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# Kittitas County Code

## Title 18 | CODE ENFORCEMENT

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### Chapter 18.01

#### GENERAL PROVISIONS

### Sections


- 18.01.010 Applicability.
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- 18.01.040 Infractions designated.
- 18.01.050 Crimes designated.
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#### **18.01.010 Applicability.**

1. This Title shall apply to the enforcement of Kittitas County ordinances and codes, related to building, zoning, fire, and environmental health and safety, the violation of which either injures or endangers the comfort, repose, health, or safety of others are hereby declared a public nuisance:
  - a. Title 5 Kittitas County Code (KCC), Business Licenses and Regulations;
  - b. Title 8 KCC, Health, Welfare, and Sanitation;
  - c. Title 12 KCC, Roads and Bridges;
  - d. Title 13 KCC, Water and Sewers;
  - e. Title 14 KCC, Buildings and Construction;
  - f. Title 15 KCC, Environmental Policy;
  - g. Title 16 KCC, Subdivisions;


- h. Title 17 KCC, Zoning;
  - i. Title 17A KCC, Critical Areas;
  - j. Title 17B KCC, Shorelines;
  - k. Title 20 KCC, Fire and Life Safety; and
  - l. All Kittitas County Health Ordinances and Codes, including but not limited to, Solid Waste Ordinance(s).
2. This Title shall also apply to the following additional public nuisances:
- a. Any public nuisance as defined by Washington State Statute or set forth in Washington case law;
  - b. Any attractive nuisance whether in a building, on the premises of a building, or on an unoccupied lot. This includes any abandoned wells, shafts, basements, or excavations; abandoned refrigerators and junk vehicles, as defined in this chapter; or any structurally unsound fences or structures; or any lumber, trash, fences, debris or vegetation which may prove a hazard;
  - c. The existence of any dead, diseased, infested, or dying trees which may constitute a danger to property or persons;
  - d. The existence of any tree, shrub or foliage, unless by consent of the county, which is apt to destroy, impair, interfere or restrict:
    - i. Roads, sidewalks, sewers, utilities or other public improvements, or
    - ii. Visibility, or free use of, or access to such improvements.
  - e. The existence of any vines or climbing plants growing into or over any road, public hydrant, pole or street light, or the existence of any shrub, vine or plant growing on, around, or in front of any hydrant, stand pipe, sprinkler system connection or any other appliance or facility provided for fire protection purposes in such a way as to obscure the view thereof, or impair the access thereto;
  - f. The existence of a sidewalk or portion of a sidewalk adjacent to any premises which sidewalk is out of repair, and in a condition to endanger persons or property, or in a condition to interfere with the public convenience and the use of such sidewalk;
  - g. The existence of any obstruction (including snow or ice that has been plowed into or across a road, alley, crossing or sidewalk) to a road, alley, crossing or sidewalk, which is by ordinance prohibited, or which is made without lawful permission, or which having been made by lawful permission, is kept and maintained after the purpose therefore has been accomplished, and for an unreasonable length of time;
  - h. The erecting, maintaining, using, placing, depositing, leaving or permitting to be or remain in or upon any private lot, building, structure, or premises, or in or upon any road, alley, sidewalk, park, parkway, or other public or private place in the county, any one or more of the following: disorderly, disturbing, unsanitary, fly-producing, rat-harboring, disease-causing places, conditions, or objects;
  - i. Any bottles, cans, glass, ashes, small pieces of scrap iron, wire, metal, tires, articles, broken stone or cement, broken crockery, broken glass, broken plaster and all such trash, or abandoned material, unless it is kept in approved covered bins or receptacles;
  - j. Any trash, litter, rags, accumulations, or empty barrels, boxes, crates, packing cases, mattresses, bedding, straw or other packing materials, lumber not neatly piled, scrap iron, tin or other metal not neatly piled, or anything whatsoever in which flies or rats may breed or multiply, or which may be a fire hazard;
  - k. The depositing or burning or causing to be deposited or burned in any road, alley, sidewalk, park, parkway, or other public place which is open to travel, any hay, straw, paper, wood, boards, boxes, leaves, manure, or other rubbish or materials;
  - l. The existence of any pits, potholes, or holes which would endanger safety;
  - m. The existence of any conditions that would produce dust or noxious odors; provided, that nothing herein shall be prohibited when done in conjunction with a construction project for which a building permit has been issued and is being prosecuted diligently to completion, and the contractor or owner shall be responsible for dust control throughout the development area;

