#### **ORDINANCE NO. 723**

AN ORDINANCE OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, AMENDING CHAPTERS 1.15, 1.20, 9.35 AND 14.05, AND CREATING A NEW CHAPTER 9.60 OF THE UNIVERSITY PLACE MUNICIPAL CODE; RELATING TO NUISANCE AND CODE ENFORCEMENT PROCESSES

WHEREAS, public nuisances are unsightly and unsanitary; create fire, safety and health hazards; interfere with the enjoyment of public and private property; degrade the character of neighborhoods; and have a detrimental effect on property values; and

WHEREAS, residents of the City of University Place have complained about public nuisances in their neighborhoods; and have requested that the city regulate and abate public nuisances within the city; and

WHEREAS, pursuant to RCW 35A.11.020 and RCW 35.23.440 (10) the city has the power to declare what shall be deemed nuisances; to prevent, remove, and abate nuisances at the expense of the parties creating, causing, committing or maintaining nuisances, and to levy a special assessment on the land or premises whereon the nuisance is situated to defray the cost or to reimburse the city for the cost of abating the same; and

WHEREAS, shortly following incorporation, the City has promulgated several sets of nuisance and code enforcement-related processes, but the municipal code has not been updated, nor has it kept pace with current state legislation. It also contains outdated references; and

WHEREAS, a number of processes contained in the City's current code do not reflect the best practices for code enforcement and nuisance-related enforcement processes. This necessarily slows the City's response to meaningfully solving citizen concerns; and

WHEREAS, a number of other Washington jurisdictions have undertaken review of their nuisance processes and have identified matters which appropriately constitute nuisances; and

WHEREAS, it is now appropriate to update the City's processes, mindful of current state law, the nature of the nuisances faced in this community and the need to reconcile the multiple tools at the City's disposal to achieve the best outcomes for its residents.

# NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE, WASHINGTON, DO ORDAIN AS FOLLOWS:

- Section 1. Chapter 1.15 of the University Place Municipal Code is amended as set forth in Exhibit A and set forth herein.
- Section 2. Chapter 1.20 of the University Place Municipal Code is amended as set forth in Exhibit B and set forth herein.
- Section 3. Chapter 9.35 of the University Place Municipal Code is amended as set forth in Exhibit C and set forth herein.
- Section 4. Chapter 9.60 of the University Place Municipal Code is created as set forth in Exhibit D and set forth herein.
- Section 5. Section 14.05.030 of the University Place Municipal Code entitled "Adoption of codes by reference," is amended to read as follows:

The following codes are hereby adopted by this reference as if fully set forth in this chapter and as specifically modified or amended as set forth in this chapter:

- A. The 2015 Edition of the International Building Code, including Appendix Chapter E, and ICC/ANSI A117.1-2009, and the 2015 International Existing Building Code and International Swimming Pool and Spa Code published by the International Code Council are hereby adopted by reference with the exceptions noted in Chapter 51-50 WAC and subsequently amended by this chapter.
- B. The 2015 Edition of the International Residential Code including Appendices F and Q as published by the International Code Council is hereby adopted as amended by the Washington State Building Code Council in Chapter 51-51 WAC and as subsequently amended by this chapter; provided, that Chapters 11 and 25 through 43 of this code are not adopted.
- C. The 2015 Edition of the International Mechanical Code including adoption of the 2015 International Fuel Gas Code, published by the International Code Council, and 2014 NFPA 58 and 2014 NFPA 54, published by the National Fire Protection Association, is hereby adopted by reference with the exceptions noted in Chapter 51-52 WAC.
- D. The 2015 Edition of the International Fire Code published by the International Code Council is hereby adopted by reference with the additions, deletions, and exceptions contained in Chapter 51-54A WAC, including Appendices B, C, D (Sections 105 and 106 only), E, F and G.
- E. The 2015 Edition of the Uniform Plumbing Code, including Appendices A, B and I, published by the International Association of Plumbing and Mechanical Officials, is hereby adopted by reference with the additions, deletions and exceptions contained in Chapter 51-56 WAC.
- F. The 2015 Edition of the Washington State Energy Code, including commercial and residential provisions and appendices, is hereby adopted by reference with the additions, deletions and exceptions contained in Chapters 51-11C and 51-11R WAC.
- G. The National Electrical Code, published by the National Fire Protection Association, as adopted and enforced by Tacoma Public Utilities, is hereby adopted.
- H. The 2018 Edition of the International Property Maintenance Code published by the International Code Council is hereby adopted by reference.

Section 6. Section 14.05.040 of the University Place Municipal Code entitled, "Conflicts between codes," is amended to read as follows.

In case of conflict among the building code, the residential code, the mechanical code, the fire code, and the plumbing code, and the property maintenance code, the first named code shall govern over those following. In case of conflicts between other codes and provisions adopted by this chapter, the code or provision that is most specific, as determined by the Building Official, shall apply.

- Section 7. Chapter 9.15 of the University Place Municipal Code is repealed in its entirety.
- Section 8. <u>Corrections by City Clerk or Code Reviser</u>. Upon approval of the city attorney, the city clerk or 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.
- Section 9. <u>Severability</u>. If any portion of this Ordinance or its application to any person or circumstances is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances shall not be affected.

Section 10. <u>Effective Date</u>. This Ordinance will be shall be in full force and effect five (5) days after publication of the Ordinance Summary.

# PASSED BY THE CITY COUNCIL ON JANUARY 6, 2020.

Caroline Belleci, Mayor

ATTEST:

Mighta J. Genetia, City Clerk

APPRIOMED AS TO FORM:

Matthew S. Kaser, City Attorney

Published: 01/08/20 Effective Date: 01/13/20

#### Chapter 1.15

#### **GENERAL PENALTY INFRACTION PROVISIONS**

Sections:	
1.15.010	General civil penalty.
1.15.020	General criminal penalty.
1.15.025	Other legal remedies.
1.15.030	Failure to respond to a civil infraction.
1.15.040	Enforcement officers.

# 1.15.010 General civil penalty.

Unless specific penalties other than as set forth in this section are established in an ordinance of the City for a violation of that ordinance the municipal code, a violation of a City ordinance the Municipal Code is punishable by a fine of up to \$500.00 for each day that a violation occurs. In addition to the imposition of a civil penalty, a court may order a person found to have committed a civil infraction to make restitution, including any costs or expenses incurred by the City in abating or eliminating a public nuisance. In any court or administrative hearing to determine whether a violation has occurred the City shall have the burden of proving by a preponderance of the evidence that a violation occurred.

This section does not preempt the specific penalties set forth in ordinances of the City setting forth other penalties for violations of those ordinances the Municipal Code.

# 1.15.020 General criminal penalty.

For all ordinances of the City which set forth that a violation of the ordinance shall constitute a misdemeanor, upon conviction an offender shall be penalized by imprisonment in the County or City jail for a period up to 90 days and a fine of up to \$1,000, or by both such fine and imprisonment. In addition, a defendant may be assessed court costs, jury fees and such other fees or costs as may be authorized in statute or court rules. In any court proceeding to enforce this section, the City shall have the burden of proving by evidence beyond a reasonable doubt that a violation occurred. In a proceeding under this section a defendant shall be accorded each and every right protected under the Constitutions of the United States of America and the State of Washington, all applicable Federal, State and local laws, and applicable court rules promulgated by the Washington Supreme Court and the inferior courts under the authority of the Washington Supreme Court.

