

Chapter 8.45 - NUISANCES*

Sections:

8.45.010 - Purpose.

The purpose of this chapter is to prevent and prohibit those conditions which reduce the value of private property, interfere with the enjoyment of public and private property, create and constitute fire and other safety and health hazards, and generally create a menace to the health and welfare of the public, contribute to the degradation of the character of the neighborhoods and depreciate property values. This chapter is intended to establish an efficient system to enforce these policies and to seek voluntary correction wherever practicable, to provide an opportunity for a prompt hearing and decision on alleged violations of these regulations, and to establish penalties for violations, including abatement of any affected properties.

(Ord. 999 §4(part), 2005).

8.45.015 - Declaration of nuisance.

All violations of development, land use, and public health ordinances are found and declared to be detrimental to the public health, safety, and welfare and further found and declared to be nuisances. Nuisances create public harm. Prevention and correction of nuisances are necessary to prevent public harm.

(Ord. 999 §4(part), 2005).

8.45.020 - 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 city administrator or his/her designee, including any department director or other designee, empowered by ordinance or by the city administrator to enforce a city ordinance or regulation.

"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.

"Nuisance" (also referred to herein as "violation" or "nuisance violation") means:

1. A violation of any city development, land use, or public health ordinance (except for a junk vehicle violation under Chapter 8.22 of this code). Where such an ordinance specifically provides for alternate penalties, the city may elect to prosecute a violation using that ordinance's specific sanctions or seek to abate the violation as a nuisance under this chapter. In the latter case, the procedures and penalties of this chapter shall apply;
2. Doing an act, omitting to perform any act or duty, or permitting or allowing any act or omission, which annoys,

injures, or endangers the comfort, repose, health or safety of others, is unreasonably offensive to the senses, or which obstructs or interferes with the free use of property so as to interfere with or disrupt the free use of that property by any lawful owner or occupant; or

3. The existence, without limitation, of any of the following conditions:

- a. **Trash Covered Premises.** The outside accumulation of waste, rubbish or trash, including, without limitation, bottles, cans, glass, wire, broken crockery, tires, automobile, motor home or trailer parts, building materials such as broken plaster, sheetrock, plywood, bricks, roofing materials, and any other similar discarded or unused material, which is visible from an adjacent road or other public or private property, unless kept in covered bins or covered receptacles maintained for regular collection. An accumulation of one cubic yard or more shall be considered a per se violation, although accumulations of lesser amounts may constitute a violation, depending on the nature and extent of the debris,
- b. **Dangerous Structures.** Any dangerous, decaying, unkempt, falling or damaged building, dwelling, fence, or other structure; this definition shall include, without limitation, the minimum conditions set forth in Chapters 2 through 7 of the International Property Maintenance Code, as amended, and as set forth in Chapter 51.50 of the Washington Administrative Code and adopted by the State Building Code Council, which is incorporated by this reference as though fully set herein, except all references to other codes shall be construed to refer to those codes adopted in Title 15 of this code, as amended,
- c. **Potential Vermin Habitat or Fire Hazard.** Any accumulation of material on a property including, but not limited to, animal matter, ashes, bottles, boxes, broken stone, building materials which are not properly stored or neatly piled, cans, cement, crates, empty barrels, dead animals or animal waste, glass, litter, mattresses or bedding, old appliances or equipment or any parts thereof, furniture, iron or other scrap metal, packing cases, packing material, plaster, plastic, rags, wire, yard waste or debris or other objects which endanger property or public safety, or constitute a fire hazard or vermin habitat; provided, that nothing herein shall prevent the temporary retention of waste in approved, covered receptacles,
- d. **Derelict or Abandoned Vessels.** RCW Chapter 35A.21 is hereby incorporated by this reference regarding the processes and procedures to abate derelict and abandoned vessels,
- e. **Attractive Nuisances.** Any attractive nuisance which may prove detrimental to children whether in or on a building, on the premises of a building, or upon an unoccupied lot, which is left in any place exposed or accessible to children. This includes vacant or unsecured buildings, unused or abandoned refrigerators, freezers, or other large appliances or equipment or any parts thereof; abandoned motor vehicles; any structurally unsound or unsafe fence or edifice; any unsecured or abandoned excavation, pit, well, cistern, storage tank or shaft; and any lumber, trash, debris or vegetation which may prove a hazard for minors,
- f. **Obstructions to the Public Right-of-Way.** Use of property abutting a public street or sidewalk or use of a public street, sidewalk, fire hydrant or water meter, which causes any obstruction to traffic or to open access to the streets, sidewalks, fire hydrants or water meters; provided, that this subsection shall not apply to events, parades, or the use of the streets or public rights-of-way when authorized by the city. This section includes the existence of drainage onto or over any sidewalk, street, fire hydrant, water meter or public right-of-way, and the existence of any debris or plant growth on sidewalks adjacent to any property,
- g. **Vegetation.** Any noxious or toxic weed or uncultivated plant, weeds or tall grass which may be a fire hazard, or any tree or shrub which is in danger of falling and creates a substantial risk of damage or injury, or which overhang or encroach upon any sidewalk or street so as to obstruct or impair the full and free use of sidewalk or street by the public,
- h. **Illegal Dumping.** Dumping of any type by any person on public or private property not registered as a

