

file

ORDINANCE NO. 209-1997

KITSAP COUNTY CIVIL ENFORCEMENT ORDINANCE

WHEREAS, RCW 7.80 authorizes the County to decriminalize certain offenses which can be more appropriately punished by the imposition of civil fines; and

WHEREAS, the public health, safety, and welfare require the regulation and enforcement of codes and ordinances related to building, zoning, the environment, and quality of life; and

WHEREAS, violation of the certain ordinances can be more appropriately punished by the imposition of civil fines; and

WHEREAS, it is otherwise in the interest of public health, safety, and welfare so to do;

NOW, THEREFORE, be it ordained by the Kitsap County Board of Commissioners;

Section 1. Purpose. This ordinance provides the procedure for the investigation of suspected violations and enforcement of other ordinances.

Section 2. Applicability.
(a) This title shall apply to the enforcement of Kitsap County ordinances and codes, including those related to building, zoning, environmental health and safety, and quality of life, which specifically reference this ordinance.
(b) Violations of the applicable codes shall be corrected under the provisions of this title, in coordination with existing ordinance and code provisions.

Section 3. Enforcement. Only an authorized official may enforce the provisions of this title. For purposes of this title, an authorized official is defined as any one of the following:
(a) The Kitsap County sheriff and his or her authorized representatives shall have the authority to enforce the provisions of this title;
(b) The director of the Kitsap County Department of Community Development and his or her authorized representatives shall have the authority to enforce the provisions of this title;
(c) The Kitsap County prosecuting attorney shall have authority to enforce the provisions of this title and may institute any legal proceedings necessary to enforce the provisions of this title; and
(d) The Kitsap County Board of Commissioners may designate other persons to administer the provisions of this title.

Section 4. Violations - Investigations- Evidence. An authorized official may investigate alleged or apparent violations of this ordinance. In the performance of that

investigation, an authorized official may enter upon any land and make examinations and surveys, provided that such entries, examinations and surveys do not damage or interfere with the use of the land by those persons lawfully entitled to the possession thereof. Upon request of the authorized official, the person allegedly or apparently in violation of this ordinance shall provide information identifying themselves.

(a) Violations- Failure to Provide Information Identifying Person. Willful refusal to provide information identifying a person as required by this section is a misdemeanor.

Section 5. Notice of Infraction - Service. Whenever an authorized official determines that a violation has occurred or is occurring, he or she may pursue reasonable attempts to secure voluntary corrections, failing which he or she may issue a notice of infraction. An authorized official may issue a notice of infraction if the authorized official reasonably believes that the provisions of this ordinance has been violated. A notice of infraction may be served either by:

- (a) The authorized official serving the notice of infraction on the person named in the notice of infraction at the time of issuance; or
- (b) The authorized official filing the notice of infraction with the court, in which case the court shall have the notice served either personally or by mail, postage prepaid, on the person named in the notice of infraction at his or her address.

Section 6. Notice of Infraction - Forum - Contents. The notice of infraction shall include the following:

- A. A statement that the notice represents a determination that the infraction has been committed by the person named in the notice and that the termination shall be final unless contested as provided in this ordinance;
- B. A statement that the infraction is a non-criminal offense for which imprisonment shall not be imposed as a sanction;
- C. A statement of the specific infraction for which the notice was issued;
- D. A statement that monetary penalties as set forth below have been established for each infraction;
- E. A statement of the options provided in this ordinance for responding to the notice and the procedures necessary to exercise these options;
- F. A statement that at any hearing to contest the determination that the County has the burden of proving by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses, including the authorized official who issued and served the

notice of infraction;

- G. A statement, which the person who has been served with the notice of infraction shall sign, that the person promises to respond to the notice of infraction in one of the ways provided in this chapter;
- H. A statement that refusal to sign the infraction as directed in Subsection G of this Section is a misdemeanor and may be punished by a fine and/or imprisonment in jail; and
- I. A statement that a person's failure to respond to a notice of infraction as promised is a misdemeanor and may be punishable by a fine and/or imprisonment in jail.

Section 7. Notice of Infraction - Filing - Hearing in District Court. A notice of infraction shall be filed in District Court within forty-eight hours of issuance, excluding Saturdays, Sundays, and holidays. Kitsap County District Court shall have jurisdiction to hear and determine these matters.

Section 8. Notice of Infraction - Determination Infraction Committed. Unless contested in accordance with this ordinance, the notice of infraction represents a determination that the person to whom the notice was issued committed the infraction.

Section 9. Notice of Infraction - Response Requesting a Hearing - Failure to Respond or Appear - Order to Set Aside.

- A. A person who receives a notice of infraction shall respond to the notice as provided in this section within fifteen (15) days of the date the notice was served.
- B. If the person named in the notice of infraction does not contest the determination, the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records, and a record of the response order shall be furnished to the Department.
- C. If the person determined to have committed the civil infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction, the person shall respond by completing the portion of the notice of civil infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the court

specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be earlier than seven (7) days nor more than ninety (90) days from the date of the notice of the hearing, except by agreement.