- n. The existence of any fence or other structure or thing on private property abutting or fronting upon any public road, sidewalk, or place which is in a sagging, leaning, falling, decaying, or other dilapidated or unsafe condition;
  - o. Unlawful disposal sites. It is unlawful for anyone to deliver and/or deposit any garbage or rubbish generated within or outside the county at any disposal site other than a refuse disposal, processing, transfer or recovery site provided and/or designated by the County ~~Public Works~~ Public Services Director pursuant to chapter 13.12 KCC;
  - p. Buildings found substandard pursuant to chapter 14.04 KCC;
  - q. Vehicles, boats and trailers, on property for sale. The placing or parking along street and road rights-of-way or in direct and plain view thereof any vehicle, licensed or unlicensed, boat, trailer, motor-home, mobilized equipment or machinery, recreational vehicle and equipment placed or parked on property that is owned by someone that is other than the owner of the vehicle, trailer, motor-home, etc. for the purpose of selling the same. The placing or parking of any vehicle, etc. on property owned by another includes business and commercial property so long as the business is not regularly engaged and licensed pursuant to chapter 46.70 RCW, in selling the particular vehicle, equipment, etc.
  - r. Any "Junk Vehicle." The definition of "junk vehicle" is a vehicle intended to be self-propelled and used for the transport of people, goods, and/or services.
    - i. In addition to the above definition, a vehicle must meet at least three of the following to be a "junk vehicle" under 18.01.010(r) KCC
      1. Is three years old or older;
      2. Is extensively damaged, such damage including, but not limited to, any of the following:
        - a. A broken window or windshield;
        - b. Missing wheels or tires; or
        - c. Missing motor, or transmission;
      3. Is without a valid, current license plate or certificate of registration;
      4. Is apparently inoperable;
      5. Has an approximate fair market value equal only to the approximate value of the scrap in it.
    - ii. This definition of a "junk vehicle" shall not apply to:
      1. A vehicle or part thereof that is completely enclosed within a building in a lawful manner where it is not visible from the road or other public or private property; or
      2. A vehicle or part thereof that is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed vehicle dealer and is fenced according to RCW 46.80.130; or
      3. A vehicle which is actively being restored, repaired, or reconditioned. A property shall only have one vehicle under this exception. If the project is not completed within two years, the vehicle must be removed as provided herein.
  - s. Any existing excavation or embankment or fill that has become a hazard to life and limb, or endangers property, or adversely affects the safety, use or stability of a public way or drainage channel;
  - t. All "litter" and "potentially dangerous litter" as defined in Section 70.93.030 RCW. The definition of "Potentially dangerous litter" is amended to include any litter which is disposed of in such a way as to create a fire hazard, such as any material which is still burning at the time of disposal.
3. It is unlawful and a violation of this chapter for any person, firm, or corporation found guilty of having created, or allowing to exist on premises either owned or leased by them, any nuisance defined herein. Owners remain liable for violations of duties imposed by this chapter jointly and severally of any obligation imposed on the occupants of the premises; it is irrelevant to this chapter that an owner, by agreement, imposed on the occupant the duty of complying with this chapter,

4. Successive property owners are liable for abatement of nuisances created by their predecessors in interest. No right can be acquired to continue a nuisance by virtue of its longtime existence. It shall not be necessary to show that the owner participated in, or was even aware of, the code violation in order to hold him/her liable. Kittitas County first adopted the Uniform Building Code and Building Code Standards published by the International Conference of Building Officials on April 17, 1984. Structures constructed prior to that time are considered legal nonconforming uses. It is the landowner's burden to prove the date of construction and that it has not been abandoned or modified since construction. Proof of construction may include, but is not limited to, historical county records, historical photographs, aerial photographs, etc. A legal nonconforming use is not exempt from the requirements of the Shoreline Master Program or other bodies of state and federal law.
5. Violations of the applicable codes shall be corrected under the provisions of this Title, in coordination with existing ordinance and code provisions. (Ord. 2016-010, 2016;  Ord. 2013-012 2013; Ord. 2009-22, 2009; Ord. 2009-19, 2009; Ord. 2006-37, 2006; Ord. 2005-29, 2005; Ord. 94-25 (part), 1994)

#### **18.01.020 Enforcement.**

Only an authorized official may enforce the provisions of this Title. For purposes of this Title, an authorized official is defined as any of the following:

1. The Kittitas County Sheriff and his or her authorized representatives shall have the authority to enforce the provisions of this Title.
2. The Kittitas County Code Enforcement Officer and his or her authorized representatives shall have the authority to enforce the provisions of this Title
3. The Kittitas County Prosecuting Attorney shall have the authority to enforce the provisions of this Title and may institute any legal proceedings necessary to enforce the provisions of this Title.
4. The Kittitas County Fire Marshal and his or her authorized representatives shall have the authority to enforce the provisions of this Title as to violations of Chapter 9.30, Chapter 15.08 and 20 of Kittitas County Code, and all other fire and life safety code and ordinances as adopted by Kittitas County.
5. The Kittitas County ~~Community Development Public~~ Services Director and Planning Official and their authorized representatives shall have the authority to enforce the provisions of this Title as to violations of Titles 15, 16, 17, 17A, and 17B of Kittitas County Code.
6. The Kittitas County ~~Community Development Public~~ Services Director and Building Official and their authorized representatives shall have the authority to enforce the provisions of this Title as to violations of all building codes adopted by Kittitas County.
7. The Kittitas County ~~Public Works Public Services~~ Director and his or her authorized representatives shall have the authority to enforce the provisions of this Title as to violations of Title 12, Chapter 13.40, Chapter 14.05, and Chapter 14.08 of Kittitas County Code.
8. The Kittitas County Board of Health may designate other persons to administer the provisions of this Title as to violations of Titles 8 and 13 and the Kittitas County Health Code and Ordinances.
9. The Kittitas County Board of County Commissioners may designate other persons to administer the provisions of this Title. Designation of enforcement officers shall be made by resolution and may designate persons by name or position. (Ord. 2019-013, 2019;  Ord. 2013-012, 2013; Ord. 2009-19, 2009; Ord. 2006-37, 2006; Ord. 94-25 (part), 1994)

#### **18.01.030 Amnesty period.**

Removed as part of Ord. 2005-29, 2005.

