

CITY OF LYNNWOOD

ORDINANCE NO. 2796

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, RELATING TO CODE ENFORCEMENT; AMENDING SECTIONS 1.01.085, 1.35.200, 1.35.220, 1.35.230 AND 1.35.245 LMC; REPEALING CHAPTERS 1.40 AND 1.45 LMC; AND ADDING A NEW CHAPTER 1.40 TO THE LYNNWOOD MUNICIPAL CODE

WHEREAS, the City desires to amend the various code enforcement provisions set forth in the Lynnwood Municipal Code to provide a more comprehensive and streamlined set of enforcement standards and procedures; now, therefore

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

Section 1. Section 1.01.085 of the Lynnwood Municipal Code is amended as follows:

1.01.085 Enforcement.

A. It is unlawful for any person, firm or corporation, their agents or servants, to violate any of the provisions of the Lynnwood Municipal Code.

B. The Mayor shall be responsible for enforcing this code; provided, that the mayor may designate to the appropriate department director enforcement authority over code provisions administered by the director. This code may be enforced through criminal prosecutions, infraction proceedings, or civil assessment proceedings, as provided herein.

Section 2. Section 1.35.200 of the Lynnwood Municipal Code is amended as follows:

1.35.200 Process II: administrative decisions- Appeal to hearing examiner.

Unless specifically provided otherwise in the Lynnwood Municipal Code, LMC 1.35.200 through 1.35.260 shall apply to administrative decisions including decisions on permits and decisions of department directors, or whenever a provision of the Lynnwood Municipal Code requires a decision using Process II.

Section 3. Section 1.35.220 of the Lynnwood Municipal Code is amended as follows:

1.35.220 Process on appeal.

An appeal from a decision under a provision of the Lynnwood Municipal Code that provides for an appeal using Process II shall be processed as follows:

A. The appeal shall be filed with the department director within 14 days from the issuance of the decision which is the basis for the appeal. The fee for filing an appeal shall be shown in Chapter 3.104 LMC. The timely filing of an appeal shall stay the effective date of the decision until such time as the decision is adjudicated or withdrawn.

B. The Appeal shall include a statement of why the appellant believes the decision is in error.

Section 4. Section 1.35.230 of the Lynnwood Municipal Code is amended as follows:

1.35.230 Notice of appeal hearing.

A. Upon timely appeal from a decision under a provision of the Lynnwood Municipal Code that provides for an appeal using Process II, the 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 is the subject of the appeal;
3. A brief description of the act or circumstances which is the basis of such determination;
4. The date, time and place of the hearing which shall not be earlier than 10 calendar days nor more than 30 days from the date of the notice of hearing, unless extended by agreement, or to combine with other pending or potential appeals;
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;
7. A brief summary statement of the reason(s) for the appeal, as such a statement is provided by the appellant or is clear from the written appeal.

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 5. Section 1.35.245 of the Lynnwood Municipal Code is amended as follows:

1.35.245 Authority and action of hearing examiner.

The hearing examiner shall conduct a hearing following which the hearing examiner shall determine whether the decision appealed from was correct, considering whether it conformed to relevant elements of the city's development regulations, comprehensive plan, and that any significant adverse environmental impacts have been adequately addressed. The hearing examiner shall issue a written decision within 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.

Section 6. Chapter 1.40 of the Lynnwood Municipal Code is hereby repealed in its entirety and a new Chapter 1.40 of the Lynnwood Municipal Code is added as follows:

Chapter 1.40 CODE ENFORCEMENT

1.40.010 Definitions.

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

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

B. "Code enforcement officer" means a non-police city employee commissioned and sworn to take enforcement action as provided in this chapter.

C. "Department director" means the mayor, the department director who is generally responsible for enforcement of the Lynnwood Municipal Code provision which is the subject of a violation.

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

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

F. "Nuisance" means:

1. A violation of any city development, land use or public health ordinance;
- or
2. Nuisance as defined in LMC 10.08.200.

G. "Person" means any individual, firm, association, partnership, corporation, company or any other entity, public or private.

H. "Responsible party" means any person who has committed or permitted a

violation of this code or a person who has an interest in or resides on property that is the location of a violation of this code, whether as owner, lessee, tenant, occupant or otherwise, or who by act of commission or omission procures, aids or abets a violation of this code.

1.40.020 Enforcement.

A. Whenever the city has cause to believe that a violation of Titles 5, 6, 7, 9, 10, 12, 13, 14, 15, 16, 18, 19 and 21 LMC has been or is being committed, this code shall be enforced, according to applicable law, by the department director responsible for administering that title, as provided herein. Unless provided otherwise in this chapter, department directors may act through code enforcement officers.

B. Entry.

Whenever necessary to make an inspection to enforce or determine compliance with provisions Titles 5, 6, 7, 9, 10, 12, 13, 14, 15, 16, 18, 19 and 21 LMC, or whenever the city has cause to believe that a violation of any provision of the above-referenced titles has been or is being committed, the department director shall, if such building, structure, or property is occupied, present identification credentials, state the reason for the inspection and request entry. If consent to enter is not given or the building, structure, property is unoccupied the department director may commence an enforcement action.

