CREATION OF TITLE 26
OF THE THURSTON COUNTY CODE
RELATING TO CODE COMPLIANCE

Date: September 18, 2013

Public Hearing Date: To be determined

Prepared by: Mike Kain, Planning Manager
Resource Stewardship Department

Proponent: Thurston County Departments of Resource
Stewardship, Public Works, and Planning

Tax Parcel: Countywide

Actions Requested:
1. Conduct Planning Commission briefing on
the proposed draft language relating to
amendment of the Thurston County Code to
add a new Code Compliance chapter and
amend several sections of other chapters to
reflect the new chapter.

2. Set public hearing.

ISSUE/ BACKGROUND:

As part of an effort to enhance the overall land use compliance efficiency of the County, in 2012
the Board of County Commissioners directed staff to review the County land use codes to
identify areas where code amendments would provide clarification, streamlining, and as
appropriate, increase consequences for violations. After review by staff of Resource
Stewardship, Public Works and the Prosecuting Attorney’s Office, it became clear that removing
compliance language from the multiple places where it was found in the code and creating a new
title would be the most efficient way to enhance compliance.

In January 2013, a briefing on compliance was held before the Board of County Commissioners.
The option of consolidating all compliance regulations into one new title was offered as the staff
recommendation. Additionally, staff recommended that a new compliance penalty option be
added to the new title.

The Board directed staff to move forward and create a new comprehensive title for code
compliance and to include civil penalties as a new penalty option.

Development of a new draft code section, Title 26, devoted only to land use compliance, was
recently completed by staff and is now being presented to the Planning Commission for review.
Along with the new code section, the proposed amendments include deletion of some existing
compliance sections and changing various references to the proper compliance citing.
DEPARTMENT ANALYSIS:

A single title with all compliance processes and requirements in one place is more readily understandable by citizens and a more focused reference for staff. It also helps to ensure that compliance actions, regardless of the code violation, will be consistent. The addition of civil penalties provides another option to attain compliance.

Unlike civil infractions, fines for civil penalties are set by the County and the fines can be kept by the department. Tickets written as civil penalties do not require a court appearance. This substantially reduces the timing on compliance and the fines do not accrue to the courts. A lien can be used to force payment.

Some other key changes proposed in the Title 26 draft include:

1. The Prosecuting Attorney’s Office is authorized to bring actions by any means appropriate to prevent or cure a violation.
2. Each day in which a violation is not remedied can be a separate and distinct violation without requiring a separate notice each day.
3. The County shall seek recovery of all costs in attaining compliance.
4. The County can issue a civil infraction or civil penalty to the violator as well as to the property owner.
5. A permit shall not be granted to an individual who is responsible for an outstanding violation.
6. Restoration of damage to critical areas is clearly spelled out.
7. Penalties for removal of protected trees are assessed for each tree instead of each logging operation.
8. The table of penalties has been substantially simplified.

Importantly, the new Title retains the prohibition on issuing any new permits on a property with a known violation. It also retains the ability to issue stop work and abatement orders, as well as revocation of permits already obtained. Also retained is the requirement to issue a notice of violation giving the recipient 30 days to make corrections before a civil infraction or civil penalty ticket is issued.

In summary, the proposed Title 26, in addition to providing some new compliance options, consolidates the compliance regulations from twelve codes into one place, thereby adding consistency across the codes, efficiency for staff and easier understanding by citizens.

DEPARTMENT RECOMMENDATION:

Set a public hearing before the Planning Commission at the earliest opportunity to present the proposed Title 26 to the public.

SEPA:

An environmental determination for the proposed code amendment to add Title 26 is required pursuant to WAC 197-11-704. That will be completed prior to a public hearing on the amendments before the Board of County Commissioners.
NOTIFICATION:

This briefing was noted on the agenda sent out to the Planning Department webmail subscribers.

When a public hearing date is set, notice will be published in The Olympian and sent out to the webmail subscribers at least 20 days before the hearing.

PUBLIC COMMENT:

No public comment has been sought or received to date. However, public comment will be requested when a public hearing is set for the Planning Commission and for the Board of County Commissioners, as well as when SEPA is issued.

ATTACHMENTS:

Attachment A – Draft Title 26 Code Enforcement

PLANNING COMMISSION DRAFT
9/10/13

TITLE 26 – CODE ENFORCEMENT

CHAPTER 26.05 GENERAL PROVISIONS

26.05.005 Short Title.
26.05.020 Administration.
26.05.030 Calculation of penalties and damages.
26.05.040 Enforcement and violation remedies.
26.05.050 Abatement of illegal use, structure or development.
24.05.060 Enforcement, Violations, and Penalties – Stop work orders.
26.05.070 Revocation of permits.
26.05.080 Appeals.
26.05.090 Conflicts with other codes.
26.05.100 Definitions.
26.05.110 Restoration Orders.
26.05.120 Liability for violations.