#### **18.01.040 Infractions designated.**

The violation of any provision of the applicable codes or sections or the presence of a nuisance, as set forth in KCC 18.01.010 ("violation"), shall constitute a civil infraction. Each such violation shall constitute a separate civil infraction for each and every day or portion thereof during which such violation is committed, continued, or permitted. (Ord. 2009-19, 2009; Ord. 2006-37, 2006; Ord. 2005-29, 2005; Ord. 9425 (part), 1994)

#### **18.01.050 Crimes designated.**

Any person, company, firm, corporation or other legal entity who:

1. Commits a violation as set forth in KCC 18.01.010 on two or more days within any twelve-month period shall be guilty of a misdemeanor, punishable by up to ninety days in jail and/or a fine of up to one thousand dollars.
2. Having had two or more prior code convictions and/or findings of having committed code infractions, including notices of violation and abatement, under this Title and thereafter commits a third violation as set forth in KCC 18.01.010 within ten years shall be guilty of a gross misdemeanor, punishable by up to three hundred sixty-five days in jail and/or a fine of five thousand dollars. (Ord. 2009-19, 2009; Ord. 2006-37, 2006; Ord. 2005-29, 2005)

#### **18.01.060 Inspection.**

1. All entry made onto private property for the purpose of inspection for code compliance or investigation of complaints shall be lawful when conducted in strict conformity with constitutional and statutorily established policies and constraints on entry as established by statutory or case law. The right of entry granted by this title shall not supersede those legal constraints. If entry is denied, the authorized official may use any lawful means necessary to obtain entry.
2. Upon written notice of intent to seek a search warrant, when a tenant/occupant or landlord/owner denies the authorized official the right to search a premises, the county may immediately seek a search warrant, upon a showing of probable cause specific to the premises sought to be searched that code and/or statutory violations exist upon the premises chargeable as a criminal violation pursuant to KCC section 18.01.050, a court of competent jurisdiction shall issue a warrant allowing a search of such premises.
  - a. Probable cause that a multi-day violation exists that would be chargeable as a misdemeanor pursuant to KCC 18.01.050 requires that the inspecting county employee, on at least two separate days, either observed conditions constituting a violation under this chapter or was refused entry upon premises to inspect for such a violation after receiving information reasonably leading him/her to believe such violations existed.
  - b. Either the observation of multi-day violations or the multi-day denial of entry after receipt of information as to suspicious conduct shall be attested to by sworn affidavit.
3. The Superior Court and courts of limited jurisdiction organized under Titles 3, 35, and 35A RCW have jurisdiction to issue such search warrant. Evidence obtained pursuant to any such search may be used in a criminal, civil, or administrative enforcement action. (Ord. 2009-19, 2009; Ord. 2006-37, 2006)

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## **Chapter 18.02**

### **INFRACTION CORRECTIVE ORDERS**

#### **Sections**

18.02.010 Violations - Enforcement.

18.02.020 Order to correct violation.

18.02.030 Notice of violation and abatement.

18.02.040 Notice of infraction.

18.02.050 Failure to comply.

### **18.02.010 Violations - Enforcement.**

1. Except as provided in this Title, any authorized official under 18.01.020 KCC may investigate alleged or apparent violations of this Title.
2. If an authorized official makes a determination that a violation has occurred or is occurring, that official may:
  - a. Pursue reasonable attempts to secure voluntary correction by issuing an order to correct violation;
  - b. Issue a Notice of Violation and Abatement to the landowner(s); or
  - c. Issue a notice of infraction if that official reasonably believes a violation has occurred.
  - d. File a Notice of Title with the Auditor's Office for any code violation that has remained unresolved for forty-five (45) days or more after Kittitas County issued an Order to Correct Violation. After the violation has been resolved, the landowner shall pay a fee as set forth in the ~~Community Development~~ Public Services Schedule to process and record a lifting of the Notice to Title. Fee
3. Nothing in this Chapter shall limit the ability of the authorized official to pursue other corrective actions as allowed by law. ( Ord. 2018-021, 2018; Ord. 2013-012, 2013; Ord. 2009-19, 2009; Ord. 2006-37, 2006; Ord. 2005-29, 2005; Ord. 94-25 (part), 1994)

### **18.02.020 Order to correct violation.**

1. Purpose. An order to correct violation may be issued in an effort to secure voluntary correction within a reasonable amount of time as determined by the authorized official.
2. Order to correct violation - Content. The order to correct violation should contain:
  - a. The name and address of the landowner or the other person(s) to whom the order to correct violation is directed; and
  - b. 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; and
  - c. A description of the violation and a reference to that provision of the ordinance or code which is alleged to have been violated; and
  - d. A statement of the action required to be taken to correct the violation and a date or time by which correction is to be completed; and
  - e. A statement that failure to respond to the order to correct violation, within a defined and listed amount of time assessed as reasonable by the authorized official, may result in the issuing of a notice of infraction, Notice of Violation and Abatement or possible criminal charges and the commencement of a monetary penalty in an amount per day for each violation, assessed against the person(s) in the case of violations of 18.01.010(1) KCC, and against the land in the case of violations under 18.01.010(2) KCC or 18.01.010(3) KCC, to whom the order to correct violation is directed for each and every day, or portion thereof, on which the violation continues following the date set for correction; and
  - f. Notice that multi-day violations are chargeable as crimes under 18.01.050 KCC; and
  - g. The signature of the authorized official who issues the order to correct violation.
3. Order to correct violation - Service.
  - a. The order to correct violation is issued to the landowner or to any person causing, allowing, or participating in the alleged violation. The order to correct violation shall be served upon the person to whom it is directed by either:
    - i. personal service of an authorized official pursuant to 18.01.020 KCC; or
    - ii. by mailing a copy of the order by certified mail, postage prepaid, return receipt requested, to such person at his/her last known address.