legal dump site, and

- i. Dumping in Waterways. Dumping, depositing, placing or leaving of any garbage, ashes, debris, gravel, earth, rock, stone or other material upon the banks, channels, beds or bars of any shoreline or watercourse, or the felling of any tree or trees, so that the same shall in whole or in part project within the high water bank of any watercourse, or the casting, placing, depositing or leaving of any logs, roots, snags, stumps or brush upon the banks or in the bed or channel of any watercourse, except as otherwise permitted under state or federal law, such as for habitat restoration or stream rehabilitation.

"Omission" means a failure to act.

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

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

"Repeat violation" means a violation of the same regulation in any location by the same person, for which voluntary compliance previously has been sought or a notice of civil violation has been issued, within the immediately preceding twelve consecutive month period.

(Ord. 999 §4(part), 2005).

8.45.030 - Voluntary correction.

- A. Applicability. This section applies whenever the applicable department director determines that a nuisance has occurred or is occurring.
- B. General. The applicable department director shall attempt to secure voluntary correction by contacting the person responsible for the nuisance and, where possible, explaining the violation and requesting correction.
- C. Issuance of Voluntary Correction Agreement. A voluntary correction agreement may be entered into between the person responsible for the violation and the city, acting through the applicable department director.
 1. Content. The voluntary correction agreement is a contract between the city and the person responsible for the violation under which such person agrees to abate the violation within a specified time and according to specified conditions. The voluntary correction agreement shall include the following:
 - a. The name and address of the person responsible for the violation;
 - b. The street address or other description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring;
 - c. A description of the violation and a reference to the regulation which has been violated;
 - d. The necessary corrective action to be taken, and a date or time by which correction must be completed;
 - 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;
 - f. An agreement by the person responsible for the violation that the city may abate the violation and recover its costs and expenses (including attorney fees, expert witness fees, and court costs) and/or a monetary penalty pursuant to this chapter from the person responsible for the violation if the terms of the voluntary correction agreement are not satisfied; and
 - g. An agreement that by entering into the voluntary correction agreement, the person responsible for the violation waives the right to a hearing before the court under this chapter or otherwise, regarding the matter of the violation and/or the required corrective action.
 2. Right to a Hearing Waived. Upon entering into a voluntary correction agreement, the person responsible for the violation shall have no right to a hearing before the court under this chapter or otherwise, regarding the

matter of the violation and/or the required corrective action.