26.05.005 Short Title.

This title shall be known as the “Thurston County Code Enforcement Ordinance.”

26.05.010 Purpose.

This title is adopted for the purpose of governing enforcement and penalties for the following codes: Roads and Bridges (Title 13 TCC), Buildings and Construction Code (Title 14 TCC), Public Works (Title 15 TCC), Agricultural Activities Critical Areas Ordinance (Chapter 17.15 TCC), Forest Land Conversion Ordinance (Chapter 17.25 TCC), Platting and Subdivision
26.05.020 Administration.

A. Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates a provision of the Thurston County Code as listed in 26.05.010, or permits any such violation, or fails to comply with any of the requirements thereof, shall not be granted a permit or approval pursuant to the Thurston County Code, and shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to punishment as provided by law.

B. No permit or approval shall be granted pursuant to the Thurston County Code if any violation of the Thurston County Code as listed in 26.05.010 exists on the subject property.

C. A permit or approval may be granted if conditioned on having the violation remedied within a reasonable time as provided by the approval authority. If a permit or approval is conditioned on remedial action, security in the form of a letter of credit or similar instrument shall be required unless waived by the approval authority for good cause. This section shall not apply to requests for a permit or approval to remedy a violation.

D. Any building erected or improvements constructed contrary to any of the requirements of a provision of the Thurston County Code as listed in 26.05.010, and any use of any building or land which is conducted, operated or maintained contrary to any of the requirements of a provision of the Thurston County Code as listed in 26.05.010, or permits issued pursuant thereto shall be and is declared to be unlawful.

E. The enforcement officer(s) for violations of the Thurston County Code Titles 14, 17.15, 17.25, 18, 20, 21, 22, 23, 24 and the Shoreline Master Program is the director of Resource Stewardship or his or her designee, and for violations of Thurston County Code Titles 13 and 15 is the director of Public Works or his or her designee. For civil infraction and civil penalties purposes, the enforcement officer shall be designated by resolution of the board of county commissioners upon the recommendation of the director.

F. The prosecuting attorney is authorized to bring actions by any appropriate means to prevent the violation of a provision of the Thurston County Code as listed in 26.05.010, and to enforce the provisions therein.

26.05.030 Calculation of penalties and damages.

A. Each violation of a provision of a section of the Thurston County Code as listed in 26.05.010, or any permit, permit condition, or order issued pursuant to this title is a separate offense.

B. Each day in which such a violation is not remedied is a separate and distinct violation at the discretion of the director.
C. The director is not required to issue a notice of violation, notice of abatement, restoration order, stop work order, civil infraction, civil penalty or other order for each day of the violation.

D. The initiation of a singular remedy under this title, or a provision of the Thurston County Code as listed in 26.05.010, for a violation does not preclude the initiation of a separate remedy.

E. The County shall seek recovery of all costs, fees, and expenses in connection with enforcement actions as damages against the violator. Costs, fees, and expenses may include, but are not limited to, costs of restoration, abatement, or cleanup, including staff time and court expenses.

26.05.040 Enforcement and violation remedies

A. If the director finds that any person, whether owner, lessee, principal, agent, employee or otherwise, violates a provision of the Thurston County Code as listed in 26.05.010, or permits any such violation, or fails to comply with any of the requirements hereof, or who erects any building or uses any building or uses any land in violation a provision of the Thurston County Code as listed in 26.05.010, the director may:

1. Issue a stop work order to halt any activity which is in violation of this title;

2. Issue a restoration order for complete or partial restoration, rehabilitation, or replacement of a critical area by the property owner. It is the responsibility of the property owner(s) to contact and seek a remedy from any other person(s) who may be responsible for the violation;

3. Revoke a permit or approval;

4. Issue a notice of civil infraction to the property owner(s) of record or to the known violator or both;

5. Issue a civil penalty to the property owner(s) of record or to the known violator or both;

6. Require abatement of an illegal use, structure or development; and

7. Request that the prosecuting attorney commence a criminal prosecution, seek a temporary restraining order or seek equitable relief to enjoin any act or practices and abate any conditions which constitute or will constitute a violation.

