

ORDINANCE NO. 15628

AN ORDINANCE OF THURSTON COUNTY, WASHINGTON, AMENDING TITLE 26 OF THE THURSTON COUNTY CODE FOR CODE ENFORCEMENT AND TO AMEND THURSTON COUNTY CODE CHAPTER 26.05 GENERAL PROVISIONS, SECTION 26.05.010, SECTION 26.05.020, SECTION 26.05.030, SECTION 26.05.040, SECTION 26.05.050, SECTION 26.05.060, SECTION 26.05.070, SECTION 26.05.080, SECTION 26.05.090, SECTION 26.05.100, SECTION 26.05.110, SECTION 26.20.120, TABLE 26-1, AND FOR OTHER MATTERS PROPERLY RELATED THERETO.

WHEREAS, Thurston County is required to plan under Chapter 36.70A RCW, the Growth Management Act (GMA), which contains fourteen goals that are intended to guide the development and adoption of comprehensive plans and associated development regulations, which relate to urban growth, rural development, reduced sprawl, transportation, housing, economic development, property rights, permits, natural resource industries, open space and recreation, the environment, citizen participation and coordination, public facilities and services, historic preservation, and Shoreline Management Act goals and policies; and

WHEREAS, the GMA requires the comprehensive plan and development regulations in the Thurston County Code (TCC) to demonstrate and uphold the concepts of internal consistency, conformity, and concurrency; and

WHEREAS, the GMA also requires a process of early and continuous citizen participation for amending comprehensive plans and development regulations; and

WHEREAS, Thurston County has performed professional review, public notice, and comment with respect to these amendments; and

WHEREAS, the development regulations in Thurston County adopted under the GMA must be consistent with the Thurston County Comprehensive Plan and associated Joint Plans; and

WHEREAS, the Thurston County Comprehensive Plan, as amended, collectively includes Joint Plans with the cities of Bucoda, Lacey, Olympia, Rainier, Tenino, Tumwater, Yelm, and other sub-area plans, with chapters on land use, natural resource lands, housing, transportation, capital facilities, utilities, economic development, the natural environment, archeological, and historic resources that govern development throughout unincorporated Thurston County and comply with GMA requirements for comprehensive plans and development regulations; and

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

10/10/10

WHEREAS, the Board of County Commissioners (Board) found that the previous system and regulations for enforcing development code requirements in Title 13 TCC Roads and Bridges, Title 14 TCC Buildings and Construction, Title 15 TCC Public Works, Title 17 TCC Environment, Title 18 TCC Platting and Subdivisions , the provisions of Title 19 TCC and the Thurston County Shoreline Master Program, Title 20 TCC Zoning , Title 21 TCC Lacey Urban Growth Area Zoning , Title 22 TCC Tumwater Urban Growth Area Zoning , Title 23 TCC Olympia Urban Growth Area Zoning, and Title 24 TCC Critical Areas were fragmented and should be unified under one code enforcement title; and

WHEREAS, a duly noticed public hearing was held the evening of June 5, 2018 before the Board to take public testimony on staff's proposal amending specific sections of the code enforcement title; and

WHEREAS, the Board of County Commissioners (Board) finds that the proposed amendments in this ordinance are consistent with the Thurston County Comprehensive Plan and associated Joint Plans; and

WHEREAS, unifying the various code enforcement provisions in the Thurston County Code will provide a clear enforcement process for development code requirements in Thurston County and increase accessibility to community members by simplifying policies procedures for rectifying violations; and

WHEREAS, the amendments adopted by this ordinance do not diminish enforcement authority, do not limit anyone's right to due process of law, and do not increase procedural processes established by state law; and

WHEREAS, notice was provided to the Washington State Department of Commerce on the intent to adopt revised development regulations applicable to land use code enforcement in accordance with RCW 36.70A.470; and

WHEREAS, the Board believes the code amendments enabled by the adoption of this ordinance are necessary for the preservation of the public health, safety, and general welfare of Thurston County residents.

NOW, THEREFORE, THE THURSTON COUNTY BOARD OF COUNTY COMMISSIONERS ORDAINS AS FOLLOWS:

SECTION 1. TITLE 26 CODE ENFORCEMENT IS AMENDED. Title 26 of the Thurston County Code is hereby amended as shown in Attachment A to remove redundant and unnecessary code enforcement verbiage thereby increasing accessibility to community members.

SECTION 2. SEVERABILITY. If any section, subsection, sentence, clause, phrase or other portion of this ordinance or its application to any person is, for any reason, declared invalid,



illegal or unconstitutional in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof.