- b. Where practical, a copy of the notice should be posted on the affected property or structure. Failure to post a copy of the notice is not, however, a requirement of proper service.
  - c. The failure of the landowner or person causing, allowing or participating in the alleged violation to receive such Order to Correct shall not affect the validity of any proceedings taken under this Chapter. Service by certified mail in the manner provided in this section shall be effective on the third day after the date of postmark, excluding Saturdays, Sundays and holidays.
4. Order to correct violation - Extension of Time. Upon written agreement between an authorized official and the party allegedly in violation, the parties may agree to an extension of time to correct the violation.
- a. The extension of time shall include a date certain in the future upon which correction of the violation is to be complete.
  - b. The extension of time shall be granted only upon a showing of good cause as demonstrated in the written agreement. Among others, factors to be considered are:
    - i. Substantial completion of the necessary correction;
    - ii. Unforeseeable circumstances which render completion of the necessary correction impossible by the date established;
    - iii. A proposed phase removal plan that extends beyond the established correction date.
5. Order to correct violation - Repeat Offense. When an order to correct violation has been previously issued for the same offense to the same person at the same location, the authorized official is not required to issue an order to correct violation and may immediately issue a notice of infraction, a Notice of Violation and Abatement, or possible criminal charges (Ord. 2013-012, 2013; Ord. 2009-19, 2009; Ord. 2006-37, 2006; Ord. 2005-29, 2005; Ord. 94-25 (part), 1994).

#### **18.02.030 Notice of Violation and Abatement.**

1. Whenever, upon a reasonable belief, a public nuisance exists in violation of this Title, an authorized official may issue a Notice of Violation and Abatement to the landowner(s), containing the following:
  - a. The street address, parcel number(s), or description of the building, structure, premises, or land in terms reasonably sufficient to identify its location;
  - b. A description of the violation(s) including the day or days of the offenses;
  - c. A reference to the Title, Chapter, and Section of the KCC or Kittitas County Health Department regulation or written order which has been violated, if applicable;
  - d. The amount of the fine imposed and to whom and by when it must be paid;
  - e. A description of the action required to abate the public nuisance which may include corrections, repairs, demolition, removal, or any other appropriate action, and a date by which voluntary abatement must be completed;
  - f. A statement that the person to whom a Notice of Violation and Abatement is directed may request an administrative hearing to be conducted by the Hearing Examiner. Such request (Notice of Appeal) must be in writing, accompanied by the appeals fee and must be received by the Public Official within 10 working days after the Notice of Violation and Abatement has been served.
  - g. A statement that the landowner must correct the violation and pay the civil penalty; or may appeal the Notice; and
  - h. A statement that the costs and expenses of abatement incurred by the County may be assessed against the person(s) named in the Notice of Violation and Abatement and further that failure to pay said costs may result in a lien for the costs of abatement being assessed against the property.
2. Service of the Notice of Violation and Abatement
  - a. The Notice of Violation and Abatement shall be served by any one or combination of the following methods:

- i. By both first-class and certified mail with a 5-day return receipt requested to the last known address of the landowner of the property; or
- ii. By posting the Notice of Violation and Abatement in a prominent location on the premises in a conspicuous manner which is reasonably likely to be discovered; or
- iii. By personal service upon the landowner.

b. The failure of the landowner to receive such Notice of Violation and Abatement shall not affect the validity of any proceedings taken under this Chapter. Service by certified mail in the manner provided in this section shall be effective on the third day after the date of postmark, excluding Saturdays, Sundays and holidays.

### 3. Notice of Appeal.

- a. Within 10 working days of service of a Notice of Violation and Abatement, the landowner may submit a written Notice of Appeal to the Authorized official, to appeal the Notice of Violation and Abatement.
- b. The notice of appeal shall contain a written, concise statement identifying:
  - i. The decision being appealed;
  - ii. The name and address of the appellant and his interest(s) in the matter;
  - iii. The specific reasons why the appellant believes the decision to be wrong. The appellant shall bear the burden of proving the decision was wrong; and
  - iv. The desired outcome or changes to the decision.

### 4. Notice of Hearing.

- a. The authorized official shall issue and serve a Notice of Hearing to the appellants within fifteen working days after the receipt of one or more timely Notices of Appeal. Requests from multiple parties concerning the same nuisance may be consolidated.
- b. The Notice of Hearing shall be served by the same means as the Notice of Violation and Abatement.
- c. The Notice of Hearing shall contain the date, time, and location of the hearing.

### 5. Hearing.

- a. The appeal of a Notice of Violation and Abatement shall be heard by the Hearing Examiner.
- b. Unless otherwise provided herein, the provisions of Chapter 2.11 KCC shall govern the hearing process.
- c. Burden of proof.
  - i. Except as otherwise required by law, in all cases where a license or permit is required but has not been issued, the burden shall be on the applicant to establish that the application meets all applicable criteria or that a license or permit is not required. In all other cases, the burden is on the county to prove the alleged factual basis set forth in the initiating document.
  - ii. Except as otherwise required by law, the burden in all cases is a preponderance of the evidence.
  - iii. The observation of a violation on different dates shall be prima facie evidence that the violation continued to exist on intervening dates.
- d. The Hearing Examiner shall determine if the property at issue constitutes a public nuisance as defined in this Chapter. The Hearing Examiner shall also determine if the appellant is the property owner and is therefore personally liable for the costs of abating the nuisance.

