

CITY OF LACEY, WASHINGTON

ORDINANCE NO. 926

AN ORDINANCE relating to civil violations and abatement; repealing existing Lacey Municipal Code Chapter 14.40; and adding a new Chapter 14.40 to the Lacey Municipal Code, Civil Violations and Abatement.

THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Ordinance No. 773 and Lacey Municipal Code Chapter 14.40 are hereby repealed.

Section 2. The Lacey Municipal Code is amended by the addition of a new Chapter 14.40 which reads as follows:

Chapter 14.40 CIVIL VIOLATIONS AND ABATEMENT

14.40.010 Purpose.

The purpose of this chapter is to establish an efficient system to enforce the regulations of the City of Lacey to provide an opportunity for a prompt hearing on alleged violations of such regulations, to establish monetary penalties for violations as authorized by RCW 35A.11.020, and to establish a standard procedure to be used by the City to abate unsafe or unlawful conditions.

14.40.020 Definitions.

As used in this chapter, unless a different meaning is plainly required:

- A. "Abate" means to repair, replace, remove, destroy or otherwise remedy a condition which constitutes a civil violation by such means, in such a manner and to such an extent as the applicable department director determines is necessary in the interest of the general health, safety and welfare of the community.
- B. "Act" means doing or performing something.
- C. "Applicable department director" means the director of the department or any designated alternate empowered by ordinance or by the City manager to enforce a City of Lacey ordinance or regulation.
- D. "Civil violation" means a violation for which a monetary penalty may be imposed as specified in this chapter. Each day or portion of a day during which a violation occurs is a separate violation. Traffic infractions pursuant to RCW Chapter 46.90 except sections 46.90.500 through 46.90.565 are specifically excluded from the application of this Chapter.
- E. "Development" means the erection, alteration, enlargement, demolition, maintenance or use of any structure or the alteration or use of any land above, at or below ground or water level, and all acts authorized by a City of Lacey regulation.

F. "Emergency" means a situation which the applicable department director determines requires immediate action to prevent or eliminate a threat to the health or safety of persons or property.

G. "Hearings Examiner" means the Lacey Hearings Examiner and the office thereof established pursuant to Lacey Municipal Code Chapter 2.30.010.

H. "Omission" means a failure to act.

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

J. "Person responsible for the violation" means any person who is required by the applicable regulation to comply therewith, or who commits any act or omission which is a civil violation or causes or permits a civil violation to occur or remain upon property in the City, and includes but is not limited to the owner(s), lessor(s), tenant(s), or other person(s) entitled to control, use and/or occupy property where a civil violation occurs.

K. "Regulation" means and includes the following as now or hereafter amended:

1. Lacey City Zoning Code Chapters 16.75 and 16.78 (Sign Code); 8.04 (Garbage and Refuse Storage Disposal); 9.52 (Nuisances); 14.38 (Noise Control); Lacey Municipal Code Title 12 (Streets and Sidewalks Codes); Title 13 (Water and Sewage Codes); Title 14 (Buildings and Construction Codes); Title 15 (Subdivision Codes); and Title 16 (City Zoning Code);

2. City of Lacey Development Guidelines and Public Works Standards, as adopted by Ordinance #893, as now or hereafter amended;

3. All standards, regulations and procedures adopted pursuant to the above; and

4. The terms and conditions of any permit or approval issued by the City, or any concomitant agreement with the City.

L. "Repeat Violation" means a violation of the same regulation in any location by the same person for which voluntary compliance previously has been sought within two years or a Notice of Civil Violation has been issued within two years.

M. "Violation" means an act or omission contrary to a City of Lacey regulation including an act or omission at the same or different location by the same person, and including a condition resulting from such act or omission.

14.40.030 Voluntary Correction.

A. **Applicability.** This Section applies whenever the applicable department director determines that a violation of a regulation has occurred or is occurring.

B. **General.** The applicable department director shall pursue a reasonable attempt to secure voluntary correction by contacting the person responsible for the violation where possible, explaining the violation and requesting correction.

C. **Issuance of Voluntary Correction Agreement.** A Voluntary Correction Agreement may be entered into between the person responsible for the violation and the City, acting through the applicable department director.

1. **Content.** The Voluntary Correction Agreement is a contract between the City and the person responsible for the violation under which such person agrees to abate the violation within a specified time and according to specified conditions. The Voluntary Correction Agreement shall include the following:

a. The name and address of the person responsible for the violation; and

b. The street address or a description sufficient for identification of the building, structure, premises, or land upon which or within which the violation has occurred or is occurring; and

c. A description of the violation and a reference to the provision(s) of the City of Lacey ordinance or regulation which has been violated; and

d. The necessary corrective action to be taken, and a date and time by which the corrective action must be completed; and

e. An agreement by the person responsible for the violation that the City of Lacey may abate the violation and recover its costs and expenses and a monetary penalty pursuant to this Chapter from the person responsible for the violation if terms of the Voluntary Correction Agreement are not met.

f. An agreement that by entering into the Voluntary Correction Agreement the person responsible for the violation waives the right to an administrative appeal of the violation and/or the required corrective action.