B. Prior to issuance of a civil infraction or a civil penalty or referral to the prosecuting attorney, the enforcement officer shall give the violator a written warning with an opportunity to cure the violation, except in emergency situations where the violation being carried out cannot be undone or is an imminent public health or safety concern.
26.05.050  Abatement of illegal use, structure or development.

Any use, structure, site improvement, or development not established in compliance with use and development standards in effect at the time of establishment shall be deemed illegal and shall be discontinued or terminated and subject to removal.

24.05.060  Enforcement, Violations, and Penalties – Stop work orders.

Stop work orders shall become effective immediately upon posting of the stop work order in a conspicuous place on the property where the violation exists or when provided to the alleged violator. Failure to comply with the terms of a stop work order may result in additional enforcement actions including, but not limited to, the issuance of a civil infraction, civil penalty, or referral to the prosecuting attorney. The stop work order shall set forth the following terms and conditions:

A. A dated description of the nature and extent of the violation, and where appropriate, the damage or potential damage done; and

B. A notice that the violation or the potential violation of this title cease immediately or, in appropriate cases, the specific corrective action to be taken within a given time.

26.05.070  Revocation of permits.

Unless otherwise provided or restricted by law, the director may, in writing, suspend or revoke a permit or approval required by a provision of the Thurston County Code as listed in 26.05.010 TCC, whenever the permit is issued in error or on the basis of incorrect information, or in violation of an ordinance or regulation or any provision of the Thurston County Code, or when a use or building is being maintained in a manner contrary to the terms and conditions of the permit or approval.

26.05.080  Appeals.

Notices of violation, civil penalties, stop work orders, and restoration orders may be appealed following the procedure in Section 20.60.060 TCC for appeals of administrative decisions.

26.05.090  Code Enforcement interpretation and application.

Where conflicts occur between code enforcement, violation and penalty regulations in this title and other regulations in the Thurston County Code listed in 26.05.10 TCC, the code enforcement regulations in this title shall supersede other titles, unless otherwise provided for in this title. For code enforcement regarding critical areas, the regulation more protective of preserving and maintaining critical areas shall apply.

26.05.100  Definitions.

A. The Thurston County Code Enforcement Ordinance governs code enforcement for a number of different titles and sections of the Thurston County Code specified in 26.05.010 TCC. Definitions for words may vary depending on which section of the Thurston County Code is violated. For the purposes of this title, words, phrases, or uses
will be defined as they are in the respective title or section for which the code enforcement action is being taken.

B. The following definitions shall apply to this title:

"Department" or "department" means the Thurston County Resource Stewardship Department.

"Director" or "director" means the director of the Thurston County Resource Stewardship Department, and the director's designees.

"TCC" means the Thurston County Code.

"Title" or "title" means Title 26 of the Thurston County Code unless otherwise stated.

26.05.110 Restoration Orders.

A. Restoration orders shall become effective immediately upon receipt by the person or property owner to whom the order is directed. Failure to comply with the terms of a restoration order may result in additional enforcement actions including, but not limited to, the issuance of a civil infraction, civil penalty, or referral to the prosecuting attorney.

B. If warranted due to the scale of the damage or the sensitivity of the affected critical area, associated buffer or dependent fish and wildlife habitat, the county may require submission of a restoration plan and implementation schedule prior to initiation of the restoration activity. If so, any development activity on the site where the violation occurred shall cease until the county approves the restoration plan and schedule. The plan shall be prepared by a qualified professional as determined by the approval authority, and shall describe how the proposed actions meet the requirements of this title. Restoration activities shall be reviewed by the approval authority under the requirements for a critical area review permit (Chapter 24.40 TCC). Inadequate plans as determined by the approval authority shall be returned to the violator/property owner for revision and resubmittal.

C. Restoration plans shall comply with the following requirements unless the property owner/ violator demonstrates that equal or greater critical area and buffer functions can otherwise be obtained.

1. The pre-violation structure, condition, and functions of the critical area, associated buffer and management zone, as applicable, shall be restored including, but not limited to, topography; soil types; vegetation types, sizes and densities (not including noxious weeds or invasive plants); water quality; hydrologic functions; habitat functions; and other relevant conditions.

2. If information is not available regarding pre-violation conditions at the violation site, the county shall determine the restoration goals based on similar sites.

D. The property owner/ violator shall submit a surety consistent with Chapter 24.70 TCC and with the requirements of this title to ensure that restoration is successful.
E. The property owner/violator shall be responsible for all costs associated with the restoration plan, including review costs.

26.05.120 Liability for violations.

The owner of property on which a violation of this chapter has occurred and the persons or entities carrying out actions in violation of this chapter are each responsible and liable for the violation.