## 1.15.025 Other legal remedies.

Nothing in this chapter limits the right of the City to pursue other lawful, criminal, civil or equitable remedies to abate, discontinue, correct or discourage unlawful acts under or in violation of the Code.

#### 1.15.030 Failure to respond to a civil infraction.

It shall be a misdemeanor to fail to respond to a notice of civil infraction issued by a police officer or such other officers of the City as may be authorized to issue civil infractions.

In any court proceeding to enforce this section, the City shall have the burden of proving beyond a reasonable doubt both that the violator was personally served with the notice of civil infraction and that the violator willfully failed to respond to the infraction by either appearing in court as directed or by paying the fine for the infraction.

#### 1.15.040 Enforcement officers.

Department heads or supervisors and City employees as designated by the department head or supervisor, or employees of other governments performing enforcement services for the City pursuant to an interlocal

# **EXHIBIT A**

agreement, shall be and are designated and appointed as "enforcement officers" and are authorized to initiate, issue and serve notices of civil infraction for violations of the University Place Municipal Code for regulation provisions or sections that are subject to their supervision, interpretation or enforcement. Such individuals are "citing officers," as defined by Rule 1.2(j) of the Infraction Rules for Courts of Limited Jurisdiction.



## Chapter 1.20

#### **ENFORCEMENT**

Sections:	
1.20.010	Purpose.
1.20.015	Duty of Enforcement.
1.20.020	Definitions.
1.20.030	Voluntary correction.
1.20.040	Notice of civil violation.
1.20.050	Hearing before the hearings examiner.
1.20.060	Abatement by the city.
1.20.070	Criminal penalties.
1.20.080	Alternative abatement procedure.
1.20.085	Collection of civil fines and penalties.
1.20.090	Additional enforcement procedures.
1.20.100	Chapter 35.80 RCW adopted.
1.20.110	Improvement officer and appeals commission designated
1.20.120	Improvement officer authority - Issuance of complaint.
1.20.130	Service of complaint.
1.20.140	Complaint hearing.
1.20.150	Determination, findings of fact and order.
1.20.160	Appeal to appeals commission.
1.20.170	Appeal to superior court.
1.20.180	Remediation - Penalties.
1.20.190	Tax lien.
1.20.200	-Salvage.
1.20.210	Designation and enforcement.
1.20.220	Conflicts.
1.20.230	Meaning of terms.

# 1.20.010 Purpose.

The purpose of this chapter 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, to provide an administrative framework for resolving violations and to establish monetary penalties for violations. This chapter is intended to serve as an alternative to other means available to the City to remedy nuisance violations. This chapter shall apply to those violations of the public nuisance provisions of UPMC Title 9, Public Safety, UPMC Title 19, Zoning, and other sections making reference to this chapter.

# 1.20.015 Duty of enforcement.

It is the intent of the City Council that any duty of enforcement of any codes, ordinances or regulations of the City, or any part thereof, be owed to the public at large, and not to any individual members of the public. The City Council, further, intends to make no assurances or promises of protection thereby or enforcement thereof to any individual, and that no special relationship regarding enforcement of any code, ordinance or regulation shall exist with any individual which would set such individual apart from the general public.

#### 1.20.020 Definitions.

As used in this chapter, 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 chapter. 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.
- "Hearings examiner" means the University Place hearings examiner and the office thereof established pursuant to Chapter 2.20 UPMC.
- "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. The public nuisance provisions of UPMC Title 9, Public Safety, and UPMC Title 19, Zoning;
- 2. All other city ordinances making reference to this chapter;
- 3. All standards, regulations and procedures adopted by the city making reference to this chapter; 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 chapter.
- "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 years, a notice of civil violation or a civil infraction has been issued within two years.
- "Violation" means an act or omission contrary to a city regulation.

## 1.20.030 Voluntary correction.

- A. General. Where possible, the <u>City shall should, but is not required to,</u> attempt to secure voluntary correction by contacting the person responsible for the violation, explaining the violation and requesting correction.
- 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 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 should 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 chapter 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 hearings examiner under this chapter 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 hearings examiner under this chapter 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 UPMC 1.20.060 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 1.20.040(E), plus all costs and expenses of abatement, as set forth in UPMC 1.20.060(D)including a reasonable attorney's fee.
- 6. Confession of Judgment. A voluntary correction agreement may take the form of a confession of judgment as provided by chapter 4.60 RCW.

## 1.20.040 Notice of civil violation.

#### A. Issuance.

- 1. When the applicable department director <u>City</u> determines that a violation has occurred or is occurring and the city is unable to secure voluntary correction, pursuant to <u>UPMC 1.20.030</u>, the applicable department director-<u>City Manager or designee</u> may issue a notice of civil violation.
- 2. The applicable department director may issue Aa notice of civil violation without having attempted to secure voluntary correction as provided in UPMC 1.20.030 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 time the city may abate the unlawful condition; and
- 5. The date, time and location of an appeal hearing before the hearings examiner which will be at least 10 days but no more than 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 48 hours prior to the hearing; and
- 7. 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 may be assessed against the person to whom the notice of civil violation is directed as specified and ordered by the hearings 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 hearings examiner.
- E. Monetary Penalty. <u>Unless a different penalty is set forth in this Code</u>, <u>∓the monetary penalty for each violation per day or portion thereof shall be \$500.00.</u>
- F. 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.

- 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 10 calendar days from the date of mailing of the hearings 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.

## 1.20.050 Hearing before the hearings examiner.

- A. Notice. A person to whom a notice of civil violation is issued will be scheduled to appear before the hearings examiner not less than 10 calendar days but no more than 45 days after the notice of civil violation is issued. Extensions may be granted at the discretion of the applicable department director City or Hearings Examiner.
- B. Prior Correction of Violation. The hearing will be canceled and no monetary penalty will be assessed if the applicable department director <u>City</u> approves the completed required corrective action at least 48 hours prior to the scheduled hearing.
- C. Procedure. The hearings examiner shall conduct a hearing on the civil violation pursuant to the rules of procedure of the hearings 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 hearings examiner in determining the reasonableness of the required corrective action.
- D. Decision of the Hearings Examiner.
- 1. The hearings 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 hearings 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 subsection (D)(3) of this section;
- 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 hearings examiner shall be in accordance with the monetary penalty in UPMC 1.20.040(E).
- a. The hearings examiner shall have the following options in assessing monetary penalties:

- i. Assess monetary penalties beginning on the date the notice of civil violation was issued and thereafter; or
- ii. Assess monetary penalties beginning on the correction date set by the applicable department director, an alternate correction date set by the hearings examiner, or a date set forth in a voluntary correction agreement (if any) and thereafter; or
- iii. Assess less than the established monetary penalty set forth in UPMC 1.20.040(E) based on the criteria of subsection (D)(3)(b) of this section; or
- iv. Assess no monetary penalties.
- b. In determining the monetary penalty assessment, the hearings examiner shall consider the following factors:
- i. Whether the person responded to staff attempts to contact the person and cooperated with efforts to correct the violation;
- ii. Whether the person failed to appear at the hearing;
- iii. Whether the violation was a repeat violation;
- iv. Whether the person showed due diligence and/or substantial progress in correcting the violation;
- v. Whether a genuine code interpretation issue exists; and
- vi. Any other relevant factors.
- c. The hearings 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 hearings examiner shall consider the factors set forth in subsection (D)(3)(b) of this section.
- 4. Notice of Decision. The hearings 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 20 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 subsection (D)(2) of this section and assess the appropriate monetary penalty pursuant to subsection (D)(3) of this section. The city will enforce the hearings 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 hearings examiner must be filed with Pierce County superior court within 21 days of the issuance of the hearings examiner's decision.

  Finality of Decision. The decision of all matters decided hereunder shall be final and conclusive unless, within twenty-one days from the date of the final decision, an applicant or an aggrieved party makes an application to a court of competent jurisdiction or competent administrative agency for review.

#### 1.20.060 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 a voluntary correction agreement pursuant to UPMC 1.20.030 have not been met; or
- 2. A notice of civil violation has been issued and a hearing has been held as set forth in this Chapter and the required correction has not been completed by the date specified in the hearings examiner's order; or

- 3. The condition is subject to summary abatement as provided for in subsection (B) of this section.
- 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 occupancy of the property and shall become due and payable to the city within 10 calendar days. The term "incidental expenses" includes but is not limited to personal costs, both direct and indirect, including attorneys' 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.
- E. As provided by RCW 35A.21.405, the City Manager or designee is also authorized to file a special assessment against the property on which the notice of civil violation was assessed for the City's costs in abating the nuisance and for any fines imposed. Before levying a special assessment, the City shall notify the property owner and any identifiable mortgage holder that a special assessment will be levied on the property and provide the estimated amount of the special assessment. The notice must be sent by regular mail.
- F. This section does not preclude the use of other abatement processes allowed by law.

## 1.20.070 Criminal penalties.

- A. Any person who knowingly and unlawfully obstructs, hinders, or delays a city official in the enforcement of this chapter shall be guilty of a misdemeanor.
- B. Any person who knowingly and unlawfully violates a decision and ordinance issued by the hearings examiner shall be guilty of a misdemeanor.
- C. 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.
- 1.20.080 Alternative abatement procedure.

Any property on which violations of this chapter 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:

A. When requested by the applicable department director and approved by the hearings 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 UPMC 1.20.030 through 1.20.060 shall be complied with to the extent not in conflict herein except that the decision of the hearings examiner pursuant to UPMC 1.20.050(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 hearings examiner and only if the hearings 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 hearings 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.

B. The resolution shall not be passed until the property owner is given at least five days' notice of the pendency of the proposed resolution. Such notice shall be served by the applicable department director pursuant to UPMC 1.20.040(C). The notice, either accompanied with or incorporated into the hearings 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.

C. 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.

1.20.085 Collection of civil fines and penalties.

Pursuant to RCW 19.16.500, the civil fines and penalties ordered by the city's hearings examiner may be collected by a licensed collection agency working under a contract with the city.

1.20.090 Additional enforcement procedures.

A. Civil Infraction Citation. If after investigation, or after the complaint of residents or others, the applicable department director has probable cause to believe that the applicable standards or requirements of the University Place Municipal Code have been violated, the director may issue a civil infraction citation in accordance with Chapter 7.80 RCW, which is incorporated herein by reference, upon the owner, tenant, occupier, manager, agent, or other person responsible for the violation.

B. The provisions of this chapter are not exclusive, and may be used in addition to other enforcement provisions authorized by city ordinance.

1.20.100 Chapter 35.80 RCW adopted.

Chapter 35.80 RCW, Unfit Dwellings, Buildings and Structures, as it currently exists or is hereinafter amended, is hereby adopted.

1.20.110 Improvement officer and appeals commission designated.

The code enforcement official and the code enforcement official's designate is designated as the city's "improvement officer," and shall have the full scope of authority granted to that official under Chapter 35.80 RCW. The city of University Place's hearings examiner is designated as the city's "appeals commission," and shall have the full scope of authority granted to that commission under Chapter 35.80 RCW.

1.20.120 Improvement officer authority - Issuance of complaint.

If after a preliminary investigation of any dwelling, building, structure or premises, the improvement officer finds that it is unfit for human habitation or other use, the improvement officer may issue a complaint conforming to the provisions of RCW 35.80.030, stating in what respects such dwelling, building, structure or premises is unfit for human habitation or other use. In determining whether a dwelling, building, structure or premises should be repaired or demolished, the improvement officer shall be guided by the University Place Municipal Code as

the improvement officer deems applicable, in particular the most recent edition of the International Property Maintenance Code.

## 1.20.130 Service of complaint.

A complaint issued under UPMC 1.20.120 shall be served on the parties and posted on the subject property pursuant to RCW 35.80.030, and shall also be filed with the Pierce County auditor. All complaints or other documents posted on the subject property shall remain in place until the complaint has been resolved. For purposes of service, such complaints or other documents are deemed effective on the day of posting.

## 1.20.140 Complaint hearing.

Not less than 10 days nor more than 30 days after serving a complaint, the improvement officer shall hold a hearing conforming to the provisions of RCW 35.80.030, at which all parties in interest shall be given the right to appear in person, to bring witnesses, and to give testimony regarding the complaint. At any time prior to or at the time of the hearing, any party may file an answer to the complaint. The improvement officer shall adopt procedural rules governing the procedure of such hearing, which shall be available for public inspection at the city clerk's office.

#### 1.20.150 Determination, findings of fact, and order.

Within 10 days of the complaint hearing, the improvement officer shall issue a determination, findings of fact, and order stating the improvement officer's determination as to whether the subject dwelling, building, structure or premises is unfit for human habitation or other use, the findings of fact supporting the determination, and an order specifying the actions necessary to address any unfitness and a deadline for completing the actions. The determination, findings of fact, and order shall be served and posted as set forth in UPMC 1.20.130, and if no appeal is filed within the deadline specified in UPMC 1.20.050, a copy of the determination, findings of fact, and order shall be filed with the Pierce County auditor.

## 1.20.160 Appeal to appeals commission.

Within 30 days of service of a determination, findings of fact, and order, any party may file an appeal to the appeals commission. Such an appeal shall be governed by the city of University Place hearings examiner's procedural rules, except that the appeals commission shall conduct a hearing on the appeal and issue a ruling within 60 days from the date the appeal is filed; and if the appeals commission issues any oral findings of fact, the ruling shall contain a transcript of such findings in addition to any findings issued at the time of the ruling. The ruling shall be served and posted as set forth in UPMC 1.20.130, and if no appeal is filed within the deadline specified in UPMC 1.20.050, a copy of the ruling shall be filed with the Pierce County auditor.

## 1.20.170 Appeal to superior court.

Any person affected by a determination, findings of fact, and order issued by the improvement officer, who has brought an appeal before the appeals commission pursuant to UPMC 1.20.160, may, within 30 days after the appeals commission's ruling has been served and posted pursuant to UPMC 1.20.130, petition the Pierce County superior court for an injunction restraining the improvement officer from carrying out the provisions of the determination, findings of fact, and order. In all such proceedings, the court is authorized to affirm, reverse or modify the order, and such trial shall be heard de novo.

#### 1.20.180 Remediation - Penalties.

If a party, following exhaustion of the party's rights to appeal, fails to comply with the determination, findings of fact, and order, the improvement officer may direct or cause the subject dwelling, building, structure or premises to be repaired, altered, improved, vacated, and closed, removed, or demolished pursuant to Chapter 35.80 RCW.

#### 1.20.190 Tax lien.

The cost of any action taken by the improvement officer under UPMC 1.20.180 shall be assessed against the subject property pursuant to Chapter 35.80 RCW. Upon certification by the city of University Place finance director that the assessment amount is due and owing, the Pierce County treasurer shall enter the amount of such assessment upon the tax rolls against the subject property pursuant to the provisions of RCW 35.80.030.