1.40.030 Enforcement actions.

A. Enforcement actions shall be taken according to the following order of precedence:

1. Voluntary compliance.
2. Notice of violation and order corrective action according to LMC 1.40.050.
3. Imposition of civil penalties when and as prescribed by this chapter.
4. Citation for a criminal violation whenever the violator is a repeat offender and the violation poses an immediate threat to the public health and safety.

B. A civil infraction shall issue without regard to the foregoing order of precedence when the violation has been designated as an infraction in the code.

C. In addition to, or in lieu of, any other enforcement action, any nuisance may be abated as prescribed in Title 10 LMC.

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

1.40.040 Civil penalty

A. Department directors are authorized to order assessment of civil penalties under

this chapter. This authority may not be delegated.

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

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

C. Civil penalties shall accrue daily until the required corrective action is taken. Civil penalties shall constitute a personal obligation of the person against whom the penalties were imposed. An assessed civil penalty must be paid to the office of the finance director, City of Lynnwood.

1.40.050 Notice of violation and order of corrective action.

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

1. The responsible party has breached and/or failed to fully satisfy the terms of any voluntary correction agreement;
2. The violation creates conditions that cannot be corrected;
3. The responsible party cannot be contacted or refuses to communicate or cooperate with the city; or
4. Section 1.40.030 authorizes another enforcement action.

B. The notice of violation and order of corrective action shall contain:

1. The name and address of the responsible party;
2. The street address or other description sufficient to identify the premises or property where the violation has occurred or is occurring;
3. A description of the violation and citation to the applicable code provision(s);
4. The necessary corrective action to be taken, and the date by which the corrective action must be completed;
5. A copy of any voluntary correction agreement proposed by the city in accordance this chapter, and
6. Notice that if voluntary correction cannot be secured and/or if the responsible party does not respond within ten (10) business days following service of the notice and order, the city may impose civil penalties or commence abatement proceedings.

7. The signature and commission number of the code enforcement officer issuing the notice of violation and order of corrective action and contact information for that officer.

C. The notice of violation and order of corrective action shall be served upon the responsible party either by personal service or by mailing a copy of the notice and order by regular U.S. first class mail to the person's last known address. If the responsible party cannot be personally served within Snohomish County and if the address of the responsible party cannot be reasonably ascertained, notice shall be served by posting a copy of the notice of violation and order of corrective order conspicuously on the subject property or a structure located thereon. Service shall be deemed effective upon personal service, or three (3) business days following placement of the notice and order in the U. S. Mail, postage prepaid, or upon posting of the notice upon the property. Proof of service shall be made by a written statement under penalty of perjury executed by the person making the service, declaring the time and date of service, the manner by which the service was made, and, if by posting, the facts showing the attempts to serve the responsible party personally and/or by mail.

1.40.060 Voluntary Correction Agreement.

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

B. The voluntary correction agreement shall be a contract between the city and the responsible party under which such person agrees to correct and abate the violation within a specified time, according to specified conditions. The voluntary correction agreement may provide for:

1. correction and abatement of the violation by a date certain;
2. accrual of the applicable civil penalties from the date of the agreement and continuation of penalties until the violation is corrected and abated, if the responsible party breaches the agreement;
3. a safe harbor provision if the violation cannot be corrected and abated because of unforeseen circumstances not within the control of the responsible party;
4. city abatement of the violation and recovery of its costs and expenses (including attorney fees, expert witness fees and court costs) if the agreement is breached;
5. other terms deemed appropriate by the department director; and
6. a waiver of the right to appeal the department director's determination of violation and/or the required corrective action.

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

penalties shall accrue to the responsible party, and no further enforcement proceedings on the subject violation shall be pursued by the city against the responsible party.

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

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

1.40.070 Response to notice of violation and order of corrective action.

The responsible party shall either respond to or appeal the notice of violation and order of corrective action within ten (10) business days following service of the notice and order. A response shall contain the address and telephone number of the responsible party and advise the city whether the responsible party will perform the corrective action required by the notice and order and enter into any proposed voluntary correction agreement. The response shall be addressed to the person who issued the notice and order and shall be served on the city by personal delivery or by placing the response in the U.S. mail, postage prepaid on or before the expiration of ten (10) business days following service of the notice and order.

1.40.080 Order assessing civil penalties.

A. The department director may issue an order assessing civil penalties against a responsible party whenever

1. the department director is not required to seek voluntary corrective action under LMC 1.40.050A;
2. the responsible party fails to respond as required by LMC 1.40.070; or
3. the responsible party refuses to voluntarily correct and abate the violation.