CHAPTER 26.10 CIVIL INFRACTIONS.

26.10.010 Civil infractions - Purpose.
26.10.030 Civil infractions - Procedures.
26.10.040 Civil infractions – Class of infraction.

26.10.010 Civil infractions - Purpose.

In addition to or as an alternative to any other judicial or administrative remedy provided herein or by law, any person who violates any portion of the Thurston County Code as listed in 26.05.010 by each act of commission or omission, or procures, aids or abets such violation, shall be subject to a civil infraction pursuant to Chapter 7.80 RCW. Civil infractions shall be heard and determined according to Chapter 7.80 RCW, as amended, and any applicable court rules. Pursuant to RCW 7.80.120 each person found to have committed a civil infraction shall be assessed a monetary penalty based on the class of infraction as provided in 26.10.040 and Table 26-1. The purpose of this section is remedial. Use of the civil infraction procedure will better protect the public from the harmful effects of violations, and will aid enforcement.

26.10.030 Civil infractions - Procedures.

A. Hearing Procedure. Civil infractions shall be heard and determined according to Chapter 7.80 RCW, as amended, and any applicable court rules.

B. Identification of Violators. An enforcement officer issuing a notice of civil infraction shall take all due diligence to correctly identify the alleged violator.

C. Administrative Responsibilities. The director is responsible for assuring county compliance with RCW 7.80.150. The director may publicize a list of persons found guilty of violations in the newspaper or other means deemed appropriate.

D. Recording of Civil Infractions.

1. Notice of civil infraction may be recorded with the Thurston County Auditor against the property on which the violation took place in the following instances:

a. The owner of the property affected by the civil infraction has been given prior notice with an opportunity to cure the violation.
b. The person receiving the notice of civil infraction does not respond as required by RCW 7.80.080.

c. The person receiving the notice of civil infraction fails to appear at a hearing requested under RCW 7.80.080(3) or (4).

d. The person assessed a monetary penalty for the civil infraction fails to pay such penalty within the time required by law and does not appeal the penalty. If the penalty is appealed, the enforcement officer may record the notice of civil determination only if a penalty remains unpaid after a final appellate determination has been entered.

2. The auditor shall record any notice of civil infraction submitted for recording under this section.

3. Removing of Recording. The recording of a notice of civil infraction with the auditor shall be removed when:

   a. The civil infraction proceeding has been dismissed or decided in favor of the person to whom the notice was issued; or

   b. Any monetary penalty assessed for the infraction has been paid and the violation has been remedied to the satisfaction of the county.

26.10.040 Civil infractions – Class of infraction.

With the exceptions as listed in Table 26-1, civil infractions for all violations of the Thurston County Code as listed in 26.05.010 are Class 2. Applicable fines are set by state law.

CHAPTER 26.20 CIVIL PENALTIES
26.20.010 Civil penalties – Purpose.
26.20.120 Civil Penalties – Identification of violators.
26.20.030 Civil penalties - Lien authorized.

26.20.040 Civil penalties - Personal obligation authorized.
26.20.050 Civil penalties - Notice lien may be claimed.
26.20.060 Civil penalties – Priority of lien.
26.20.070 Civil penalties - Claim of Lien.
26.20.080 Civil penalties - Recording.

26.20.090 Civil penalties - Duration of lien -Limitation of action.
26.20.100 Civil Penalties - Foreclosure parties.

26.20.110 Civil penalties - Settlement of civil penalty claims.
26.20.120 Civil penalties – Penalty assessment.

26.20.010 Civil penalties – Purpose.

In addition to, or as an alternative to, any other judicial or administrative remedy provided in the Thurston County Code or by law, any person who violates a provision of the Thurston County Code as listed in 26.05.010, by each act of commission or omission or procures, aids or abets
such violation, shall be subject to a civil penalty as provided in 26.20.110 and Table 26-1. All civil penalties assessed will be enforced and collected in accordance with the lien, personal obligation, and other procedures specified in this title, or as authorized by law. The purpose of this section is remedial. Use of the civil penalty procedure will better protect the public from the harmful effects of violations, will aid enforcement, and will help reimburse the county for the expenses of enforcement.


An enforcement officer issuing a notice of civil penalty shall take all due diligence to correctly identify the alleged violator.

26.20.030 Civil penalties - Lien authorized.

Thurston County may claim a lien and record same with the County Auditor for any civil penalty imposed or for the cost of any work of abatement done pursuant to this title, or both, against the real property on which the civil penalty was imposed or any of the above work was performed.