### 6. Order of the Hearing Examiner.

- a. Unless mutually agreed to by the appellant and the Hearing Examiner, the Hearing Examiner or the Hearing's Examiner's clerk shall serve upon both the county and the appellant, either personally or by mailing a copy of the order to the parties at his/her last known address as determined by the designated authorized official.
- b. The Hearing Examiner, in affirming the authorized official's Notice of Violation and Abatement, shall impose the fine consistent with the penalty provision of this Title and may assess administrative costs and/or costs related to the abatement of the nuisance.



- c. The Hearing Examiner may order the County to pay the appellant costs, and/or attorney fees only upon a finding that both the violation did not occur and intentional misconduct on the part of the authorized official.
- d. The appellant may file a request for reconsideration of the Hearing Examiner's decision within ten days of service of the Hearing Examiner's written decision, based on any of the following grounds materially affecting the substantial rights of said party or person:
  - i. Errors of procedure or misinterpretation of fact, material to the party seeking the request for reconsideration;
  - ii. Irregularity in the proceedings before the Hearing Examiner by which such party was prevented from having a fair hearing; or
  - iii. Clerical mistakes in the official file or record transmitted to the Examiner, including errors arising from inadvertence, oversight, or omission, which may have materially affected the Board's decision on the matter.
- e. Upon receipt of a request for reconsideration, the Hearing Examiner shall review said request in light of the record and take such further action as is deemed proper; including, but not limited to, denying the request, granting the request, with or without oral argument, and may render a revised decision. The decision of the Hearing Examiner shall be subject to reconsideration only one time, even if the Hearing Examiner reverses or modifies the original decision.
- f. If no written request for reconsideration has been received by the authorized official within ten days of the service of the order of the Hearing Examiner, the order shall be considered final unless appealed to the Kittitas County Superior Court. All such appeals shall be governed by Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ).
- g. Any order related to a violation of the Shoreline Master Program shall be considered final unless appealed to the Shoreline Hearings Board.


#### 7. Cooperative Abatement Agreements.

The authorized official and the landowner may enter into a cooperative abatement agreement which includes a right of entry agreement and an agreement regarding the recovery of costs of the abatement.

#### 8. Cost Recovery.

- a. In addition to the other remedies available under this chapter, an authorized official may charge the costs of abatement to the landowner(s) who received the Notice of Violation and Abatement or to the landowner(s) who were found personally liable for the costs of abating the nuisance by an order issued by the Hearing Examiner if an appeal was filed. The costs are due and payable 30 days from mailing of the invoice and if not paid by that date shall bear interest at the rate of 12 percent per annum. The costs shall be paid to the Department to which the authorized official is assigned. In the case of persons designated by the Kittitas County fire marshal to enforce Chapter 15.08, 20 KCC costs shall be paid to the Office of the Fire Marshal.
- b. If more than one landowner has been issued a Notice of Violation and Abatement or more than one appellant was found personally liable for the costs of abating the nuisance by an order issued by the Hearing Examiner, each party shall be jointly and severally liable for the costs of the abatement.
- c. For purposes of this Section, "costs" shall include but are not limited to:
  - i. Personnel costs, both direct and indirect, including all attorney's fees and costs incurred in the investigation, documentation, and abatement of the nuisance;
  - ii. Repair, demolition, hauling, clean up, storage, disposal, and environmental mitigation expenses;
  - iii. Actual expenses and costs of the County in preparing notices, specifications, and contracts, and the costs of any required printing or mailing;

- iv. Actual expenses and costs of the County in accomplishing, contracting, or inspecting the abatement work;
  - v. Penalties under to Chapter 18.05 KCC.
- d. Any salvage value proceeds resulting from the abatement of the property shall first be applied to the costs of abatement. Any remaining such monies shall be paid to the landowner as shown on the last equalized assessment roll.
- e. The County may impose a special assessment for the costs of any abatement proceedings under this chapter and all other related costs against the real property on which the nuisance was found or any of the work of abatement was performed.
9. Special Assessment.

Pursuant to RCW 36.32.120(10), all costs incurred by Kittitas County for the abatement of any nuisance defined by any statute or ordinance shall be a special assessment upon land or premises on which the nuisance is situated and this assessment and/or any penalties under this Title shall constitute a lien against the property which shall be of equal rank with state, county, and municipal taxes. An authorized official shall cause a claim of lien to be filed for record in the Auditor's Office within ninety (90) days from a final finding. (Ord. 2016-010, 2016;  Ord. 2013-012, 2013; Ord. 2009-19, 2009)

### **18.02.040 Notice of infraction.**

An authorized official may issue a notice of infraction where that official has probable cause to believe, and does believe, that a violation has occurred or is occurring.

1. Notice of Infraction - Contents. A notice of infraction shall either be:
- a. A notice of infraction ticket from a ticket book which substantially complies with IRLJ 2.1(b) and is approved by the Administrative Office of the Courts, or
  - b. A notice of infraction form that shall contain the following:
    - i. A statement indicating a determination has been made that the civil infraction has been committed by the person named in the notice and that the determination shall be final unless contested as provided in this Title;
    - ii. A statement of the specific civil infraction(s) alleged to have been committed for which the notice of infraction was issued and a reference to the code section allegedly violated;
    - iii. The date(s) the violation was observed;
    - iv. Address or sufficient description of the property at which the violation allegedly occurred;
    - v. A statement that the civil infraction is a noncriminal offense for which imprisonment shall not be imposed as a sanction;
    - vi. 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 of up to one thousand dollars and/or imprisonment in jail up to ninety days;
    - vii. A list of options provided in this ordinance for responding to the notice of infraction and the procedures necessary to exercise these options;
    - viii. A statement that at any hearing to contest the determination of infraction, the burden is on the county to establish that the infraction was committed by preponderance of the evidence and that the person may produce witnesses and subpoena the authorized official who issued and/or served the notice of infraction;
    - ix. A statement that the person alleged to have committed the infraction promises to respond to the Notice of Infraction in a manner consistent with this title, and a space for the alleged violator's signature;