SECTION 3. EFFECTIVE DATE. This ordinance shall take effect immediately upon adoption.

SECTION 4. CORRECTIONS. Upon approval of the Prosecuting Attorney's Office, the Clerk of the Board is authorized to make any necessary corrections to any section, subsection, sentence, clause, phrase or other portion of this Ordinance for scrivener's or clerical errors, references, ordinance numbering, section/subsection numbers, and any reference thereto.

ADOPTED: June 5, 2018

ATTEST:

LaBonita P. Bowmar
LaBonita Bowmar, Clerk of the Board

BOARD OF COUNTY COMMISSIONERS
Thurston County, Washington

Bud Blake
Chair, Bud Blake

APPROVED AS TO FORM:

JON TUNHEIM
PROSECUTING ATTORNEY

Travis Burns
Travis Burns,
Deputy Prosecuting Attorney

John Hutchings
Vice-Chair, John Hutchings

Gary Edwards
Commissioner, Gary Edwards

1000

1000

TITLE 26 – CODE ENFORCEMENT

CHAPTER 26.05 GENERAL PROVISIONS

- 26.05.005 Short Title.**
- 26.05.010 Purpose.**
- 26.05.020 Administration.**
- 26.05.030 Calculation of penalties and damages.**
- 26.05.040 Enforcement, voluntary compliance agreements and violation remedies.**
- 26.05.050 Reserved Abatement of illegal use, structure or development.**
- 26.05.060 Enforcement, violations, and penalties – Stop work orders.**
- 26.05.070 Revocation of permits.**
- 26.05.080 Appeals.**
- 26.05.090 Code enforcement interpretation and application.**
- 26.05.100 Definitions.**
- 26.05.110 Restoration ~~orders~~ plans for critical areas.**
- 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.

- A. This title is adopted for the purpose of governing enforcement and ~~penalties~~ remedies for the following codes now or as subsequently amended: Roads and Bridges (Title 13 TCC), Buildings and Construction (Title 14 TCC), Thurston County Stormwater Standards (Chapter 15.05 TCC), Sewer Systems (Chapter 15.09 TCC), Water Systems (Chapter 15.10 TCC), Cross-connections (Chapter 15.11 TCC), State Environmental Policy Act (Chapter 17.09 TCC) Agricultural Activities Critical Areas (Chapter 17.15 TCC), Mineral Extraction and Asphalt Production (Chapter 17.20 TCC), Thurston County Forest Lands Conversion Ordinance (Chapter 17.25 TCC), Platting and Subdivisions (Title 18 TCC), Shoreline Master Program for the Thurston Region (Title 19 TCC), Zoning Ordinances (Titles 20, 21, 22, and 23 TCC), Critical Areas Ordinance (Title 24 TCC), and including any permit, permit condition, or other remedy order issued pursuant to any of the codes listed above. This Title hereby replaces and supersedes all code provisions referenced therein.
- B. Thurston County’s code compliance activities are intended to protect public health, private property, quality of life, economic development and the environment. The County shall attempt to achieve compliance through the most collaborative method and at the lowest compliance measure feasible given the scope and severity of the violation. The County shall also consider good faith efforts when initiating or considering escalation of compliance measures.

26.05.020 Administration.

ATTACHMENT A - Page 2

- A. 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 unauthorized illegal and must either be brought into compliance with current standards; or, shall be discontinued. Unauthorized activity under this Title or terminated and is subject to abatement, pursuant to 26.05.040 removal.
- B. Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates a provision of the Thurston County Code as listed in Section 26.05.010 TCC, 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 this code, and shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to punishment as provided by law.~~
- C. No permit or approval shall be granted pursuant to the Thurston County Code if any violation of the Thurston County Sanitary Code, or as listed in 26.05.010(A) TCC exists on the subject property.
- D. 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.
- E. 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 TCC, 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 in violation unlawful.
- F. The enforcement officer(s) for violations of the Thurston County Code Titles and Chapters 14, 15.05, 15.09 through 15.11, 17.09, 17.15, 17.20, 17.25, 18, 19, 20, 21, 22, 23, and 24, to include authority to issue civil infractions and civil penalties is the director of ~~Resource Stewardship or his or her designee or his or her designee.~~ Community Planning and Economic Development.
- G. The enforcement officer(s) for violations of Thurston County Code Title 13 and the remainder of 15, to include authority to issue civil infractions and civil penalties 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.~~
- H. 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 TCC, is a separate offense.