#### 1.20.200 Salvage.

Materials from any dwelling, building, structure, or premises removed or demolished by the improvement officer shall, if possible, be salvaged and sold as if the materials were surplus property of the city of University Place, and the funds received from the sale shall be credited against the cost of the removal or demolition; and if there be any balance remaining, it shall be paid to the parties entitled thereto, as determined by the improvement officer, after deducting the costs incident thereto.

## 1.20.210 Designation and enforcement.

A. The code enforcement officer(s) is/are the person(s) authorized by the city manager to enforce the civil and criminal provisions of the University Place Municipal Code, including issuance of civil infraction, notice and orders of violation, and criminal misdemeanors.

B. The code enforcement officer may call upon the police, fire, building, public works or any other appropriate city departments to assist in enforcement. As used in this chapter, "code enforcement officer" shall also mean any applicable department director as designated by the city manager.

C. This chapter shall be enforced for the benefit of the health, safety, and welfare of the general public, and not for the benefit of any particular person or class of persons.

## 1.20.220 Conflicts.

In the event of a conflict between this chapter and any other provision of the city or city ordinances providing for a civil penalty, this chapter shall control. Provisions of the public safety code in UPMC Title 9, Public Safety, do not apply to this chapter.

#### 1.20.230 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.

#### Chapter 9.35

#### **PUBLIC NUISANCES**

Sections:	
9.35.010	Purpose and construction.
9.35.015	Definitions.
9.35.020	Duty to maintain real property.
9.35.025	Prohibited conduct.
9.35.030	Public nuisances.
9.35.035	Abatement of public nuisance.
9.35.036	Serving of orders.
9.35.037	Contents of order.
9.35.038	Alternative abatement procedure.
9.35.040	Penalties and enforcement.
9.35.050	Authorizing enforcement assistance from the Tacoma-Pierce County Health Department.
9 35 060	Appeals

## 9.35.010 Purpose and construction.

The purpose of this chapter is to define, regulate and provide for the abatement of public nuisances; reduce fire, safety and health hazards; preserve and enhance the attractiveness of the City's neighborhoods; and protect property values within the City. This chapter is an exercise of the City's police power and is necessary for the health, safety and welfare of the City and to preserve and protect the public peace. Therefore, the provisions of this chapter shall be liberally construed for the accomplishment of such purposes.

#### 9.35.015 Definitions.

All terms used in this chapter shall have their common definition meaning. In addition to the common definition meaning, the terms used shall mean as follows:

"Abate" means to repair, replace, remove, destroy or otherwise remedy a condition that violates this chapter.

"Abandoned vehicle" means any vehicle left on a public right-of-way or on private property without the consent of the property owner for a period of 72 hours or longer.

"Apparently inoperable" means a vehicle that meets any of the following criteria:

## The vehicle is:

- 1. Covered or partially covered by moss, leaves, needles or other vegetation; or has grass or other vegetation growing up around the vehicle; or other circumstances exist that support a reasonable belief that the vehicle has not been moved for 30 days or more;
- 2. Has any visibly damaged, missing, or broken major components, including but not limited to any of the following: windows, windshields, headlights, taillights, mirrors, body panels, hoods, doors, bumpers, trunk lids, driver's seats, steering wheels, grill covers, radiators, or any major mechanical or electrical equipment; or
- 3. For any other reason appears in such a condition as to not be legally operable on a public road.

"Building materials" means lumber, plumbing materials, wallboard, sheet metal, plaster, brick, cement, asphalt, concrete block, roofing materials, cans of paint and similar materials.

A "blight on the surrounding neighborhood" is any property, dwelling, building, or structure that meets any two of the following factors: (1) If a dwelling, building, or structure exists on the property, the dwelling, building, or structure has not been lawfully occupied for a period of one year or more; (2) the property,

dwelling, building, or structure constitutes a threat to the public health, safety, or welfare as determined by the executive authority of the county, city, or town, or the designee of the executive authority; or (3) the property, dwelling, building, or structure is or has been associated with illegal drug activity during the previous twelve months.

"Garbage" means waste food products, other organic waste products and packaging materials from food products.

## "Housing Unit" means:

(1) a house;

(2) an apartment;

(3) a mobile home:

(4) a group of rooms; or

(5) a single room that is (a) occupied as separate living quarters, (b) in which the occupants live and eat separately from any other persons in the building, and (c) which have direct access from the outside of the building through a common hall.

"Junk" means discarded, broken or disabled items, including, but not limited to, furniture, appliances, toys, vehicle parts, building materials, tools, machinery parts or other items that are not in functioning condition. "Junk Vehicle" has the same definition as set forth in RCW 46.55.010(5).

"Marijuana Nuisance" means the production or processing of marijuana or marijuana-infused products, or the storage or growing of marijuana plants where any portion of such activity can be readily seen by normal unaided vision or readily smelled from a public place or the private property of another "housing unit" as defined in this Section.

"Landowner" means an owner of private property, or a person in possession or control of private property. "Person" means human beings of either sex as well as firms, partnerships, corporations, and all associations of human beings, whether acting by themselves or by a servant, agent or employee. "Premises" means any building, lot, parcel, real estate, land or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.

"Public nuisance" means a thing, act, failure to act, occupation or use of property which (1) annoys, injures or endangers the comfort, repose, health or safety of the public; (2) unlawfully interferes with, obstructs, or renders dangerous for passage any stream, river, channel, public park, square, street, alley, highway or sidewalk; or (3) renders the public insecure in life or use of property; or (4) is recognized as a nuisance as defined by state law, federal law, or elsewhere within this Code. All of the conditions enumerated in UPMC 9.35.030 are "public nuisances."

"Responsible party" means any person owning property, as shown on the real property records of Pierce County or on the last assessment roll for taxes, and shall also mean any lessee, tenant or person having possession of the property. There may be more than one responsible party for a particular property.

"Trash" includes, but is not limited to, used, discarded, torn or broken paper; plastic; glass; cardboard; packaging materials; small pieces of scrap metal; wire; pipe; stone; plaster; cement; office supplies; cosmetics; bottles; cans; jars; or boxes.

"Yard waste" means any accumulation of leaves; trimmings from trees, brush and shrubs; cut grass and weeds; or garden waste.

## 9.35.020 Duty to maintain real property.

Any person owning, leasing, renting, occupying or in charge of any real property in the City, including vacant lots, has a duty to maintain the property free from junk, trash, yard waste and any other nuisance as defined in this chapter, in order that such property shall not endanger the safety, health or welfare of the general public.

#### 9.35.025 Prohibited conduct.

It is a violation of this chapter for any person to permit, create, maintain or allow upon any premises, any of the acts or things declared to be public nuisances herein.