- x. A statement that refusal to sign the infraction as directed in paragraph (i) of this subsection shall constitute a determination that the person to whom the notice was issued committed the infraction;
  - xi. The amount of the penalty for the alleged infraction;
  - xii. Statement that if the violation is a nuisance and is not corrected, that the County can abate the nuisance and that the infraction penalty, abatement costs, and all associated legal costs and fees can become a lien against the property as well as a joint and several judgment against the owners and that the County can foreclose upon that lien, also obtaining reimbursement for its foreclosure costs, against the property;
  - xiii. The name, signature, address, and phone number of the authorized official issuing the notice of infraction as well as the time and place the notice was issued; and
  - xiv. A statement that multi-day violations can be charged as crimes.
2. Notice of Infraction - Service. An authorized official may issue a notice of infraction if that official has probable cause to believe, and does believe, that the provisions of an applicable ordinance has been violated. A notice of infraction may be served through adherence to IRLJ 2.2(c):
  3. Notice of Infraction - Filing. A notice of infraction shall be filed in District Court within forty-eight hours of issuance, excluding Saturdays, Sundays, and holidays. Kittitas County District Court shall have jurisdiction to hear and determine these matters.
  4. Notice of Infraction - Determination. A notice of infraction represents a determination that the person to whom the notice was issued committed the infraction unless contested under the provisions of this Title.
  5. Notice of Infraction-Notice of Lien. The Notice of Infraction shall constitute a Notice of Lien in case the matter ultimately results in abatement and a lien for such abatement costs.
  6. Notice of Infraction - Procedure.
    - a. A person who has been served with a notice of infraction shall respond to the notice as provided within this section within fifteen days of the date the notice was served as provided in the Infraction Rules for Courts of Limited Jurisdiction (IRLJ) 2.4.
    - b. If the person fails to respond as provided in IRLJ 2.4, the court shall follow the procedure in IRLJ 2.5.
  7. Notice of Infraction - Scheduling of Hearings
    - a. If the person responds by requesting a contested hearing, then the court shall follow IRLJ 2.6(a) to schedule the contested hearing.
    - b. If the person responds by requesting a mitigation hearing, then the court shall follow IRLJ 2.6(b) to schedule the mitigation hearing.
    - c. The court may notify the county prosecuting attorney of a failure to respond to the notice of infraction if the person named on the notice fails to respond to the notice of infraction as provided in (b) of subsection six 18.02.040 KCC or fails to appear at a hearing requested pursuant to paragraphs (c) or (d) of this subsection. The court shall notify the respective county department of any judgment entered and the reasons therefore.
- (Ord. 2021-003,2021 Ord. 2013-012, 2013; Ord. 2009-19, 2009; Ord. 2006-37, 2006; Ord. 94-25 (part), 1994)

#### **18.02.050 Failure to comply.**

1. Any person willfully violating his or her written and signed promise to appear in court or his or her signed promise to respond to the notice of infraction is guilty of a misdemeanor, punishable by fine up to one thousand dollars and/or imprisonment in jail up to ninety days, regardless of the disposition of the notice of infraction.
2. A person who willfully fails to pay a monetary penalty as required by a court under this chapter may be found in civil contempt of court after notice and hearing. Further, delinquent accounts with the court may be referred to

an agency for collection.

3. Any person subject to criminal proceedings under this Title may be represented by a lawyer. If the person named on the notice of infraction qualifies, he or she may be represented by court-appointed counsel. (Ord. 2009-19, 2009; Ord. 2006-37, 2006; Ord. 94-25 (part), 1994)

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## **Chapter 18.04**

### **INFRACTION HEARINGS**

#### **Sections**

18.04.010 General Procedures.

18.04.020 Repealed.

#### **18.04.010 Contested hearing.**

1. Infraction hearings shall be governed by the Infraction Rules for Courts of Limited Jurisdiction (IRLJ) Title 3: Procedure at Hearings, unless otherwise provided in this Section.
2. If the court determines that the infraction was committed, it shall:
  - a. Assess the monetary penalty per Section 18.05.010 KCC; and
  - b. Order the individual to correct the violation, and enter such an order into the court's records.
3. All appeals of the court's determination shall be according to IRLJ Title 5: Appeals. (Ord. 2013-012, 2013; Ord. 2009-19, 2009; Ord. 2006-37, 2006; Ord. 2005-29, 2005; Ord. 94-25 (part), 1994).

#### **18.04.020 Repealed.**

(Ord. 2013-012, 2013; Ord. 2009-19, 2009; Ord. 2006-37, 2006; Ord. 94-25 (part), 1994).