ATTACHMENT A - Page 3

- B. Each day in which such a violation is not remedied is a separate and distinct ~~violation offense~~ at the discretion of the director. Daily notice is not required.
- ~~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.~~
- C. The initiation of a singular remedy under this title, or a provision of the Thurston County Code as listed in 26.05.010 TCC, for a violation does not preclude the initiation of a separate remedy.
- D. The County may 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, cleanup, recording fees, including staff time and court expenses.
- E. Civil penalties for violation of the Thurston County Code as listed in 26.05.010 TCC shall be assessed a maximum of thirty (30) days per violation.

26.05.040 Enforcement, voluntary compliance agreements, and violation remedies

- A. Thurston County is committed to achieving voluntary compliance through the most collaborative methods feasible. 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 herein, or who erects any building or uses any building or uses any land in violation of a provision of the Thurston County Code as listed in 26.05.010 TCC, the director may initiate compliance actions generally in the following sequence:
 - 1. Issue Contact Letter;
 - 2. Issue a Notice of Violation, allowing up to thirty (30) calendar days to correct;
 - 3. Enter into a voluntary compliance agreement as described in 26.05.040(C) TCC;
 - 4. Issue a stop work ~~notice order~~ to halt any activity which is in violation of this title, 25.06.050 TCC;
 - 5. Require complete or partial restoration, rehabilitation, or replacement of a critical area or other affected site, structure or area by the property owner, pursuant to 26.05.110 TCC. 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;
 - 6. Revoke a permit or approval, pursuant to 26.05.070 TCC;
 - 7. Issue a civil infraction to the property owner(s) of record or to the known violator or both, pursuant to 26.10 TCC;
 - 8. Issue a civil penalty to the property owner(s) of record or to the known violator or both, pursuant to 26.20 TCC;
 - 9. ~~Require abatement of an illegal use, structure or development;~~
 - 10. Request that the prosecuting attorney commence a criminal prosecution or seek an injunction temporary restraining order, order or seek equitable relief to enjoin any act or practices and abate any conditions which constitute or will constitute a violation, pursuant to 26.05.020(H) TCC.
 - 11. The director may issue a "stop work" notice, civil infraction or civil penalty, or abatement notice without taking the sequential steps listed in 25.05.040(A) TCC for the following:

ATTACHMENT A - Page 4

- a. A violation that may cause substantial, or undue, adverse effect to a critical area;
 - b. A violation that may cause substantial, or undue, adverse effect to an adjacent property owner; or
 - c. A violation that is an imminent public health or safety concern.
- B.** Voluntary compliance is a means of correcting a violations in a timely manner while considering public health, safety, and general welfare, as well as the ability of the property owner or violator to access resources.
- C.** Whenever the director determines that a code violation has occurred or is occurring, the department may enter into a voluntary compliance agreement, as described below:
- 1. The director is responsible for guiding the form and content of any compliance agreement;
 - 2. The voluntary compliance agreement is a collaborative written commitment between the county and those responsible for correcting the impacts of the violation;
 - 3. A voluntary compliance agreement may be entered into at any time after issuance of a verbal or written warning, a citation, a restoration requirement, a notice of violation or a stop work, and before an appeal is decided pursuant to this Title.
 - 4. The voluntary compliance agreement is not a settlement agreement. In the event the agreement is terminated, the voluntary process shall be part of the record in the event subsequent enforcement actions are appealed. The voluntary compliance agreement shall at a minimum include the following:
 - a. The name and address of an individual accepting responsibility for code compliance;
 - b. The address or other identification of the location of the violation;
 - c. A description of the violation and a reference to the provision or provisions of the ordinance, resolution, regulation or approval condition that has been violated;
 - d. A description of the necessary corrective action to be taken and identification of the date or time by which compliance must be completed. For the purpose of this subsection, the county may either require that compliance be achieved by a specific date or that compliance be achieved by a date to be determined based on the occurrence of some future event;
 - e. The compliance actions that may be imposed pursuant to TCC Chapter 26.20 if the voluntary compliance agreement is not satisfied; and
 - f. An acknowledgment that the voluntary compliance agreement may be recorded against the property with the Thurston County Auditor, the recording to be accomplished as provided by state law.

26.05.050 ~~Reserved 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, shall be discontinued, or terminated and subject to removal~~

26.05.060 Enforcement, violations, and penalties – notice to stop work orders.

ATTACHMENT A – Page 5

A stop work notice 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 notice 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 cease immediately or, in appropriate cases, the specific corrective action to be taken within a given time.
- C. Notification that appeal provisions are contained under 26.05.080 TCC.

