

City of Lynnwood  
DEC 20 2000  
SCANNED

CITY OF LYNNWOOD  
ORDINANCE NO. 2010

**ORIGINAL**  
Do not remove from  
the City Clerk's Office

**AN ORDINANCE ADDING NEW SECTIONS TO CHAPTER 1.35 OF THE LYNNWOOD MUNICIPAL CODE; PROVIDING FOR HEARING PROCESSES AND PROCEDURES ("PROCESS II") FOR APPEALS FROM NOTICES OF VIOLATION OF THE LYNNWOOD MUNICIPAL CODE AND CIVIL PENALTY ASSESSMENTS.**

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

Section 1. PROCESS II. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.200 PROCESS II: CODE ENFORCEMENT APPEALS

Unless specifically provided otherwise in the Lynnwood Municipal Code, Sections 1.35.200 through 1.35.299 LMC shall apply whenever violations of the Lynnwood Municipal Code have occurred and the City has determined that civil penalties shall be imposed for such violations, or whenever a provision of the Lynnwood Municipal Code requires a decision using "PROCESS II".

Section 2. SCOPE OF PROCESS II. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.210 SCOPE

LMC 1.35.200 through 1.35.299 set forth the procedures that the City shall use in implementing "PROCESS II". This process includes a hearing and decision by a Hearing Examiner and rights of appeal.

Section 3. NOTICE OF HEARING. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.230 NOTICE OF APPEAL HEARING

Upon appeal from a Notice of Violation and Assessment of Civil Penalties, the applicable department director shall prepare a written notice of appeal hearing containing all of the following:

1. The name of the appellant and, if applicable, the project name;
2. The citation of the Lynnwood Municipal Code provision(s) which the Director determined that the appellant violated;
3. A brief description of the act or omission which is the basis of such determination and the location of same;

4. The date, time and place of the hearing which shall be not earlier than ten (10) calendar days nor more than 30 days from the date of the notice of hearing, except by agreement;
  5. A statement of the appellant's right to call witnesses and present evidence;
  6. A statement that only the appellant and the appropriate department director may appeal the decision of the Hearing Examiner.
- B. The Notice of Appeal Hearing shall be sent to the appellant, at the address given in his notice of appeal, by certified mail, return receipt requested and by first class mail, postage pre-paid.

Section 4. APPEAL HEARING. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.240 APPEAL HEARING

- A. Who May Participate. The appellant, the appropriate City staff, any witnesses called by the appellant or City staff, and any other person may participate in an appeal hearing.
- B. Burden of Proof. At the hearing, the City has the burden of proof to establish, by a preponderance of the evidence, that violation of the Lynnwood Municipal Code, ordinances, rules or regulations has occurred.
- C. Hearing Record. The Hearing Examiner shall make an electronic sound recording of each hearing or shall otherwise provide for a record of each hearing.

Section 5. HEARING EXAMINER'S AUTHORITY. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.245 AUTHORITY AND ACTION OF HEARING EXAMINER

In accordance with the provisions of Process II and Chapter 2.22 LMC, a Hearing Examiner shall conduct a hearing following which he shall determine whether violation(s) of the Lynnwood Municipal Code occurred and issue a written decision within ten (10) City of Lynnwood working days following the conclusion of all testimony and hearings. The decision shall contain findings of fact and conclusions of law and a statement of the appeal and reconsideration rights provided in this Code. If the Hearing Examiner determines that violation(s) occurred, he shall so indicate and assess the appropriate daily civil penalty, as provided by LMC 1.02.215. For violations of Ch 10.08 LMC or LMC 16.08.200 et seq, the Hearing Examiner, in addition to any civil penalties, may direct and order the appellant to take such steps as are necessary to abate the nuisance or correct to violation.

Section 6. EFFECT OF EXAMINER'S DECISION. A new section is added to Ch. 1.35 LMC, to read as follows:

### 1.35.250 DISTRIBUTION AND EFFECT OF EXAMINER'S DECISION

- A. Within three (3) City of Lynnwood working days of its issue, the Examiner's decision shall be distributed by the applicable department director to the appellant and all who participated in the public hearings.
- B. A Hearing Examiner's decision on the appeal is the final decision of the City, which may be appealed to the Superior Court as provided in LMC 1.35.260.