9.35.030 Public nuisances.

Each of the following conditions, unless otherwise permitted by law, is declared to constitute a public nuisance:

- A. Any unfenced, uncovered, unguarded or abandoned pit, hole, excavation, well, septic tank, cesspool, pond, or swimming pool into which a child or other person could fall.
- B. Attractive nuisances dangerous to children, including, but not limited to, abandoned, broken or neglected vehicles, boats, equipment and machinery; refrigerators, freezers or other insulated containers within which a child could suffocate; and abandoned, dilapidated or structurally unsound buildings.
- C. The existence or accumulation of any garbage or organic waste on the premises, including, but not limited to, bones; hides; skins; dead animals, fish or fowl; waste food products; or manure; provided that nothing herein shall prevent the temporary retention of such waste in approved covered receptacles or the temporary retention of waste food products and manure in enclosed compost piles.
- D. The existence or accumulation of any trash, litter or inorganic waste, including, but not limited to, used, broken, torn or discarded paper, cardboard, plastic, rags, empty bottles, cans, glass, plaster, barrels, boxes, crates, packing cases, construction debris, Styrofoam, excelsior, hay, straw, packing materials, scrap metal, wire, pipe, crockery, and plaster not enclosed in covered bins or metal receptacles approved by the City.
- E. The existence or accumulation of any junk, including, but not limited to, broken, discarded, torn, or non-functional furniture, mattresses, bedding, appliances, toys, vehicle parts, building materials or other articles of personal property.
- F. The accumulation of yard waste, including, but not limited to, grass cuttings, weeds, brush, tree limbs, vegetation, garden waste, debris or organic matter which may be a fire hazard, or in which flies or rodents may breed and multiply, or which is a hazard to the public health, safety or welfare; provided that nothing herein shall prevent the temporary retention of yard waste in an enclosed compost pile.
- G. The existence of noxious or toxic weeds which could be hazardous to health, including, but not limited to, poison oak, poison ivy, and deadly nightshade; or the existence of overgrown grass, weeds or shrubs in which flies and rodents may breed and multiply or which may be a fire hazard pursuant to the Uniform Fire Code as adopted by reference in the University Place Municipal Code.
- H. The outdoor burning or disposal of refuse, sawdust, wood or other material in such a manner as to cause or permit ashes, sawdust, soot or cinders to be cast upon private or public property, including City streets, rights-of-way and alleys, or to cause or permit the smoke, ashes, soot or gases arising from such burning to pollute the air or endanger the health, safety and welfare of the public; provided, that this section shall not apply where the party responsible for the action has obtained a burning permit from the applicable fire department or local air quality authority.
- Any toxic, radioactive, caustic, explosive, flammable, combustible, malodorous, or septic substances, unless kept in proper receptacles as provided by the health and refuse laws or by the Uniform Fire Code.

- J. The existence or accumulation of building material, lumber, salvage materials, scrap iron, tin and other metal, wire, stone, cement or brick which is unsightly and may be an attractive nuisance; provided, that this subsection shall not apply if the materials are associated with an active building permit, or are neatly piled and screened from view from the public right-of-way or any neighboring property.
- K. Any fence or structure which is sagging, leaning, fallen, decayed, dangerous, or a fire hazard. Any building which is determined to be a dangerous building pursuant to the Uniform Code for the Abatement of Dangerous Buildings as adopted by reference other provisions of the University Place Municipal Code.
- L. The existence of any dead, diseased, infested or dying tree that may constitute a danger to property or persons.
- M. All trees, plants, shrubs, vegetation or fences overhanging or on any sidewalk, street, or public right-of-way, which:
- 1. Obstruct or impair the free and full use of the sidewalk or street by the public, or
- 2. Damage, obstruct or endanger power lines, cables, conduits, sewers or drains located within a public right-of-way, or
- 3. Obstruct the public's vision of intersections from the streets, sidewalks and public right-of-way. All tree limbs overhanging a public sidewalk which are less than 10 feet above the surface of the sidewalk and all tree limbs overhanging a public street which are less than 12 feet above the surface of the street are deemed to obstruct or impair the full use of the sidewalk or street.
- N. Maintaining a Marijuana Nuisance.
- O. Retain or store, except if permitted by any other City ordinance, any of the following:
- 1. One or more junk, wrecked, dismantled, partially dismantled, or apparently inoperable vehicles; or
- 2. Body parts, engines or drive-train parts, wheels, tires, or any other parts, assemblies or components of automobiles and other vehicles;
- 3. One or more abandoned vehicles.
- Unless such vehicles are (a) completely enclosed within a building sited, constructed and maintained in full compliance with the terms of any permit, license, statute, regulation, ordinance or order regulating such activity; (b) screened from neighboring properties and the right-of-way; or (c) stored or parked in a lawful manner on private property in connection with the legal business of a licensed dismantler, motor vehicle wrecker, licensed vehicle dealer, junk, salvage or wrecking yard, which is operating in full compliance with the terms of any permit, license, statute, regulation, ordinance or order regulating such activity, including the property fencing and screening provisions in RCW 46.80.130.
- P. Any building or structure where construction was commenced and then ceased and the building or structure was left unfinished, or any building or structure that has been constructed or modified without required permits.
- Q. Any structure, vehicle or other personal property that has been found contaminated and declared unfit or use by a local health officer pursuant to RCW 64.44.030.
- R. Any structure or personal property maintained in violation of the terms of a written order issued by the City of University Place, the Tacoma-Pierce County Health Department, or the local fire prevention district.
- S. The failure to maintain yard space thereof reasonably neat and clean and free of uncut grass, weeds, blackberry vines, bushes and debris, so as to prevent rodent, insect or other pest infestation, and so as to prevent a fire hazard.
- T. Constitutes a blight on the surrounding neighborhood.

## 9.35.035 Abatement of public nuisance.

- A. The responsible person or persons for any premises on which a nuisance as defined in UPMC 9.35.030 is found, shall abate such nuisance by removal, trimming, demolition, rehabilitation or repair.
- B. Whenever any declared nuisance, source of filth or cause or probable cause of injury to health shall be found to exist on any private or public property, the City Manager or designee shall have the power and authority to order verbally and/or in writing the owner or occupant or user thereof, by appropriate action, at the expense of such owner, occupant, or user to correct and remove such nuisance, source of filth or cause or probable cause of injury to health within such time as the City Manager or designee may order.
- C. In the event of the refusal or failure to remove such nuisance within said time, the City Manager or designee may cause such nuisance to be abated at the expense of such person or persons, which cost may be recovered by the City from such person or persons in an action brought in the name of the City to recover the same in any court of competent jurisdiction.
- D. As provided by RCW 35A.21.405, the City Manager or designee is also authorized to file a special assessment against the property on which the nuisance was abated for the City's costs in abating the nuisance. Before levying a special assessment, the City shall notify the property owner and any identifiable mortgage holder that a special assessment will be levied on the property and provide the estimated amount of the special assessment. The notice must be sent by regular mail.
- E. In any such abatement by the City, the City shall also be entitled to interest accruing at the rate of twelve percent (12%) per annum from the time of the expenditure of funds by the City for such abatement, or such other maximum rate established by law.

# 9.35.036 Serving of Orders.

- A. Any order described in Section 9.35.035(B) of this Code required to be served on a person, owner, agent or occupant of a premises, shall be deemed to have been served under any of the following conditions:
- Such order is delivered to such person by any authorized representative of the City Manager or designee;
- 2. Such order is mailed (by first class mail, postage prepaid and by a form of mail that requires the signed receipt showing when and to whom it was delivered) to the owner, representative of the owner, or the last known occupant of the premises;
- 3. Such order, properly signed, is posted by an authorized representative of the City Manager or designee upon any portion of such premises visible from a public place; or
- 4. In such manner as a summons and complaint may be served.
- 5. If the whereabouts of such persons are unknown and the same cannot be ascertained by the City Manager or designee in the exercise of reasonable diligence and the City Manager or designee shall make an affidavit to that effect, then the order may also be served by publishing the same twice, once each week for two consecutive weeks, in the official newspaper of the City.

## 9.35.037 Contents of Order.

The order shall contain, among other things, the following information:

- A. Name of owner or other persons interested;
- B. The location of the premises, identified by street address or legal description of the premises or other brief description;
- C. General description of the premises considered a nuisance;
- D. A statement or list of items in violation of this Chapter;
- E. A reasonable time for correction of the violation. In the instance of a junk vehicle or abandoned vehicle, the period of time shall be no less than fifteen (15) days.

F. A copy of the order may be filed with County Auditor, which filing shall have the same force and effect as other lis pendens orders provided by law.

## 9.35.038 Alternative abatement procedure.

In addition to the procedures outlined in this Chapter, nuisances may be abated in accordance with the following additional procedures pursuant to RCW 35.21.310:

- A. When requested by the City Manager, the matter of a pending violation may be submitted to the City Council for consideration whenever the violation consists of trees, plants, shrubs or vegetation, or parts thereof, which overhang any sidewalk or street or which are growing thereon in such manner as to obstruct or impair the free and full use of the sidewalk or street by the public; and may further so require the owner of any property therein to remove or destroy all grass, weeds, shrubs, bushes, trees or vegetation growing or which has grown and died, and to remove or destroy all debris, upon property owned or occupied by them and which are a fire hazard or a menace to public health, safety or welfare. After consideration, the Council may, by resolution, either accept, reject or modify the 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.
- B. The resolution shall not be passed until the property owner is given at least five days' notice of the pendency of the proposed resolution. The notice 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.
- C. If the nuisance is not abated by the property owner within the time fixed in the resolution, the City may abate the same and mail a bill to the property owner covering the cost to the City of such abatement. If the property owner fails or refuses to pay the bill immediately, the City may 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.

## 9.35.040 Penalties and enforcement.

In order to discourage public nuisances and otherwise promote compliance with applicable Code provisions, the City may undertake any of the following enforcement actions:

- A. Civil Penalties. Any person who fails to comply with the provisions of this chapter shall be subject to a civil penalty infraction in accordance with Chapter 1.15 UPMC 7.80 RCW. The existence of an order as set forth under this chapter shall not be a prerequisite for the issuance of civil infractions.
- B. Enforcement Actions Authorized. Initiate enforcement actions as authorized by this chapter or elsewhere within the Municipal Code or as permitted by law.
- C. Require abatement by means of a judicial abatement order, and if such abatement is not timely completed by the person or persons responsible for a Code violation, undertake the abatement and charge the reasonable costs of such work as authorized by this chapter;
- D. Order work stopped at a site by means of a stop work order, and if such order is not complied with, assesses civil penalties as authorized by this chapter.
- E. Suspend, revoke, or modify any permit or business license previously issued by the City or deny an application for a permit or business license when other efforts to achieve compliance have failed. An action under this subsection shall be governed by the processes particular to such permit or license;

- BF. Other Legal Remedies. Nothing in this chapter limits the right of the City to pursue other lawful, criminal, civil or equitable remedies to abate, discontinue, correct or discourage unlawful acts under or in violation of this chapter.
- C. Enforcement action by the City shall be in accordance with Chapter 1.20 and/or 1.30 UPMC at the City's discretion.
- G. In addition to or as an alternative to any other penalty provided herein or by any other nuisance ordinance, the City shall be entitled to its costs, reasonable attorneys' fees and reimbursement of staff time and expenses in any action to enforce the provisions of this Chapter or any other nuisance regulation ordinance.
- H. Summary Abatement. Nothing in this Chapter prohibits the City from taking any emergency action for the summary closure of such property when it is necessary to avoid an immediate threat to public welfare and safety. The City may take summary action to close the property without complying with the notification provisions of this chapter, but shall provide such notice as is reasonable under the circumstances.
- 9.35.050 Authorizing enforcement assistance from the Tacoma-Pierce County Health DepartmentOther Agencies.

The <u>City may obtain enforcement assistance from other governmental agencies Tacoma-Pierce County</u>

Health Department is hereby authorized to assist City officials in the enforcement of this chapter.

## 9.35.060 Appeals.

- A. The City Hearing Examiner is designated to hear appeals by property owners or those having an interest in the property subject to an abatement order as set forth in Section 9.35.035(B) UPMC. PROVIDED, HOWEVER, the Hearing Examiner shall not have the authority to adjudicate civil infractions issued under chapter 7.80 RCW.
- B. Any applicant or licensee may, within fourteen (14) days after receipt of an abatement order, file with the City Clerk a written notice of appeal. No fee shall be required for the filing of an appeal.
- C. As soon as practicable after receiving the written appeal, the City Clerk shall fix a date, time, and place for the hearing of the appeal by the Hearing Examiner. Written notice of the time and place of the hearing shall be given at least ten (10) days prior to the date of the hearing by the City Clerk, by mailing a copy addressed to each appellant at his or her address shown on the notice of appeal.
- D. At the hearing, the appellant or appellants shall be entitled to appear in person, and to be represented by counsel and to offer such evidence as may be pertinent and material to the denial or to the notice and order. The technical rules of evidence need not apply.
- E. Only those matters or issues specifically raised by the appellant or appellants in the written notice of appeal shall be considered in the hearing of the appeal.
- F. Unless the parties agree otherwise or circumstances do not otherwise permit, within ten (10) business days following conclusion of the hearing, the Hearing Examiner shall make written findings of fact and conclusions of law, supported by the record, and a decision which may affirm, modify, or overrule the denial or order of the City, and may further impose terms and conditions relative to the abatement of the nuisance, and may further impose upon an unsuccessful appellant the costs associated with the appeal.
- G. Failure of any person to file an appeal in accordance with the provisions of this Chapter shall constitute a waiver of the right to an administrative hearing and adjudication of the abatement order.

## 9.35.070 State Provisions Adopted by Reference.

- A. The following RCW sections, as currently enacted or as hereafter amended or recodified from time to time, are hereby adopted by reference and shall be given the same force and effect as if set forth herein in full:
- 7.48.010 Actionable nuisance defined.
- 7.48.050 Moral nuisances—Definitions.
- 7.48.120 Nuisance defined.
- 7.48.130 Public nuisance defined.
- 7.48.140 Public nuisances enumerated.
- 7.48.150 Private nuisance defined.
- 7.48.155 Unlawful use of firearm or deadly weapon—Arrest required.
- 7.48.160 Authorized act not a nuisance.
- 7.48.170 Successive owners liable.
- 7.48.180 Abatement does not preclude action for damages.
- 7.48.190 Nuisance does not become legal by prescription.
- 7.48.200 Remedies.
- 7.48.240 Certain places of resort declared nuisances.
- 7.48.250 Penalty—Abatement.
- 7.48.280 Costs of abatement.
- B. The following RCW sections, as currently enacted or as hereafter amended or recodified from time to time, are hereby adopted by reference and shall be given the same force and effect as if set forth herein in full. To the extent that such provisions impose or modify requirements elsewhere within this chapter, the RCW sections shall be reconciled with the provisions set forth in this chapter to provide effect to both, provided however, in the event of a conflict, the RCW section shall prevail:

RCW 46.55.240(3) Local Ordinances -- Requirements

#### **EXHIBIT D**

## Unfit dwellings, buildings, and structures

Sections 9.60.010 Purpose - Findings 9.60.020 Definitions 9.60.030 Authority 9.60.040 Criteria for Unfit or Dangerous Structures 9.60.050 Inspection and Complaint