3. Extension and Modification. An extension of the time limit for correction or a modification of the required corrective action may be granted by the applicable department director if the person responsible for the violation has shown due diligence and/or substantial progress in correcting the violation, but unforeseen circumstances delay correction under the original conditions.
4. Abatement by the City. The city may abate the violation in accordance with Section 8.45.060 of this chapter (or Chapter 35A.21 for derelict or abandoned vessels) if the terms of the voluntary correction agreement are not met.
5. Collection of Costs. If the terms of the voluntary correction agreement are not met the person responsible for the violation shall be assessed a monetary penalty commencing on the date set for correction and thereafter, in accordance with Section 8.45.040(E) of this chapter, plus all costs and expenses of abatement, as set forth in Section 8.45.060(D) of this chapter.

(Ord. 999 §4(part), 2005).

8.45.040 - Notice of civil violation.

A. Issuance.

1. When the applicable department director determines that a violation has occurred or is occurring, and is unable to secure voluntary correction, pursuant to Section 8.45.030 of this chapter the applicable department director may issue a notice of civil violation to the person responsible for the violation.
2. The applicable department director may issue a notice of civil violation without having attempted to secure voluntary correction as provided in Section 8.45.030 of this chapter under the following circumstances:
 - a. When an emergency exists;
 - b. When a repeat violation occurs;
 - c. When the violation creates a situation or condition which cannot be corrected;
 - 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;
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;
3. A description of the violation and a reference to the provision(s) of the city regulation(s) which has been violated;
4. The required corrective action and a date and time by which the correction must be completed after which the city may abate the unlawful condition in accordance with Section 8.45.060 of this chapter;
5. The date, time and location of an appeal hearing before a judge, judge pro tem, or commissioner of the municipal court which will be at least twenty days but no more than sixty days from the date the notice of civil violation is issued, unless such date is continued by the court for good cause shown;
6. A statement indicating that the hearing will be canceled and no monetary penalty will be assessed, other than the court filing fee, if the applicable department director approves the completed, required corrective action prior to the hearing; and
7. A statement that the costs and expenses of abatement incurred by the city pursuant to Section 8.45.060(D) of

this chapter, 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 court.

- C. Service of Notice. The applicable department director 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 by certified or registered mail, return receipt requested, to such person at their last known address. If the person responsible for the violation cannot be personally served within Skamania 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 the attempts 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 court.
- E. Monetary Penalty. The monetary penalty for each violation per day or portion thereof shall be five hundred dollars.
- 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 ten calendar days from the date of mailing of the court's decision or a notice from the city that penalties are due. Any such monetary penalty shall further constitute a lien against the affected real property, in the manner as set forth in Section 8.45.060(F) of this chapter.
 - 2. The city attorney is authorized to take appropriate action to collect the monetary penalty.

(Ord. 999 §4(part), 2005).

8.45.050 - Hearing before the court.

- A. Notice. A person to whom a notice of civil violation is issued will be scheduled to appear before the municipal court not less than twenty calendar days nor more than sixty calendar days after the notice of civil violation is issued. Continuances may be granted at the discretion of the applicable department director, or by the court for good cause shown.
- B. Prior Correction of Violation. The hearing will be canceled and no monetary penalty will be assessed, other than the court filing fee, if the applicable department director approves the completed required corrective action prior to the scheduled hearing.
- C. Procedure. The court shall conduct a hearing on the civil violation pursuant to the then-current applicable rules of civil procedure for courts of limited jurisdiction. 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 is reasonable under the circumstances. The determination of the applicable department director as to the need for the required corrective action shall be accorded substantial weight by the court in determining the reasonableness of the required corrective action.
- D. Decision of the Court.
 - 1. The court shall determine whether the city has established by a preponderance of the evidence that a violation has occurred and that the required correction is reasonable under the circumstances, 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 court 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; and
 - 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 court shall be in accordance with the monetary penalty in Section 8.45.040(E) of this chapter.
 - a. The court 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;
 - ii. Assess monetary penalties beginning on the correction date set by the applicable department director or an alternate correction date set by the court and thereafter;
 - iii. Assess less than the established monetary penalty set forth in Section 8.45.040(E) of this chapter, 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 court shall consider the following factors:
 - i. Whether the person responded to staff attempts to contact the person, and cooperated 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, "close call" code interpretation issue exists; and
 - vi. Any other relevant factors.
 - c. The court 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 court shall consider the factors set forth in subsection (D)(3)(b) of this section.
- E. Failure to Appear. If the person to whom the notice of civil violation was issued fails to appear without lawful excuse at the scheduled hearing, the court 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 may enforce the court's order and recover all related expenses, including attorney fees, plus the costs of the hearing and any monetary penalty from that person.
- F. Appeal to Superior Court. Any appeal of the decision of the court shall be prosecuted pursuant to the then-current Rules for Appeal from Courts of Limited Jurisdiction (RALJ).