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## **Chapter 18.05**

### **PENALTIES**

#### **Sections**

18.05.010 Infraction Penalties.

18.05.020 Criminal Penalties.

18.05.030 Abatement.

#### **18.05.010 Infraction Penalties.**

1. A person found to have committed a civil infraction shall be assessed a monetary penalty. Except as otherwise required by law, the maximum penalty and default amount is \$500 for each day of violation under this Title, not including statutory assessments, and the minimum penalty shall be \$250 for each day of violation under this chapter, not including statutory assessments. The court may not reduce, waive, or suspend the monetary penalty below the stated minimum.
2. A person having been issued a Notice of Violation and Abatement shall be subject to a monetary penalty. The authorized official shall determine the penalty amount. Except as otherwise required by law, the maximum penalty and default amount shall be \$500 for each day of violation under this Title, not including statutory assessments, and the minimum penalty shall be \$100 for each day of violation under this chapter, not including statutory assessments. The Hearings Examiner may not reduce, waive, or suspend the monetary penalty below the amount assessed by the authorized official.
3. Each and every day of violation is a separate civil infraction subject to the above per-day penalty.

4. A person found to have committed a civil infraction shall be ordered to correct the violation. Failure to correct the violation may result in an abatement action.
5. Whenever a monetary penalty is imposed by a court under this Title, it is immediately payable to the court. If the person is unable to pay at that time, the court may grant an extension of the period 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 county prosecuting attorney of the failure to pay. The court shall also notify the respective county department of the failure to pay the penalty, and the respective county department shall not issue the person any future permits for any activities and/or work until the monetary penalty has been paid in full.
6. The court may also order restitution be paid to a damaged party by the person found to have committed the infraction.
7. Any person who, through an act of commission or omission procures, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.
8. Whenever a Notice of Violation and Abatement has been issued by an authorized official and the applicable appeals period has expired, the monetary penalty shall be immediately payable to the Department to which the authorized official is assigned. Any such penalty not paid within 30 days of the issuance of the notice or order affirming such notice shall bear interest at the rate of 12 percent per annum and may be referred to a collection agency. Nothing in this Title limits the right of the County to pursue other lawful remedies to fees, fines and costs imposed by this Title.

(Ord. 2016-010, 2016; Ord. 2016-006, 2016; Ord. 2013-012, 2013; Ord. 2009-19, 2009; Ord. 2006-37, 2006; Ord. 2005-29, 2005; Ord. 94-25 (part), 1994)

#### **18.05.020 Criminal Penalties.**

1. Any misdemeanor in violation of 18.01.050 KCC shall be punishable by up to ninety days in jail and/or a fine of up to one thousand dollars.
2. Any gross misdemeanor in violation of 18.01.050 KCC shall be punishable by up to three hundred sixty-five days in jail and/or a fine of five thousand dollars.
3. A person found to have committed a misdemeanor or gross misdemeanor under 18.01.050 KCC may be ordered to correct the violation. Failure to correct the violation may result in an abatement action. ( Ord. 2013-012, 2013; Ord. 2009-19, 2009; Ord. 2006-37, 2006; Ord. 2005-29, 2005)

#### **18.05.030 Abatement.**

1. When the violation is nuisance under KCC 18.01.010 and the unsuccessful defendant has not complied
  - a. with the portion of the District Court order prescribing correction and the applicable appeal period has expired; or
  - b. with the portion of the Notice of Violation and Abatement prescribing correction and the applicable appeals period has expired, the County may propose a resolution to the Kittitas County Board of County Commissioners seeking (a) authority to proceed with an abatement action in the Superior Court, (b) appropriation of funding to carry out the abatement, and (c) approval of a time table within which to complete the contemplated abatement. If a Department has an abatement fund established the County need only propose the above resolution to the Board if County general funds are necessary for the abatement.
2. Upon approval of the above described resolution if required by the Kittitas County Board of County Commissioners, the County shall apply to the District Court for a warrant of abatement and a transfer to Superior Court or file an action for a warrant of abatement in Superior Court.

3. Upon receipt of such application, the District Court shall transfer the cause to the Superior Court, which shall proceed to try the issue of abatement.
4. The presence of a nuisance, as determined by the District Court or through the procedure outlined in KCC 18.02.035, shall be res judicata.
5. The Superior Court shall decide whether or not the defendant has complied with the District Court order requiring correction or the corrective measure outlined in the Notice of Violation and Abatement.
6. If not, the Superior Court shall issue a warrant of abatement authorizing the County to abate the nuisance at the expense of the party causing the nuisance and to levy a special assessment against the involved real estate to defray costs and reimburse the County for its abatement costs.
7. Such special assessment, along with any civil penalties and costs shall constitute a lien against the property upon which the violation occurred that shall be of equal rank with state, county, and municipal taxes.
8. An authorized official shall cause a claim of lien to be filed for record in the Auditor's Office within ninety (90) days from the date of completion of the abatement performed pursuant to this Title.
9. The claim of lien shall contain the following:
  - a. The authority for imposing a civil penalty and/or proceeding to abate the violation;
  - b. 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;
  - c. A description of the property to be charged with the lien;
  - d. The name of the known owner or reputed owner, and if not known the fact shall be alleged; and
  - e. The amount, including lawful and reasonable costs, for which the lien is claimed.
10. No lien created by this Title binds the property subject to the lien for a period longer than ten years after the claim has been filed unless an action is commenced in the proper court within that time to enforce the lien.
11. Liens created under this Title shall bear interest at the rate of 12 percent per annum and such interest shall accrue as of the date notice of the lien is sent to the property owner. (Ord. 2013-012, 2013; Ord. 2009-19, 2009; Ord. 2006-37, 2006)

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## Chapter 18.06

### LEGAL PROVISIONS

#### Sections

- 18.06.010 Nature of infraction proceedings.
- 18.06.020 Legal costs infractions.
- 18.06.030 Severability and Saving.
- 18.06.040 Conflicts.
- 18.06.050 Other Lawful Remedies.