2. **Right to a Hearing Waived.** The person responsible for the violation waives the right to an administrative appeal of the violation and the required corrective action upon entering into a Voluntary Correction Agreement.

3. Extension-Modification. An extension of the time limit for correction or a modification of the required corrective action may be granted by the applicable department director if the person responsible for the violation has shown due diligence and/or substantial progress in correcting the violation but unforeseen circumstances render correction under the original conditions unattainable.

4. Abatement by the City. The City may abate the violation in accordance with Section 14.40.060 if the terms of the Voluntary Correction Agreement are not met.

5. Collection of costs. If the terms of the Voluntary Correction Agreement are not met the person responsible for the violation shall be assessed a monetary penalty commencing on the date set for correction and thereafter, in accordance with Section 14.40.040.E, plus all costs and expenses of abatement, as set forth in 14.40.060.D.

#### 14.40.040 Notice of Civil Violation

##### A. Issuance.

1. When the applicable department director determines that a violation has occurred or is occurring, and is unable to secure voluntary correction pursuant to Section 14.40.030, the applicable department director may issue a Notice of Civil Violation to the person responsible for the violation.

2. The applicable department director may issue a Notice of Civil Violation without having attempted to secure voluntary correction as provided in Section 14.40.030 under the following circumstances:

- a. When an emergency exists; or
- b. When a repeat violation occurs; or
- c. When the violation creates a situation or condition which cannot be corrected; or
- d. When the person knows or reasonably should have known that the action is in violation of a City of Lacey regulation.

##### B. Content. The Notice of Civil Violation shall include the following information:

1. The name and address of the person responsible for the violation; and
2. The street address or a description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring; and

3. A description of the violation and a reference to the provision(s) of the City of Lacey regulation which has been violated; and

4. The required corrective action and a date and time by which the correction must be completed after which the City may abate the unlawful condition in accordance with Section 14.40.060 and the Hearings Examiner's Order; and

5. The date, time, and location of an appeal hearing before the Hearings Examiner which will be at least 10 days from the date the Notice of Civil Violation is issued; and

6. A statement indicating that the hearing will be cancelled and no monetary penalty will be assessed if the applicable department director approves the completed, required corrective action at least 48 hours prior to the hearing; and

7. A statement that the costs and expenses of abatement incurred by the City pursuant to Paragraph 14.40.060.D and a monetary penalty in an amount per day for each violation as specified in Paragraph 14.40.040.E may be assessed against the person to whom the Notice of Civil Violation is directed as specified and ordered by the Hearings Examiner.

C. Service of Notice. The applicable department director shall serve the Notice of Civil Violation upon the person to whom it is directed, either personally or by mailing a copy of the Notice of Civil Violation 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 Violation conspicuously on the affected property or structure. Proof of service shall be made by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service, the manner by which the service was made, and if by posting the facts showing that due diligence was used in attempting to serve the person personally or by mail.

D. Extension. No extension of the time specified in the Notice of Civil Violation for correction of the violation may be granted, except by order of the Hearings Examiner.

E. Monetary Penalty. The monetary penalty for each separate violation per day or portion thereof shall be as follows:

1. First day of each violation - \$100.00;
2. Second day of each violation - \$200.00;
3. Third day of each violation - \$300.00;
4. Fourth day of each violation - \$400.00;

5. Each additional day of each violation beyond four days - \$500.00 per day.

F. Continued Duty to Correct. Payment of the monetary penalty does not relieve the person to whom the Notice of Civil Violation was issued of the duty to correct the violation.

G. Collection of monetary penalty.

1. The monetary penalty constitutes a personal obligation of the person to whom the Notice of Civil Violation is directed. Any monetary penalty assessed must be paid to the City of Lacey at the Department of Community Development within ten calendar days from the date of mailing of the Hearings Examiner's decision or a notice from the City that penalties are due.

2. The City shall contract with a collection agency in order to collect monetary penalties from individuals who do not pay within ten calendar days of the Hearing Examiner's decision.