(Ord. 999 §4(part), 2005).

8.45.060 - 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 voluntary correction agreement pursuant to Section 8.45.030 of this chapter have not been met;
 2. A notice of civil violation has been issued pursuant to Section 8.45.040 of this chapter and a hearing has been held pursuant to Section 8.45.050 of this chapter and the required correction has not been completed by the date specified in the court'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 nuisance causes a condition, the continued existence of which constitutes an immediate threat to the public health, safety or welfare or to the environment, the city may summarily and without prior notice abate the condition. Notice of such abatement, including the reason for it shall be given to the person responsible for the violation as soon as reasonably possible after the abatement. No right of action shall lie against the city or its agents, officers, or employees for actions reasonably taken to prevent or cure any such immediate threats, but neither shall the city be entitled to recover any costs incurred for summary abatement, prior to the time that actual notice of same is provided to the person responsible for the violation.
- 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 control of the property and shall become due and payable to the city within ten calendar days. The term "incidental expenses" includes but is not limited to personnel costs, both direct and indirect and including attorney's fees; costs incurred in documenting the violation; hauling, storage and disposal expenses; and actual expenses and costs of the city in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work; and the costs of any required printing and mailing. All such costs and expenses shall constitute a lien against the affected property, as set forth in subsection F of this section.
- E. Interference. Any person who knowingly obstructs, impedes, or interferes with the city or its agents, or with the person responsible for the violation in the performance of duties imposed by this chapter, shall be guilty of a misdemeanor punishable by imprisonment not exceeding ninety days and a fine not exceeding one thousand dollars.
- F. Lien—Authorized. The city of Stevenson shall have a lien for any monetary penalty imposed, the cost of any abatement proceedings under this chapter, and all other related costs including attorney and expert witness fees, against the real property on which the monetary penalty was imposed or any of the work of abatement was performed. The lien shall be subordinate to all previously existing special assessment liens imposed on the same property and shall be superior to all other liens, except for state and county taxes, with which it shall be on a parity.
1. The applicable department director shall cause a claim for lien to be filed for record within ninety days from the later of the date that the monetary penalty is due or the date the work is completed or the nuisance abated.
 2. The claim of lien shall contain sufficient information regarding the notice of civil violation, as determined by the applicable department director, a description of the property to be charged with the lien and the owner of record, and the total amount of the lien.
 3. Any such claim of lien shall be verified by the applicable department director, and may be amended from time to time to reflect changed conditions.

(Ord. 999 §4(part), 2005).

8.45.070 - Additional enforcement procedures.

The provisions of this chapter are not exclusive, and may be used in addition to other enforcement provisions authorized by the Stevenson Municipal Code except as precluded by law.

(Ord. 999 §4(part), 2005).

8.45.080 - Conflicts.

In the event of a conflict between this chapter and any other provision of the Stevenson Municipal Code or other city ordinance providing for a civil penalty, this chapter shall control.

(Ord. 999 §4(part), 2005).

8.45.090 - Severability.

If any portion of this chapter or its application to any person is declared unconstitutional or is otherwise held invalid, the remainder of the ordinance and the application of the ordinance to other persons or circumstances is not effected.

(Ord. 999 §4(part), 2005).