordinance remain uncorrected after issuance of a notice of violation may, in addition to the procedures outlined above, be abated in accordance with the following additional procedures pursuant to RCW 35.21.310:

1. When requested by the applicable department director and approved by the hearing examiner, the matter of a pending violation may be submitted to the city council for consideration whenever the violation consists of debris upon property constituting a fire hazard or a menace to public health, safety or welfare. In such instance, the procedures set forth in Sections 3 through 6 shall be complied with to the extent not in conflict herein except that the decision of the hearing examiner pursuant to Section 5(D) shall be in the form of a recommendation to the city council. This alternate procedure may be requested by the applicable department director at any time prior to the hearing before the hearing examiner and only if the hearing examiner makes a finding that the violation constitutes a fire hazard or a menace to public health, safety or welfare requiring removal or destruction of the debris constituting the violation. After consideration, the council may, by resolution, either accept, reject or modify the hearing examiner's recommendation

and require the property owner to abate the violation by removal or destruction, at his or her cost and expense, within a time specified in the resolution.

2. The resolution shall not be passed until the property owner is give at least five (5) days' notice of the pendency of the proposed resolution. Such notice shall be served by the applicable department director pursuant to Section 4 (c) of this ordinance. The notice, either accompanied with or incorporated into the hearing examiner's recommendation, shall describe the property involved, the nature of the hazardous condition, the corrective action required, and the date of the council meeting during which the matter will be considered.

3. If the nuisance is not abated by the property owner within the time fixed in the resolution, the applicable department director may abate the same and mail a bill to the property owner covering the cost to the City of such abatement, including the applicable department director's expense. If the property owner fails or refuses to pay the bill immediately, the applicable department director shall file a lien therefor against the property, which lien shall be in the same form, filed with the same officer and within the same time and manner and enforced and foreclosed as is provided by law for liens for labor and material.

Section 9. Additional enforcement procedures. The provisions of this ordinance are not exclusive, and may be used in addition to other enforcement provisions authorized by the City ordinance except as precluded by law.

Section 10. Conflicts. In the event of a conflict between this ordinance and any other provision of the City or City ordinances providing for a civil penalty, this ordinance shall control. Provisions of the Public Safety Code, Ordinance No 49, do not apply to this ordinance.

Section 11. Meaning of terms. For the purposes of this code, whenever "civil infraction" and "civil penalty" are used in any code, ordinance or regulation of the City, these terms shall be deemed to have the same meaning as the terms civil violation and monetary penalty, respectively, as used herein.

Section 12. Severability. If any section, sentence, clause or phrase of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not effect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 13. Publication and Effective Date. A summary of this Ordinance consisting of its title shall be published in official newspaper of the City. This ordinance shall be effective five days after its publication.

PASSED BY THE CITY COUNCIL ON JUNE 3, 1996



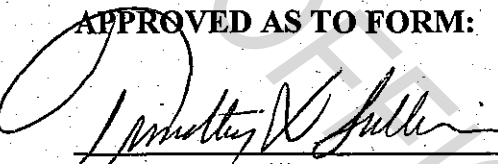
Ronald L. Williams, Mayor

ATTEST:



Susan Matthew, City Clerk

APPROVED AS TO FORM:



Timothy X. Sullivan, City Attorney

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