#### **18.06.010 Nature of infraction proceedings.**

Any finding or order that an infraction has been committed under the provisions of this Title is civil in nature. (Ord. 2013-012, 2013; Ord. 2009-19, 2009; Ord. 2006-37, 2006; Ord. 94-25 (part), 1994)

#### **18.06.020 Legal costs of infractions.**

Except where explicitly stated in this Title, each party in a civil infraction case is responsible for attorney fees and costs incurred by that party. (Ord. 2013-012, 2013; Ord. 2009-19, 2009; Ord. 2006-37, 2006; Ord. 94-25 (part), 1994)

### **18.06.030 Severability and Saving.**

If any provision of this chapter or its application to any person or property is held invalid, the remainder of this chapter or the application of the provision to other persons or property is not affected and if for any reason this code should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect. (Ord. 2009-19, 2009)

### **18.06.040 Conflicts.**

If any provision of this Title or its application to any person or property is in conflict with any other provision of County Code or Court Rule, including procedural rules; then the provision contained within this Title shall control. ( Ord. 2013-012, 2013; Ord. 2009-19, 2009)

### **18.06.050 Other Lawful Remedies.**

Nothing in this code limits the right of the County to pursue other lawful criminal, civil or equitable remedies to abate, discontinue or correct violations of this Title. ( Ord. 2013-012, 2013; Ord. 2009-19, 2009)

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## **Chapter 18.07**

### **SPECIAL PROVISIONS FOR ENFORCEMENT OF TITLE 17B SHORELINES**

#### **Sections**

18.07.010 Authority and purpose.

18.07.020 Definitions.

18.07.030 Collaborative enforcement with the Department of Ecology.

18.07.040 Appeals to the Shorelines Hearings Board.

18.07.050 Damages and attorney's Fees.

#### **18.07.010 Authority and purpose**

The Shoreline Management Act calls for a cooperative program between local government and the state. It provides for a variety of means of enforcement, including civil and criminal penalties, orders to cease and desist, orders to take corrective action, and permit recession. The provisions of WAC 173-27 adopted under RCW 90.58.200 and 90.58.210 implement the enforcement responsibilities of the Department of Ecology and local government under the Shoreline Management Act. This Chapter implements specific provisions of WAC 173-27 that should be used in enforcement of the Shoreline Master Program and should be used in addition to other provisions of KCC Title 18 to enforce Title 17B Shorelines. (Ord. 2016-010, 2016)

#### **18.07.020 Definitions**

The definitions in WAC 173-27-030 shall apply in KCC 18.07, except that the following definitions shall apply when used in this part of the regulations:

1. "Permit" means any form of permission required under the Shoreline Management Act prior to undertaking activity on shorelines of the state, including substantial development permits, variances, conditional use permits, permits for oil or natural gas exploration activities, permission which may be required for selective commercial timber harvesting, and shoreline exemptions; and
2. "Exemption" means authorization from local government which establishes that an activity is exempt from substantial development permit requirements under WAC 173-27-040, but subject to regulations of the act and the local master program.

(Ord. 2016-010, 2016)

### **18.07.030 Collaborative enforcement with the Department of Ecology**

1. A person who fails to conform to the terms of a shoreline permit issued under RCW 90.58.140, who undertakes a development or use on shorelines of the state without first obtaining a permit, or who fails to comply with an infraction corrective order issued for violation of the Shoreline Master Program under this Title may be subject to a civil penalty pursuant to KCC 18.05.
2. The Department of Ecology may impose a penalty jointly with the County, or alone only upon an additional finding that a person:
  - a. Has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule; or
  - b. Has been given previous notice of the same or similar type of violation of the same statute or rule; or
  - c. The violation has a probability of placing a person in danger of death or bodily harm; or
  - d. Has a probability of causing more than minor environmental harm; or
  - e. Has a probability of causing physical damage to the property of another in an amount exceeding one thousand dollars.
3. In the alternative, a penalty may be issued to a person by the Department of Ecology alone, or jointly with the County for violations which do not meet the criteria of subsection 1.a through e of this chapter, after the following information has been provided in writing to a person through a technical assistance visit or a notice of correction:
  - a. A description of the condition that is not in compliance and a specific citation to the applicable law or rule;
  - b. A statement of what is required to achieve compliance;
  - c. The date by which compliance is required to be achieved;
  - d. Notice of the means to contact any technical assistance services provided by the agency or others; and
  - e. Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the Department of Ecology. Furthermore, no penalty shall be issued by the Department of Ecology until the individual or business has been given a reasonable time to correct the violation and has not done so.

(Ord. 2016-010, 2016)

### **18.07.040 Appeals to the Shorelines Hearings Board**

Persons incurring a penalty imposed by the Department of Ecology or imposed jointly by the Department of Ecology and the County may appeal the same to the shorelines hearings board, pursuant to WAC 173-27-290. Appeals to the shorelines hearings board are adjudicatory proceedings subject to the provisions of chapter 34.05 RCW. Persons incurring a penalty imposed by the County may follow appeal/contesting procedures of KCC 18.02 and KCC 18.04.

(Ord. 2016-010, 2016)

### **18.07.050 Damages and attorney's Fees**

Private persons shall have the right to bring suit for damages under RCW 90.58.230 on their own behalf and on the behalf of all persons similarly situated. If liability has been established through abatement proceedings according to KCC 18.05.030, the court shall make provision to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including money damages, the court in its discretion may award attorney's fees and costs of the suit to prevailing party. (Ord. 2016-010, 2016)

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