Section 7. REQUEST FOR RECONSIDERATION. A new section is added to Ch. 1.35 LMC, to read as follows:

### 1.35.255 REQUEST FOR RECONSIDERATION

- A. Time Period for Filing Request for Reconsideration. Within seven (7) calendar days of the date of the Hearing Examiner's decision, the appellant or the applicable department director may file, with the Examiner, a written request for reconsideration. Such request shall specify the error of law or fact, or new evidence which could not have been reasonably available at the time of the hearing, which is the basis of the request. An appellant or department director may file only one request for reconsideration, even if the reconsidered decision modifies the Hearing Examiner's initial decision.
- B. Examiner's Action on Request for Reconsideration.
  - 1. Within ten (10) days from the filing of a request for reconsideration, the Examiner shall issue a written decision on the request. If the Examiner decides to reconsider, the decision to reconsider shall be mailed to all who participated in the prior hearings no later than five (5) days after the Examiner's decision.
  - 2. The Examiner shall determine whether to hold additional hearings on the matter. Notice of any additional hearings shall be mailed to all who participated in the prior hearings no later than seven (7) days prior to the hearing.
  - 3. The reconsidered decision shall be distributed to the appellant, the appropriate department director, and all who participated in the hearing(s).
- C. Effect of Filing Request for Reconsideration. The filing of a request for reconsideration does not stay the appeal period provided in LMC 1.35.260. However, if the request for reconsideration is granted, the appeal period is stayed pending reconsideration.

Section 8. APPEAL TO SUPERIOR COURT. A new section is added to Ch. 1.35 LMC, to read as follows:

1.35.260 APPEAL OF HEARING EXAMINER'S DECISION TO SUPERIOR COURT

The appellant, or the appropriate Department Director, may appeal the Hearing Examiner's final decision by filing an application with the Snohomish County Superior Court for a writ of review, writ of prohibition, or writ of mandamus, within twenty-one (21) calendar days following the effective date of the Examiner's decision, or is thereafter barred. Provided however, in those appeals involving enforcement or abatement of unfit or substandard buildings or nuisance in accordance with CH 10.08 LMC or LMC 16.08.200 et seq. an appeal to Snohomish County Superior Court shall be within 30 days following the effective date of the Examiner's decision, or be thereafter barred.

Section 9. That Section 1.08.185(D) of the Lynnwood Municipal Code and parts of Ordinance 1368 which read as follows, to-wit:

D. CIVIL PENALTY

In addition to or as an alternative to any other judicial or administrative remedy provided in this section or by law or other ordinance, any person organization, corporation or partnership and their agents or assigns who violates any provision of Sections 10.12.400 and 10.12.500 and Titles 7, 12, 13, 14, 15, 16, 18, 19, 20 and 22 of the Lynnwood Municipal Code or rules and regulations adopted thereunder or by each act or commission or omission procures, aids or abets such violation shall be subject to a civil penalty in an amount of twenty-five dollars per day for each continuous violation.

All civil penalties will be enforced by the City administrative staff in any court of competent jurisdiction and/or pursuant to hearing procedures before the City's Hearing Examiner.

is hereby repealed, revised and amended to read as follows:

D. CIVIL PENALTY

1. In addition to or as an alternative to any other judicial or administrative remedy provided in this section or by law or other ordinance, any person organization, corporation or partnership and their agents or assigns who violates any provision of Sections 10.08.200 through 10.08.460 or 16.230 through 250, Sections 10.12.400 and 10.12.500 and Titles 7, 12, 13, 14, 15, 16, 18, 19, 20 and 22 of the Lynnwood Municipal Code or rules and regulations adopted thereunder or by each act or commission or omission procures, aids or abets such violation shall be subject to a civil penalty in accordance with the following schedule:

- a. First day of each violation, one hundred dollars;

- b. Second day of each violation, two hundred dollars;
- c. Third day of each violation, three hundred dollars;
- d. Fourth day of each violation, four hundred dollars;
- e. Each additional day of each violation beyond four days, five hundred dollars per day.

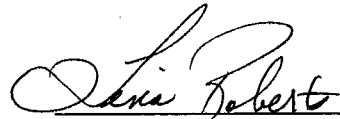
2. The civil penalties constitute a personal obligation of the person to whom the notice of civil violation is directed. Any monetary penalty assessed must be paid to the city clerks office within ten calendar days form the date of mailing of the hearing examiner's decision or a notice from the city that penalties are due.

3. The office of the city attorney is authorized to take appropriate action to collect the civil penalty.

Section 10. SEVERABILITY. If any section, subsection, paragraph, sentence, clause, phrase or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, paragraph, sentence, clause, phrase or work of this ordinance.

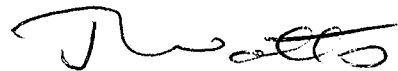
Section 11. EFFECTIVE DATE. This ordinance shall take effect and be in full force five (5) days after its passage, approval and publication.

PASSED this 14<sup>th</sup> day of NOV, 1999, and signed in authentication of its passage this 15<sup>th</sup> day of NOV, 1999



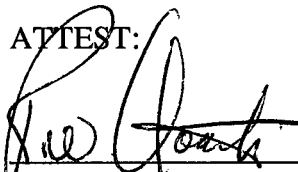
TINA ROBERTS, MAYOR

APPROVED AS TO FORM:



JOHN P. WATTS  
Office of City Attorney

ATTEST:



R. W. NOACK, CITY CLERK

PUBLISHED: