

ORDINANCE #390

AN ORDINANCE OF THE TOWN OF YACOLT, WASHINGTON, REPEALING ORDINANCES #301 AND #322 REGARDING NUISANCE VIOLATIONS, ESTABLISHING PROVISIONS FOR NOTICE AND ORDER OF VIOLATIONS, IMPOSITION OF CIVIL PENALTIES INCLUDING ABATEMENT, AND RECOVERY OF COSTS OF ABATEMENT.

WHEREAS, the Town Council of Yacolt, Washington is in regular session this 20<sup>th</sup> day of December, 1999; and

WHEREAS, all members of the Town Council have had notice of time, place, and purpose of said meeting; and

WHEREAS, regulation of common nuisance activities is a necessary government service designed both to protect the public health, safety, and welfare, and to prevent public harm; and

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF YACOLT, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Purpose.

The purpose of this ordinance is to establish an efficient system to enforce the development, land use, and public health regulations of the town, to provide an opportunity for a prompt hearing and decision on alleged violations of these regulations, and to establish penalties for violations, including abatement of any affected properties.

Section 2. Declaration of Nuisance.

All violations of development, land use, and public health ordinances are found and declared to be detrimental to the public health, safety, and welfare and further found and declared to be nuisances. Nuisances create public harm. Prevention and correction of nuisances are necessary to prevent public harm.

Section 3. Definitions.

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

*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 town official determines is necessary in the interest of the general health, safety, and welfare of the community.

*Act* means doing or performing something.

*Applicable town official* means the Town Public Works Director or his designee, including any department director or other designee, empowered by ordinance or by the Mayor to enforce a town ordinance or regulation.

*Civil violation* means a violation for which a monetary penalty may be imposed as specified in this ordinance. Each day in which a violation occurs or exists is a separate violation.

*Development* means the erection, alteration, enlargement, demolition, maintenance, or use of any structure or the alteration or use of land above, at or below ground, or water level, and all acts authorized by a town regulation.

*Emergency* means a situation, which in the opinion of the applicable town official requires immediate action to prevent or eliminate an immediate threat to the health or safety of persons or property.

*Nuisance* (also referred to herein as "violation" or "nuisance violation") means:

1. A violation of any Town of Yacolt development, land use, or public health ordinance;
2. Doing an act, omitting to perform any act or duty, or permitting or allowing any act or omission, which annoys, injures, or endangers the comfort, repose, health, or safety of others, is unreasonably offensive to the senses, or which obstructs or interferes with the free use of property so as to interfere with or disrupt the use of that property by any lawful owner or occupant; or
3. The existence, without limitation, of any of the following conditions:
  - a. Trash Covered Premises: Any premises containing trash or abandoned materials, except that kept in garbage cans or containers maintained for regular collection;
  - b. Dangerous Structures: Any dangerous, decaying, unkempt, falling, or damaged dwelling, fence, or other structure;

- c. Potential Vermin Habitat or Fire Hazard: Any accumulation of material on a property including, but not limited to animal matter, ashes, bottles, boxes, broken stone, building materials which are not properly stored or neatly piled, cans, cement, crates, empty barrels, dead animals or animal waste, glass, litter, mattresses or bedding, old appliances or equipment or any parts thereof, furniture, iron or other scrap metal, packing cases, packing material, plaster, plastic, rags, wire, yard waste or debris, or other objects which endanger property or public safety, or constitute a fire hazard or vermin habitat; provided that nothing herein shall prevent the temporary (less than 45 days) retention of waste in covered receptacles of a nondisposable, durable nature;
- d. Junk Vehicles: Any wrecked, inoperable, abandoned, or disassembled trailer, house trailer, boat, tractor, automobile or other vehicle, or any parts thereof. A junk vehicle includes apparently inoperable, immobile, disassembled, or extensively damaged vehicles. Evidence of inoperability and damage includes, but is not limited to a buildup of debris that obstructs use, a broken window or windshield, a missing wheel, a flat tire, a non-functional motor or transmission, missing bumpers, or missing license plates; however, nothing herein shall prevent the keeping or storage of any vehicle on private property which is screened from view except that the on-site sewage area and the reserve area must be protected from compaction by vehicular traffic;
- e. Attractive Nuisances: Any attractive nuisance which may prove detrimental to children whether in or on a building, on the premises of a building, or upon an unoccupied lot, which is left in any place exposed or accessible to children. This includes unused or abandoned refrigerators, freezers, or other large appliances or equipment or any parts thereof, abandoned motor vehicles, any structurally unsound or unsafe fence or edifice; any unsecured or abandoned excavation, pit, well, cistern, storage tank, or shaft; and any lumber, trash, debris, or vegetation which may prove a hazard for children;