B. The order assessing civil penalties shall contain:

1. The name and address of the responsible party;
2. The street address or other description sufficient to identify the premises or property where the violation has occurred or is occurring;
3. A description of the violation and citation to the applicable code provision(s);
4. Notice of the civil penalty assessed for such violation and that each day the violation continues or is permitted to continue shall result in the assessment of daily civil penalties.
5. Notice of the right to appeal the department director's determination.
6. The date and the signature of the department director.

C. The order assessing civil penalties shall be served as provided in LMC 1.40.050.C.

1.40.090 Right of appeal.

A. Except for the department director's decisions concerning the content of a voluntary correction agreement, a notice of violation and order of corrective action, or an order assessing civil penalties may be appealed in writing to the city's hearing examiner within 10 city working days of the issuance of notice of violation and order of corrective action or the order assessing civil penalties; otherwise, the decision is the final decision of the city and the hearing examiner shall be without jurisdiction to hear an appeal. The appeal shall identify the appellant, provide appellant's address and telephone number, and state the grounds of appeal. The notice of appeal shall be accompanied by the fee for filing an appeal established in Chapter 3.104 LMC.

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

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

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

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

1.40.100 Appeal hearing.

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

B. The appellant must prove by a preponderance of the evidence that the department director's decision is erroneous.

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

1.40.110 Authority and action of hearing examiner.

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

notice of the right to appeal.

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

1.40.120 Distribution and effect of examiner's decision.

A. The hearing examiner's decision shall be distributed by the department director to the appellant and any other interested party who appeared at the hearing within 3 city working days of its issue.

B. A hearing examiner's decision on the appeal is the final decision of the city. The appellant or the department director may submit a request for reconsideration of such decision in accordance with LMC 1.35.255 or appeal such decision to the superior court in accordance with LMC 1.35.260.

1.40.130 Civil infractions.

A. A limited commission city code enforcement officer may issue a citation for civil infraction and, in accordance with the Infraction Rules for Courts of Limited Jurisdiction, file and prosecute the citation in the Lynnwood Municipal Court.

B. Violations of the following provisions of the Lynnwood Municipal Court shall be infractions: Titles 5, 6, 7, 9, 10, 12, 13, 14, 15, 16, 18, 19 and 21 LMC.

C. The penalty for a civil infraction shall be as follows:

1. First offense \$100.00;
2. Second offense \$200.00.

D. A responsible party charged for the third time with conduct that would otherwise be an infraction shall be referred to the City Prosecutor for prosecution in the Lynnwood Municipal Court.

E. The Infraction Rules for Courts of Limited Jurisdiction shall apply to civil infractions established by this chapter.

1.40.140 Limited Commission.

A. The chief of police is authorized, upon prior approval of the mayor, to commission non-police city employees as code enforcement officers for purposes of performing

enforcement duties under this chapter.

B. Before commencing any duties, the prospective code enforcement officer shall take an oath of office before the Judge of the Municipal Court, as follows:

I, _____, do solemnly swear (or affirm) that I will perform the duties of code enforcement officer of the city of Lynnwood to the best of my ability according to city ordinances, the law of the State of Washington, and the Constitutions of the State of Washington and the United States of America.

C. The chief of police shall issue to all code enforcement officers a numbered limited commission card, specifying the enforcement and citation authority of the code enforcement officer.

D. A limited commission may be revoked at any time by the chief of police and shall automatically and permanently terminate upon termination of employment as city of Lynnwood code enforcement officer for any reason.

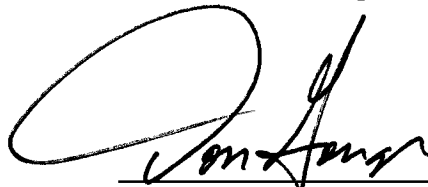
1.40.150 Authority of City Attorney. At the direction of the mayor, the city attorney shall represent the city in all administrative code enforcement proceeding, and shall take appropriate legal actions to collect fines imposed under this chapter or to abate nuisances.

Section 7. Chapter 1.45 of the Lynnwood Municipal Code is hereby repealed in its entirety.

Section 8. If any section, subsection, sentence, clause, phrase or word of this Ordinance is held to be invalid or unconstitutional by a court, such holding shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this Ordinance.

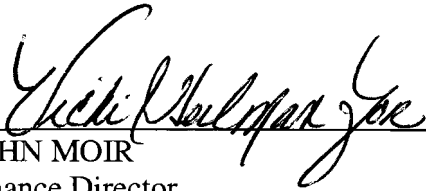
Section 9. This Ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of tile title.

PASSED this 27th day of July 2009, and signed in authentication of its passage this 30th day of July 2009.



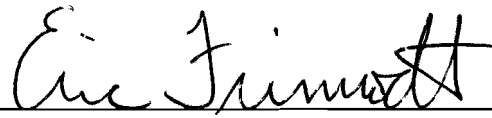
DON GOUGH
Mayor

ATTEST:



JOHN MOIR
Finance Director

APPROVED AS TO FORM:



ERIC FRIMODT
City Attorney