9.60.060 Findings and Order

9.60.070 Appeals

9.60.080 Enforcement of Order

9.60.090 Sale or Disposal of Materials and Contents

9.60.100 Recovery of Expenses

9.60.110 Demolition of Dangerous Building

9.60.120 Permits, Regulation and Workmanship

9.60.130 Remedies Not Exclusive

9.60.140 Public Nuisance

# 9.60.010 Purpose - Findings

Pursuant to chapter 35.80 of the Revised Code of Washington (RCW), the City Council finds that there are within the City of University Place, dwellings which are unfit for human habitation and buildings, structures, and premises or portions thereof which are unfit for other uses due to dilapidation, disrepair, structural defects, unpermitted and substandard construction or modification, filth and other conditions attracting insects or vermin or likely to spread disease, defects increasing the hazards of fire, accidents, or other calamities, or other similar conditions and violations of various building, health, and safety regulations. and/or which are vacant, unsecured, and abandoned or apparently abandoned. Such dwellings, buildings, structures, and premises are dangerous to occupants, threaten the public health, safety, and welfare, attract and harbor vagrants and criminals, offend public values, lower the value of neighboring properties, contribute to neighborhood or community deterioration, and hamper community and economic development. When the owners or other persons in possession or control of such properties are unwilling or unable to correct such conditions in a proper and timely manner, it is in the interest of the community for the City to intervene and correct, repair, or remove such buildings, structures, and conditions and to pursue all legal means to recover from such persons and/or properties the costs of doing so, including the costs of staff salaries and benefits, materials, contractors, and all other legally recoverable costs and expenses.

#### 9.60.020 Definitions

Unless the context provides otherwise, the following words and phrases where used in this Chapter shall have the meaning and construction given in this section:

- A. "Abate" shall mean to put an end to, or otherwise diminish the intensity of, any condition causing a structure to be dangerous or unfit.
- B. "Abandoned" or "Apparently Abandoned" shall mean any structure or premises that is so neglected, or other characteristics exist, such that it appears to be vacant and not cared for by any owner, occupant, or other party.
- C. "Public Officer" shall mean and include the Building Official or designees.
- D. "Person" shall mean and include any individual, business, corporation, organization, or entity.
- E. "Owner" shall mean the owner or taxpaver shown in the records of the Pierce County Assessor-Treasurer, recorded with the Pierce County Auditor, or as otherwise known to the City of University Place, and shall include any manager or other representative of the owner, or other person with responsibility for or control over the structure or premises.

F. "Structure" shall mean or include that which is built or constructed or a portion thereof.

# 9.60.030 Authority of Public Officer

The Public Officer is hereby authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter. These powers shall include the following in addition to others granted in this Chapter: (a)(i) To determine which dwellings are unfit for human habitation; (ii) to determine which buildings, structures, or premises are unfit for other use; (b) to administer oaths and affirmations, examine witnesses, and receive evidence; and (c) to investigate the dwelling and other property conditions and to enter upon premises for the purpose of making examinations when the Public Officer has reasonable ground for believing they are unfit for human habitation, or for other use. PROVIDED, that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession, and to obtain an order for this purpose after submitting evidence in support of an application which is adequate to justify such an order from a court of competent jurisdiction in the event entry is denied or resisted: PROVIDED FURTHER that the Public Officer may recognize and give appropriate effect to special and extenuating circumstances which, in order to do substantial justice, warrant the exercise of discretion to adjust the timeframes, standards and other provisions of this chapter. Examples of circumstances which may warrant such exercise of discretion include, without limitation, medical illness or disability affecting a property owner's ability to respond to orders or appear at hearings and bona fide insurance coverage disputes which create a definite risk that enforcement of this chapter would unfairly result in a substantial economic loss to the property owner.

## 9.60.040 Criteria for Unfit or Dangerous Structures

The Public Officer may determine that a structure is dangerous or unfit for human habitation or other use if he finds that conditions exist in such structure which are dangerous or injurious to the health, safety, or welfare of the occupants of such structure, the occupants of neighboring structures, or other residents of the City. Such conditions may include the following, without limitations:

- 1. Any door, aisle, passageway, stairway, or other means of exit is too narrow or small, or other factors or conditions exist, so as to be unsafe or to hinder safe exit in case of panic, fire, or other emergency.
- 2. The walking surface of any aisle, passageway, stairway, or other means of exit is so warped, worn, loose, torn, or other factors or conditions exist, so as to be unsafe or to not provide safe and adequate means of exit in case of panic, fire, or other emergency.
- 3. The stress in any materials, member, or portion thereof, due to dead and live loads, is more than one and one-half times the working stress or stresses allowed in the Building Code, chapter 15A.8 UPMC for new buildings of similar structure, purpose, or location.
- 4. Any portion has been damaged by fire, earthquake, wind, flood, deterioration, neglect, or any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such damage or deterioration and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose, or location.
- 5. Any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons, damage property, or render other portions of the structure or premises unsafe or unfit to occupy.
- 6. Any portion of a building, or any member, appurtenance, or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached, or fastened in place as to be capable of resisting a wind pressure of one-half of that specified in the Building Code for new buildings of similar structure, purpose, or location without exceeding the working stresses permitted in the Building Code for such buildings.

#### **EXHIBIT D**

- 7. Any portion thereof is wracked, warped, buckled, settled, or other conditions exist, such that walls or other structural portions have materially less resistance to wind, earthquakes, snow, or other loads, than is required in the case of similar new construction.
- 8. The building or structure, or any portion thereof, because of (i) dilapidation, deterioration, or decay; (ii) faulty construction; (iii) the removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration, decay, or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse.
- 9. For any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used or is designed and intended to be used.
- 10. The exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall within the middle one-third of the base.
- 11. The building or structure, exclusive of the foundation, shows 33% or more damage or deterioration of its supporting member or members, or 50% damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.
- 12. Any structure or premises that is damaged by fire, wind, earthquake, flood, or any other cause, has become dilapidated, deteriorated, or neglected, or is abandoned or apparently abandoned and not thoroughly and adequately secured against unauthorized entry, so as to (i) be an attractive nuisance to children; (ii) attract and/or provide harborage for vagrants, criminals, or immoral persons; or (iii) enable persons to resort thereto and commit unlawful, immoral, or dangerous acts.
- 13. Any building or structure has been constructed, exists, or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this jurisdiction, as specified in the Building Code, chapter 14.05 UPMC or of any other law of this State or ordinance of the City relating to the condition, location, or structure of buildings.
- 14. Any building or structure, which, whether or not erected in accordance with all applicable laws and ordinances, has in any non-supporting part, member, or portion less than 50% or in any supporting part, member, or portion less than 66% of the (i) strength, (ii) fire-resisting qualities or characteristics, or (iii) weather-resisting qualities or characteristics required by law for newly-constructed buildings of like area, height, and occupancy in the same location.
- 15. Any structure or premises which, because of: neglect, dilapidation, decay, damage, or faulty construction; inadequate light, air, or sanitation facilities; infestation of rodents, roaches, wood-destroying organisms, or other vectors of disease; filth or accumulation of garbage; or for any other reason, is unsanitary, unfit for human habitation or occupancy, or in such a condition that is likely to cause sickness or disease.
- 16. A structure or premises, because of obsolescence, deterioration, damage, lack of sufficient or proper fire-resistive construction or fire-protection systems, faulty electric wiring or components, gas connections, or mechanical systems, or other cause, is determined by the City or local fire protection district to be a fire hazard.
- 17. Equipment or systems which are unsafe due to damage, deterioration, faulty or inadequate maintenance or construction, or any other reason.
- 18. Any portion of a structure remaining on a site after the demolition or destruction of the structure or any structure abandoned so as to constitute such structure or portion thereof an attractive nuisance or hazard to the public.
- 19. Any building or structure in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.

20. Any other condition the Building Official or other official or expert can articulate that renders the structure unsafe or unfit for habitation or occupancy.

# 9.60.050 Inspection and Complaint

If, after a preliminary investigation of any dwelling, building, structure, or premises, the Public Officer finds that it is dangerous or unfit for human habitation or other use, he shall cause to be served either personally or by certified mail, with return receipt requested, upon all persons having any interest therein, as shown upon the records of the Pierce County Auditor, and shall post in a conspicuous place on such property, a complaint stating in what respects such dwelling, building, structure, or premises is unfit for human habitation or other use. If the whereabouts of any of such persons is unknown and the same cannot be ascertained by the Public Officer in the exercise of reasonable diligence, and the Public Officer makes an affidavit to that effect, then the serving of such complaint or order upon such persons may be made either by personal service or by mailing a copy of the complaint and order by certified mail, postage prepaid, return receipt requested, to each such person at the address of the building involved in the proceedings. and mailing a copy of the complaint and order by first class mail to any address of each such person in the records of the Pierce County Treasurer-Assessor or Auditor. Such complaint shall contain a notice that a hearing will be held before the Public Officer, at a place therein fixed, not less than ten days nor more than thirty days after the serving of the complaint; and that all parties in interest shall be given the right to file an answer to the complaint, to appear in person, or otherwise, and to give testimony at the time and place in the complaint. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Public Officer. A copy of such complaint shall also be filed with the Pierce County Auditor and such filing of the complaint or order shall have the same force and effect as other lis pendens notices provided by law.

# 9.60.060 Findings and Order

- A. If, after the required hearing, the Public Officer determines that the dwelling is dangerous or unfit for human habitation, or building or structure or premises is unfit for other appropriate use, he/she shall state in writing his/her findings of fact in support of such determination, and shall issue and cause to be served upon the owners and parties in interest thereof, as provided in UPMC 9.60.050, and shall post in a conspicuous place on the property, an order that (i) requires the owners and parties in interest, within the time specified in the order, to repair, alter, or improve such dwelling, building, structure, or premises to render it fit for human habitation, or for other appropriate use, or to vacate and close the dwelling, building, structure, or premises, if such course of action is deemed proper on the basis of the standards set forth in UPMC 9.60.040; or (ii) requires the owners and parties in interest, within the time specified in the order, to remove or demolish such dwelling, building, structure, or premises, if this course of action is deemed proper on the basis of those standards. If no appeal is filed, a copy of such order shall be filed with the Pierce County Auditor.
- B. In ordering the required course of action to be taken by the owner to abate the unfit or dangerous structure, the Public Officer may order the structure or a portion thereof demolished and not repaired under the following circumstances:
- i. The structure is patently illegal with regard to building, zoning, or other regulations;
- ii. The estimated cost to repair the structure or portion thereof is more than 50% of the value of the structure or portion thereof; or,
- iii. The estimated cost to repair the structure or portion thereof is less than 50% of the value and repairing and/or securing the structure from entry would, nevertheless, cause or allow the structure to remain a hazard or public nuisance.

The value of the structure shall be as determined by the Pierce County Assessor-Treasurer. In estimating the cost of repairing the structure, the Public Officer may rely upon such cost estimating publication or method the Public Official deems appropriate.

#### 9.60.070 Appeals

A. Within thirty days from the date of service upon the owner and posting of the decision issued under UPMC 9.60.060, the owner or any party in interest may file an appeal with the City Clerk for a hearing before the Hearing Examiner. All matters under this Chapter shall be resolved by the Hearing Examiner within sixty days from the date of filing therewith and a transcript of the findings of fact of the Examiner shall be made available to the owner or other party in interest upon demand. The findings and orders of the Hearing Examiner shall be reported in the same manner and shall bear the same legal consequences as if issued by the Public Officer.

B. Absent an injunction issued by a court of competent jurisdiction, in accordance with RCW 35.80.030(2) as now or hereinafter amended, within thirty days after posting and service of the Hearing Examiner's Order, the decision of the Hearing Examiner shall be final.

#### 9.60.080 Enforcement of Order

If the owners or parties in interest, following exhaustion of his or her rights to appeal, fails to comply with the final order to repair, alter, improve, vacate, close, remove, or demolish the dwelling, building, structure, or premises, the Public Officer may direct or cause such dwelling, building, structure, or premises to be repaired, altered, improved, vacated and closed, removed, or demolished. In the enforcement of this section, the Public Officer is authorized to enter the structure and/or premises for inspection, testing, sampling, or other purposes preparatory to and in the conduct of the repairs, demolition, or other actions, to hire contractors as necessary to perform the work, and to spend public funds to complete the work.

# 9.60.090 Sale or Disposal of Materials and Contents

Prior to removing or demolishing the dwelling, building, structure, or premises, the Public Officer shall, if reasonably possible, attempt to sell the materials and/or contents of the dwelling, building, structure, or premises, and shall credit the proceeds of such sale against the cost of the removal or demolition and, if there be any balance remaining, it shall be paid to the parties entitled thereto, as determined by the Public Officer, after deducting the costs incident thereto.

## 9.60.100 Recovery of Expenses

- A. The amount of the cost of such repairs, alterations or improvements; or vacating and closing; or removal or demolition by the Public Officer; or litigation associated with an order issued under this chapter, shall be assessed against the real property upon which such cost was incurred unless such amount is previously paid. Pursuant to RCW 35.80.030(1)(h), the amount of such costs shall constitute a lien against the property of equal rank with state, county, and municipal taxes.
- B. For purposes of this section, the cost of vacating and closing shall include (i) the amount of relocation assistance payments that a property owner has not repaid to the City of University Place or other local government entity that has advanced relocation assistance payments to tenants under RCW 59.18.085; (ii) all penalties and interest that accrue as a result of the failure of the property owner to timely repay the amount of these relocation assistance payments under RCW 59.18.085; and (iii) all other reasonable expenses, including but not limited to, the costs of staff time, reasonable attorney fees, materials, incidentals, mailing, publishing, and recording notices. Upon certification to him, by the Public Officer, of the assessment amount being due and owing, the County Assessor/Treasurer shall enter the amount of such assessment upon the tax rolls against the property for the current year and the same shall become a part of the general taxes for that year to be collected at the same time and with interest at such rates and in such manner as provided for in RCW 84.56.020 for delinquent taxes, and when collected to be deposited to the credit of the general fund of the City.

#### **EXHIBIT D**

# 9.60.110 Demolition of Dangerous Building

In enforcement of this section, the Public Officer may have the structure demolished, even if the order does not require demolition, if the estimated cost to repair the structure or portion thereof is less than 50% of the value and the structure is abandoned or the owner is unresponsive, and repairing and/or securing the structure from entry would, nevertheless, cause or allow the structure to remain a hazard or public nuisance, continue a non-conforming use, or otherwise be an unreasonable use of public funds.

## 9.60.120 Permits, Regulations and Workmanship

All repairs, improvements, maintenance, or other work, performed in relation to any enforcement under this code shall be performed and completed in a workmanlike manner and in compliance with all permitting and other requirements of all applicable codes and regulations. The owner shall be responsible for identifying and complying with all applicable codes and regulations.

#### 9.60.130 Remedies Not Exclusive

- A. This chapter does not abrogate or impair the powers of the courts or of any department of the City to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law.
- B. This section does not impair or limit in any way the power of the City to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.

#### 9.60.140 Public Nuisance

Any structure or premises subject to complaint or order under this chapter is also a public nuisance.