- f. Obstructions to the Public Right-of-way: Use of property abutting a public street or sidewalk or use of a public street sidewalk which causes any obstruction to traffic or to open access to the streets or sidewalks; provided that this subsection shall not apply to events, parades, or the use of the streets or public rights-of-way when authorized by the town. This section includes the existence of drainage onto or over any sidewalk, street, or public right-of-way, and the existence of any debris or plant growth on sidewalks adjacent to any property;
- g. Vegetation: Any noxious or toxic weed or uncultivated plant, weeds, or tall grass which may be a fire hazard, or any tree which is in danger of falling and creates a substantial risk of damage or injury;
- h. Illegal Dumping: Dumping of any type by any person on public or private property not registered as a legal dump site; and
- i. Dumping in Waterways: Dumping, depositing, placing or leaving of any garbage, ashes, debris, gravel, earth, rock, stone, or other material upon the banks, channels, beds or bars of any navigable water, or the felling of any tree or trees, so that the same shall in whole or in part project within the high water bank of any navigable watercourse, or the casting, placing, depositing or leaving of any logs, roots, snags, stumps or brush upon the banks or in the bed or channel of any navigable watercourse.

*Omission* means a failure to act.

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

*Person responsible for the violation* means any person who has an interest in or resides on the property, whether as owner, tenant, occupant, or otherwise.

*Property owner* means that person or persons who is the legal owner according to the records of Clark County, Washington of the real property upon or within which the violation has occurred or is occurring.

*Repeat violation* means a violation of the same regulation in any location by the same person, for which voluntary compliance previously has been sought or a notice of civil violation has been issued, within the immediately preceding twelve consecutive month period.

Section 4. Voluntary correction.

- A. *Applicability.* This section applies whenever the applicable town official determines that a nuisance has occurred or is occurring.
- B. *General.* The applicable town official shall attempt to secure voluntary correction by contacting the person responsible for the nuisance, as provided below, and explaining the violation and requesting correction.
1. Contact shall occur either:
    - a. In person or by telephone; or
    - b. By certified or registered mail, return receipt requested, and by first class mail.
  2. The applicable town official shall keep a record of his/her attempts to contact the person responsible for the violation.
  3. The applicable town official shall not be required to make more than five attempts in a ten calendar day period to contact the person responsible for the violation before issuing a notice of civil violation under Section 5.
- C. *Issuance of voluntary correction agreement.* A voluntary correction agreement may be entered into between the person responsible for the violation and the town acting through the applicable town official.
1. *Content.* The voluntary correction agreement is a contract between the town and the person responsible for the violation under which such person agrees to abate the violation within a specified time and according to the specified conditions. The voluntary correction agreement shall include the following:
    - a. The name and address of the person responsible for the violation and the name and address of the property owner; and

- b. The street address or other 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 the regulation which has been violated; and
  - d. The necessary corrective action to be taken, and a date or time by which correction must be completed; and
  - e. An agreement by the person responsible for the violation that the town may inspect the premises as may be necessary to determine compliance with the voluntary correction agreement; and
  - f. An agreement by the person responsible for the violation that the town may abate the violation and recover its costs and expenses (including attorney fees, expert witness fees, and court costs) and/or a monetary penalty pursuant to this ordinance from the person responsible for the violation if the terms of the voluntary correction agreement are not satisfied; and
  - g. An agreement that by entering into the voluntary correction agreement, the person responsible for the violation waives the right to a hearing before the hearing examiner under this ordinance, regarding the matter of the violation and/or the required corrective action.
2. *Right to a hearing waived.* Upon entering into a voluntary correction agreement, the person responsible for the violation shall have no right to a hearing before the hearing examiner under this ordinance, regarding the matter of the violation and/or the required corrective action.
3. *Extension and modification.* An extension of the time limit for correction or a modification of the required corrective action may be granted by the applicable town official if the person responsible for the violation has shown due diligence and/or substantial progress in correcting the violation, but unforeseen circumstances delay correction under the original conditions.