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 as listed in 26.05.010 TCC, or when a use or building is being maintained in a manner contrary to the terms and conditions of the a permit or approval.

26.05.080 Appeals.

A stop work, notice of violation, ~~and~~ civil penalty, abatement notice and required environmental restoration orders may be appealed to the County Hearing Examiner pursuant to Section 20.60.060 TCC, except that any appeal of a Hearing Examiner decision under Title 26 shall be submitted to Superior Court.

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 Section 26.05.010 TCC, the code enforcement regulations in this title shall supersede other titles, unless otherwise provided for in this or other titles. ~~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 Section 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:

ATTACHMENT A - Page 6

"Department" or "department" means the Thurston County Community Planning and Development (CPED) Resource Stewardship Department, Thurston County Public Health & Social Services Department, or the Thurston County Public Works Department; or, other subsequent nomenclature deemed appropriate by the Board of County Commissioners.

"Director" or "director" means the director of a the department of Thurston County as described in this section ~~Resource Stewardship Department, or the director of the Thurston County Public Works Department, as appropriate,~~ or 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 plan orders for critical areas damage.

A. Restoration plans orders shall, whenever feasible, be incorporated into a voluntary compliance agreement and become effective immediately upon approval by the director. Failure to comply with the terms of a restoration plan 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.

AB. 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, as may be set forth in a voluntary compliance agreement prior to initiation of the restoration activity. 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. For nonagricultural activities, restoration activities shall be reviewed by the approval authority under the requirements for a critical area review permit (Chapter 24.40 TCC). For agricultural activities, restoration plans orders shall be reviewed by the approval authority by using the standards in the Agricultural Activities Critical Areas Ordinance (Chapter 17.15). To determine the applicable critical areas ordinance, please see Section 17.15.110 TCC and Section 24.01.025 TCC. Inadequate plans as determined by the approval authority shall be returned to the violator/property owner for revision and resubmittal.

BC. 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.
3. The pre-violation structure, condition, and functions of the critical area, associated buffer and management zones shall also be determined by using the applicable critical

ATTACHMENT A – Page 7

areas ordinance. To determine the applicable critical areas ordinance, please see Section 17.15.110 TCC and Section 24.01.025 TCC.

CD. For nonagricultural activities, the property owner/violator, ~~shall~~ at the discretion of the director, may be required to submit a surety consistent with Chapter 24.70 TCC and with the requirements of Title 24 TCC to ensure that restoration is successful. For agricultural activities, the property owner and/or violator, at the discretion of the director, may be required to submit a surety ~~shall be submitted~~ consistent with the requirements of this title. To determine the applicable critical areas ordinance, please see Section 17.15.110 TCC and Section 24.01.025 TCC.

DE. 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 the Thurston County Code as specified in Section 26.05.010 TCC has occurred and the persons or entities carrying out actions in violation of the Thurston County Code as specified in Section 26.05.010 TCC are each responsible and liable for the violation.

CHAPTER 26.10 CIVIL INFRACTIONS.

- 26.10.010 Civil infractions - Purpose.**
- 26.10.030~~20~~ Civil infractions - Procedures.**
- 26.10.040~~30~~ 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 Section 26.05.010 TCC by each act of commission or omission, or procures, aids or abets such violation, may 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 7.80.120 RCW each person found to have committed a civil infraction shall be assessed a monetary penalty based on the class of infraction as provided in Section 26.10.040 TCC 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~~20~~ 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.

ATTACHMENT A – Page 8

- C. Administrative Responsibilities. The director is responsible for assuring county compliance with 7.80.150 RCW. The director may publicize a list of persons found committed 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 7.80.080 RCW.
 - c. The person receiving the notice of civil infraction fails to appear at a hearing requested under 7.80.080(3) or (4) RCW.
 - 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. Superseding of a Recording. The recording of any official notice of civil infraction with the auditor shall be superseded with a subsequent recording 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.

26.10.04030 Civil infractions – Class of infraction.

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

CHAPTER 26.20 CIVIL PENALTIES

- 26.20.010 Civil penalties – Purpose.**
- 26.20.020 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.**

ATTACHMENT A – Page 9

26.20.120 Civil penalties – Notice, Right to Appeal and Final 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 Section 26.05.010 TCC, by each act of commission or omission or procures, aids or abets such violation, may be subject to a civil penalty as provided in Section 26.20.110 TCC and Table 26-1. All civil penalties assessed shall 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 coercive. 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. The Administrative Civil Penalty procedure adopted by this Chapter provides an additional and independent method of enforcement to procedures found elsewhere in Title 26 TCC.