#### 14.40.045 Monetary Penalty for Illegal Landclearing Activities

The monetary penalties stated within this chapter for illegal landclearing activities shall be applied in the event of non-payment for vegetative replacement materials, on an illegally cleared site. This shall be an addition to the monetary penalties in the Lacey Municipal Code Section 14.32.090 of the Lacey Tree and Vegetation Protection Ordinance. For every day of nonpayment of the Tree Preservation Professional's assessment, the monetary penalties pursuant to Section 14.40.040.E shall apply.

In the event that the violator appeals the tree preservation professional's decision, the Hearings Examiner shall hold a hearing pursuant to Section 14.40.050.

#### 14.40.050 Hearing before the Hearings Examiner.

A. Notice. A person to whom a Notice of Civil Violation is issued will be scheduled to appear at a hearing before the Hearings Examiner not less than 10 calendar days after the Notice of Civil Violation is issued.

B. Prior Correction of Violation. The hearing will be cancelled and no monetary penalty will be assessed if the applicable department director approves the completed required corrective action at least 48 hours prior to the scheduled hearing.

C. Procedure. The Hearings Examiner shall conduct a hearing on the civil violation pursuant to the rules of procedure of the Hearings Examiner. The applicable department director and the person to whom the Notice of Civil Violation was directed may participate as parties in the hearing and each party may call witnesses. The City shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action is reasonable. The determination of the applicable department director as to the need for the required corrective action shall be accorded

substantial weight by the the Hearings Examiner in determining the reasonableness of the required corrective action.

D. Decision of the Hearings Examiner.

1. The Hearings Examiner shall determine whether the City has established by a preponderance of the evidence that a violation has occurred and that the required corrective action is reasonable and shall affirm, vacate, or modify the City's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.

2. The Hearings Examiner shall issue an Order to the person responsible for the violation which contains the following information:

a. The decision regarding the alleged violation including findings of fact and conclusions based thereon in support of the decision.

b. The required corrective action.

c. The date and time by which the correction must be completed.

d. The monetary penalties assessed based on the criteria in Paragraph 14.40.050.D.3.

e. The date and time after which the City may proceed with abatement of the unlawful condition if the required correction is not completed.

3. Assessment of Monetary Penalty. Monetary penalties assessed by the Hearings Examiner shall be in accordance with the monetary penalty schedule in Paragraph 14.40.040.E.

a. The Hearings Examiner shall have the following options in assessing monetary penalties:

i. assess monetary penalties beginning on the date the Notice of Civil Violation was issued and thereafter, or

ii. assess monetary penalties beginning on the correction date set by the applicable department director or an alternate correction date set by the Hearings Examiner and thereafter, or

iii. assess no monetary penalties.

b. In determining the monetary penalty assessment, the Hearings Examiner shall consider the following factors:

i. whether the person responded to staff attempts to contact the person and cooperated with efforts to correct the violation;

- ii. whether the person failed to appear at the hearing;
- iii. whether the violation was a repeat violation;
- iv. whether the person showed due diligence and/or substantial progress in correcting the violation;
- v. whether a genuine code interpretation issue exists; and
- vi. any other relevant factors.

c. The Hearings Examiner may double the monetary penalty schedule if the violation was a repeat violation. In determining the amount of the monetary penalty for repeat violations the Hearings Examiner shall consider the factors set forth in subparagraph 14.40.050.D.3.b.

4. Notice of Decision. The Hearings Examiner shall mail a copy of the decision to the appellant and to the applicable department director within ten working days of the hearing.

E. Failure to appear. If the person to whom the Notice of Civil Violation was issued fails to appear at the scheduled hearing, the Examiner will enter an order finding that the violation occurred and assessing the appropriate monetary penalty. The City will carry out the Hearings Examiner's Order and recover all related expenses, plus the cost of the hearing and any monetary penalty from that person.

F. Appeal to Superior Court. An appeal of the Hearings Examiner's decision must be filed with the Thurston County Superior Court within twenty calendar days from the date the Hearings Examiner's decision was mailed to the person to whom the Notice of Civil Violation was directed, or is thereafter barred.

#### 14.40.060 Abatement by the City.

A. The City may abate a condition which was caused by or continues to be a civil violation when:

- 1. The terms of Voluntary Correction Agreement pursuant to 14.40.030 have not been met; or
- 2. A Notice of Civil Violation has been issued pursuant to Section 14.40.040 and a hearing has been held pursuant to 14.40.050 and the required correction has not been completed by the date specified in the Hearings Examiner's Order; or
- 3. The condition is subject to summary abatement as provided for in 14.40.060.B.

B. Summary Abatement. Whenever any violation of a regulation causes a condition the continued existence of which constitutes an immediate and emergent threat to the public health, safety, or welfare or to the environment, the City may summarily and without prior notice abate the



condition. Notice of such abatement, including the reason for it shall be given to the person responsible for the violation as soon as reasonably possible after the abatement.