26.20.040 Civil penalties - Personal obligation authorized.

The civil penalty and the cost of abatement are also joint and separate personal obligations of any person or party in violation. The prosecuting attorney on behalf of Thurston County may collect the civil penalty and the abatement work costs by use of all appropriate legal remedies.

26.20.050 Civil penalties - Notice lien may be claimed.

The notice of violation pursuant to violations of the Thurston County Code as listed in 26.05.010 shall give notice to the owner that a lien for the civil penalty or the cost of abatement, or both, may be claimed by Thurston County.

26.20.060 Civil penalties – Priority of lien.

The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property and shall be paramount to all other liens except for state and county taxes with which it shall be on a parity.

26.20.070 Civil penalties - Claim of Lien.

A. After 90 days from the date the civil penalty is due or within 90 days from the date of completion of the work or abatement performed pursuant to this title, the director may cause a claim for lien to be filed for record in the Thurston County Auditor’s Office.

B. Contents. The claim of lien shall contain the following:

1. The authority for imposing a civil penalty, or proceeding to abate the violation, or both;

2. A brief description of the civil penalty imposed, or the abatement work done, or both, including the violations charged and the duration thereof, including the time the work is commenced and completed and the name of the persons or organizations performing the work;

3. A description of the property to be charged with the lien;
4. The name of the known owner or reputed owner, and if not known the fact shall be alleged; and

5. The amount, including lawful and reasonable costs, for which the lien is claimed.

C. Verification. The director shall sign and verify the claim by oath to the effect that the affiant believes the claim is just.

D. The claim of lien may be amended in case of action brought to foreclose same, by order of the court, insofar as the interests of third parties shall not be detrimentally affected by amendment.

26.20.080 Civil penalties - Recording.

The director or his designee shall record and index the claims and notices described in this chapter with the Thurston County Auditor.

26.20.090 Civil penalties - Duration of lien - Limitation of action.

No lien created by this title binds the property subject to the lien for a period longer than three years after the claim has been filed unless an action is commenced in the proper court within that time to enforce the lien.

26.20.100 Civil Penalties - Foreclosure parties.

A. Foreclosure. The lien provided by this title may be foreclosed and enforced by a civil action in a court having jurisdiction.

B. Joinder. All persons who have legally filed claims of liens against the same property prior to commencement of the action shall be joined as parties, either plaintiff or defendant.

C. Actions saved. Dismissal of an action to foreclose a lien at the instance of a plaintiff shall not prejudice another party to the suit who claims a lien.

26.20.110 Civil penalties - Settlement of civil penalty claims.

The director is authorized to settle and compromise claims for civil penalties accruing pursuant to this chapter where such settlement is clearly in the interests of Thurston County; provided, that the director shall periodically report such settlements and compromises to the board.

26.20.120 Civil penalties—Penalty assessment.

With the exceptions listed in Table 26-1, penalties for violations of the Thurston County Codes listed in 26.05.010 shall be Class 2 civil penalties with an assessment of $250 for first violations and double that amount for subsequent violations within any five (5) year period. Violations listed in Table 26-1 shall be Class 1 civil penalties with an assessment of $500 for first violations and double that amount for subsequent violations within any five (5) year period.

Table 26-1: Class 1 Civil Infractions and Class 1 Civil Penalties

<table>
<thead>
<tr>
<th>Code Violation Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building or installation without a permit or proper permit</td>
</tr>
<tr>
<td>Violation Description</td>
</tr>
<tr>
<td>-----------------------</td>
</tr>
<tr>
<td>Change of occupancy violation</td>
</tr>
<tr>
<td>Dangerous Building</td>
</tr>
<tr>
<td>Grading or unlawful fill without a permit or proper permit</td>
</tr>
<tr>
<td>Unauthorized alteration of critical area or buffer</td>
</tr>
<tr>
<td>Failure to comply with stop work or restoration order</td>
</tr>
<tr>
<td>Removal or irreparable damage to each protected tree</td>
</tr>
<tr>
<td>Unlawful junk yard, scrap heap or refuse pile</td>
</tr>
<tr>
<td>Unlawful storage of inoperable or junk vehicle or equipment</td>
</tr>
<tr>
<td>Unauthorized work in the right-of-way</td>
</tr>
<tr>
<td>Any Class 2 civil infraction or civil penalty violation may be re-classified to a Class 1 if such violation is unduly detrimental in nature as determined by the director</td>
</tr>
</tbody>
</table>

**ATTACHMENT B - Strikethroughs**

k:\zoning.lu\niketitle 26 compliance pc staff report.docx/ct