- D. If the person determined to have committed the civil infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction, the person shall respond by completing the portion of the notice of civil infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the court specified in the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be earlier than seven (7) days nor more than ninety (90) days from the date of the notice of the hearing, except by agreement.
- E. The court shall enter a default judgment assessing the monetary penalty prescribed for the civil infraction, and may notify the prosecuting attorney of the failure to respond to the notice of civil infraction or to appear at a requested hearing if any person issued a notice of civil infraction:
 - i. Fails to respond to the notice of civil infraction as provided in subsection B of this section; or
 - ii. Fails to appear at a hearing requested pursuant to either subsection three C or D of this section. If a default judgment is entered, the court shall notify the Department of the entry of the default judgment, and the reason therefore.

Section 10. Notice, Failure to Sign, Non-Appearance - Failure to Satisfy Penalty.

- A. A person who fails to sign a notice of civil infraction is guilty of a misdemeanor.
- B. Any person willfully violating his or her written and signed promise to appear in court or his or her written and signed promise to respond to a notice of civil infraction is guilty of a misdemeanor regardless of the disposition of the notice of civil infraction; provided that a written promise to appear in court or a written promise to respond to a notice of civil infraction may be complied with by appearance of counsel.
- C. A person who willfully fails to pay a monetary penalty or to perform community service as required by a court under this chapter may be found in civil contempt of court after notice and hearing.

Section 11. Representation by Attorney.

- A. A person subject to proceedings under this ordinance may appear or be represented by counsel.
- B. The Prosecuting Attorney representing the County may, but need not, appear in any proceedings under this ordinance, notwithstanding any statute or court rule to the contrary.

Section 12. Infraction - Hearing - Procedure - Burden of Proof - Order - Appeal.

- A. A hearing held to contest the determination that an infraction has been committed shall be without a jury.
- B. The court may consider the notice of infraction and any sworn statements submitted by the authorized representative who issued and served the notice in lieu of his or her personal appearance at the hearing. The person named in the notice may subpoena witnesses, including the authorized representative who has issued and served the notice, and has the right to present evidence and examine witnesses present in court.
- C. The burden of proof is on the County to establish the commission of the infraction by a preponderance of evidence.
- D. After consideration of the evidence and argument, the Court shall determine whether the infraction was committed. If it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the Court's records. If it has been established that a civil infraction has been committed, an appropriate order shall be entered in the Court's records.
- E. An appeal from the Court's determination to order shall be to the Superior Court in the manner provided by the Rules for Appeal of Decisions of Courts of Limited Jurisdiction. The decision of the Superior Court is subject only to discretionary review pursuant to the Rules of Appellate Procedure.

Section 13. Infraction - Explanation of Mitigating Circumstances.

- A. A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person may not subpoena witnesses. The determination that a civil infraction has been committed may not be contested at a hearing held for the purpose of explaining mitigating

circumstances.

- B. After the Court has heard the explanation of the circumstances surrounding the commission of the civil infraction, an appropriate order shall be entered in the Court's records.
- C. There shall be no appeal from the Court's determination or order.

Section 14. Monetary Penalties - Restitution.

- A. A person found to have committed a civil infraction shall be assessed a monetary penalty. All violations of this title shall be denominated Class I civil infractions. The maximum penalty and default amount for a Class I civil infraction shall be two hundred fifty dollars (\$250.00), not including statutory assessments.
- B. Whenever a monetary penalty is imposed by a Court under this ordinance it is immediately payable. If the person is unable to pay at that time, the Court may grant an extension of the period of time in which the penalty may be paid. If the penalty is not paid on or before the time established for payment, the Court may proceed to collect the penalty in the same manner as other civil judgments and may notify the prosecuting attorney of the failure to pay. The Court shall also notify the Department of the failure to pay the penalty, and the Department shall not issue the person any future permits for any work until the monetary penalty has been paid.
- C. The Court may also order a person found to have committed a civil infraction to make restitution.

Section 15. Order of Court - Civil Nature - Modification of Penalty - Community Service.

- A. An order entered after the receipt of a response which does not contest the determination, or after it has been established at a hearing that the civil infraction was committed, or after a hearing for the purpose of explaining mitigating circumstances is civil in nature.
- B. The Court may waive, reduce, or suspend the monetary penalty prescribed for the civil infraction. If the Court determines that a person has insufficient funds to pay the monetary penalty, the Court may order performance of a number of hours of community service in lieu of a monetary penalty, at the rate of the then State minimum wage per hour.

Section 16. Costs and Attorney's Fees.

- A. Each party in a civil infraction case is responsible for costs incurred by that party, but the Court may assess witness fees against a non-prevailing respondent. Attorney's fees may be awarded to either party in a civil infraction case.

Section 17. Severability.

If any section, subsection, clause or phrase of this ordinance or amendment thereto, or its application to any person or circumstance, is held by a court of competent jurisdiction to be invalid, the remainder or application to other persons or circumstances shall not be affected.

Section 18. Effective Date and Time Limit.

This ordinance shall take effect immediately.

Dated this 28th day of July, 1997.


BOARD OF COUNTY COMMISSIONERS
KITSAP COUNTY, WASHINGTON



PHIL BEST, Chairman



CHRIS ENDRESEN, Commissioner



CHARLOTTE GARRIDO, Commissioner

ATTEST



Holly Anderson,
Clerk of the Board