C. Authorized Action by the City. Using any lawful means, the City may enter upon the subject property and may remove or correct the condition which is subject to abatement. The City may seek such judicial process as it deems necessary to effect the removal or correction of such condition.

D. Recovery of Costs and Expenses. The costs, including incidental expenses, of correcting the violation shall be billed to the person responsible for the violation and/or the owner, lessor, tenant or other person entitled to control, use and/or occupy the property and shall become due and payable to the City of Lacey Department of Community Development within ten (10) calendar days. The term "incidental expenses" shall include, but not be limited to personnel costs, both direct and indirect, including attorney's fees; costs incurred in documenting the violation; hauling, storage and disposal expenses; and actual expenses and costs of the City in preparing notices, specifications and contracts, and in accomplishing and/or contracting and inspecting the work; and the costs of any required printing and mailing.

E. Interference. No person shall obstruct, impede, or interfere with the City or its agents, or with any person who owns, or holds any interest or estate in any property, in performing any acts necessary to correct the violation.

#### 14.40.070 Additional enforcement procedures.

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

#### 14.40.080 Conflicts.

In the event of a conflict between this chapter and any other provision of the Lacey City Code or City Ordinance providing for a civil penalty, this chapter shall control. Provisions of the Public Peace, Safety and Morals Code Title 9 does not apply to this Chapter.

#### 14.40.090 Meaning of Terms.

For the purposes of this code, whenever the terms civil infraction and civil penalty are used in any code, ordinance or regulation of the City, those terms shall be deemed to have the same meaning as the terms civil violation and monetary penalty, respectively, as used herein.

#### 14.40.100 Severability.

If any one of more sections, subsections or sentences of this chapter are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this chapter and the same shall remain in full force and effect.

Section 3. The summary of this ordinance, which is attached hereto, is approved for publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF LACEY, WASHINGTON, this 5th day of December, 1991.

CITY COUNCIL

Gene Canquhar  
Mayor

Approved as to form:

[Signature]  
Ken Ahlf, City Attorney

Attest:

[Signature]  
City Clerk

Published December 8, 1991

tf01/cd04

SUMMARY FOR PUBLICATION  
ORDINANCE 926

CITY OF LACEY

The City Council of the City of Lacey, Washington, passed on December 5, 1991, Ordinance No. 926 entitled "AN ORDINANCE RELATING TO CIVIL VIOLATIONS AND ABATEMENT; REPEALING EXISTING LACEY MUNICIPAL CODE CHAPTER 14.40; AND ADDING A NEW CHAPTER 14.40 TO THE LACEY MUNICIPAL CODE, CIVIL VIOLATIONS AND ABATEMENT."

A section by section summary of this ordinance is as follows:

Section 1 repeals Chapter 14.40 of the Lacey Municipal Code.

Section 2 enacts a new Chapter 14.40 of the Lacey Municipal Code dealing with the subjects set forth in this summary. The sections of the new chapter are summarized as follows:

Section 14.40.010 sets forth the purpose of the chapter as being the establishment of an efficient system to enforce city regulations, establish monetary penalties for violations and standard procedures to be used by the city to abate unsafe or unlawful conditions.

Section 14.40.020 defines terms used in the new chapter.

Section 14.40.030 encourages voluntary corrections by providing for voluntary correction agreements and the means of enforcing such agreements.

Section 14.40.040 specifies the conditions under which a notice of civil violation will be issued by the city, the contents of such notices and the service thereof and further specifies the monetary penalties associated with such notices.

Section 14.40.045 deals specifically with monetary penalties for violation of the city's land clearing regulations.

Section 14.40.050 provides for a hearing before the city's hearings examiner after the service of a notice of civil violation and specifies the procedures to be used, the evidence to be considered, possible penalties to be imposed and an appeal from a hearings examiner's decision to the Thurston County Superior Court.

Section 14.40.060 details the conditions upon which the city may abate a condition which constitutes a violation, the procedures for such abatement and the manner of recovering the cost and expenses incurred.

Section 14.40.070 states that the chapter is not exclusive and is an additional remedy to other provisions specified in the Lacey Municipal Code.

Section 14.40.080 specifies that in case of conflict between this chapter and other provisions of the city's code that this chapter shall control.

Section 14.40.090 clarifies the use of terms within the Lacey Municipal Code.

Section 14.40.100 is a severability clause.

Section 3 approves this summary for publication.

A copy of the full text of this ordinance will be mailed without charge to any person requesting the same from the City of Lacey.

Published: December 8, 1991.

*Charlotte M Taylor*  
*City Clerk*