26.20.020 Civil penalties – Identification of violators.

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.

Upon the obtaining of a judgment by the Prosecuting Attorney after the authorization of Final Civil Penalties as described in this Chapter, 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 Section 26.05.010 TCC 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 Prosecuting

ATTACHMENT A – Page 10

Attorney shall seek a judgment of the final civil penalties imposed by Thurston County. After obtaining judgment, 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~~ may 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 – Notice, right to appeal and final penalty assessment

ATTACHMENT A – Page 11

A. The director ~~or his designee~~ shall serve the Notice of Civil Penalty upon the person to whom it is directed, either personally or by mailing a registered or certified copy of the Notice of Civil Penalty to such person at their last known address. If the person to whom it is directed cannot after due diligence be personally served within Thurston County and if an address for mailed service cannot after due diligence be ascertained, notice shall be served by posting a copy of the Notice of Civil penalty 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 affecting the service, declaring the time and date of service, the manner which the service was made, and if by posting the facts showing that due diligence was used in attempting to serve the person or by mail.

B. A person to whom a Notice of Civil penalty has been issued may appeal the Notice of Civil Penalty to the Hearing Examiner. Appeal procedures shall be in accordance with Section 20.60.060 TCC and as described above in Section 26.05.080 TCC. Notice of Right to Appeal shall be indicated in the Notice of Civil Penalty. For daily or accruing civil penalties, Notice of Right to Appeal for each day that a civil penalty shall accrue should be conspicuously included in the Notice of Civil Penalty.

C. With the exceptions as listed in Table 26-1, civil penalties for all violations of the Thurston County Codes as listed in Section 26.05.010 TCC, are Class 2 penalties. Applicable fines for Class 1 and Class 2 penalties shall be the same as that set for an equivalent Civil Infraction under state law. With the exceptions listed in Table 26-1, penalties for violations of the Thurston County Codes listed in 26.05.010 TCC shall be Class 2 civil penalties with an assessment of \$256.00 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 set of \$513.00 for first violations and double that Except that, civil penalty may be doubled that amount for subsequent violations within any five (5) year period.

~~Prior to a final determination of assessment of civil penalties shall be made by the county Hearing Examiner. Notice of Hearing for Final Assessment shall be sent to the person upon whom the final assessment would be directed. Notice and Right to Appeal shall be served as described above in this provision. At the hearing for Final Assessment, the Hearing Examiner shall take into consideration the following factors:~~

D. Prior to At the request of the penalized individual(s) or entity, the director may reduce any penalty amount prior to collection for good cause shown.

E. A final determination of assessment of civil penalties shall be made by the county Hearing Examiner for any penalty in excess of two days. Notice of Hearing for Final Assessment shall be sent to the person upon whom the final assessment would be directed. Notice and Right to Appeal shall be served as described above in this provision. At the hearing for Final Assessment, the Hearing Examiner shall take into consideration the following factors:

1. The person's efforts to correct the violation and whether corrective action has been completed;
2. Whether the person failed to appear at the hearing;
3. Whether the violation was a complete violation;
4. Whether the person showed due diligence and/or substantial progress in correcting the violation;

ATTACHMENT A - Page 12

- 5. The amount of time and resources expended to abate the violation;
- 6. Whether a genuine code interpretation issue exists; and
- 7. Any other relevant factors.

F. Upon considering the factors above, the Hearing Examiner shall make a Final Assessment constituting the total civil penalties to be imposed. Upon issuing a Final Order of Civil Penalty, the Thurston County Prosecuting Attorney shall seek to obtain judgment on the amount assessed unless the Final Order is appealed to the Superior Court under the provisions described in Section 20.60.060 TCC.

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

Code Violation Description
1. Building or installation primary structure without a <u>required</u> permit or proper permit
2. Change of occupancy violation
3. Failure to abate D dangerous <u>B</u> uilding
4. Grading or unlawful fill <u>more than 500 cubic yards</u> without a permit or proper permit
5. Unauthorized alteration of critical area or buffer <u>r</u> emoval or irreparable damage to <u>of</u> each protected tree
6. Failure to comply with stop work <u>notice</u> or restoration order <u>requirement</u>
7. Failure to comply with the energy conservation code Removal or irreparable damage to each protected tree
8. Unauthorized work in the public right-of-way
<u>89.</u> Any Class 2 civil infraction or civil penalty violation may be re-classified to a Class 1 if such violation is repetitive, is unduly detrimental in nature, or is committed by a repeat violator, as determined by the director