4. *Abatement by the town.* The town may abate the violation in accordance with this ordinance 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 5, plus all costs and expenses of abatement, as set forth in section 6.
6. *Notice to property owner.* A copy of the voluntary correction agreement shall be mailed by certified mail, return receipt requested, to the property owner if he/she is not the person responsible for the violation or is not a resident of the property.
7. *Interpretation by Town Council.* Any disputes between the person responsible for the violation and the applicable town official about the interpretation of the voluntary correction agreement shall be presented to the Town Council at a regularly scheduled town council meeting and resolved by the Town Council. The person responsible for the violation agrees to be bound by the determination of Town Council.

Section 5. Notice of civil violation.

A. *Issuance.*

1. When the applicable town official determines that a violation has occurred or is occurring, and is unable to secure voluntary correction, pursuant to section 4, the applicable town official may issue a notice of civil violation to the person responsible for the violation and the property owner.
2. The applicable town official may issue a notice of civil violation without having attempted to secure voluntary correction as provided in section 4 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 responsible for the violation and the property owner knows or reasonably should have known that the action is in violation of a town ordinance; or
- e. The person responsible for the violation and the property owner cannot be contacted, as provided in Section 4, or refuses to communicate or cooperate with the town in correcting the violation.

B. *Content.* The notice of civil violation shall include the following:

1. The name and address of the person responsible for the violation and the name and address of the property owner; and
2. 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
3. A description of the violation and a reference to the provision(s) of the town ordinance 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 town may abate the unlawful condition in accordance with section 7; and
5. The date, time and location of an appeal hearing before the hearing examiner which will be at least thirty (30) calendar days but no more than sixty (60) calendar days from the date the notice of civil violation is issued, unless such date is continued by the hearing examiner for good cause shown; and
6. A statement indicating that the hearing will be canceled and no monetary penalty will be assessed, other than the court filing fee, if the applicable town official approves the completed, required corrective action prior to the hearing; and
7. A statement that the costs and expenses of abatement incurred by the town pursuant to section 7, and a monetary penalty in an amount per day for each violation as specified in this section, may be assessed against the person(s) to whom the notice of civil violation is directed as specified and ordered by the hearing examiner; and



8. A statement that the costs of removing any trees, plants, shrubs, grasses, weeds, or vegetation shall become a charge against the owner of the property and the person responsible for the violation and a lien against the property pursuant to RCW 35.21.310 as currently enacted or hereafter amended; and
  9. A statement that the property owner and the person responsible for violation could be held jointly and severally liable for any costs and expenses and any monetary penalty.
- C. *Service of notice.* The applicable town official shall serve the notice of civil violation upon the person responsible for the violation and the property owner, either personally or by mailing a copy of the notice of civil violation by certified or registered mail, return receipt requested, to such person at their last known address. If the person responsible for the violation and/or the property owner cannot be personally served within Clark County and if an address for mailed service cannot be ascertained, notice shall be served by posting a copy of the notice of civil violation conspicuously on the affected property or structure and by publishing the notice one time in a newspaper which publishes legal notice in Clark County, Washington. If the property owner is the same person as the person responsible for the violation, only one copy of the notice need be given. 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 the attempts to serve the person(s) personally or by mail.
- D. *Extension.* Extensions of the time specified in the notice of civil violation for correction of the violation may be granted at the discretion of the applicable town official or by order of the hearing examiner.
- E. *Monetary penalty.* The monetary penalty for each violation per day or portion thereof shall be twenty-five dollars (\$25.00).
- F. *Continued duty to correct.* Payment of a monetary penalty pursuant to this ordinance does not relieve the person(s) 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(s) to whom the notice of civil violation is directed. Any monetary penalty assessed must be paid to the town within ten (10) calendar days from the date of mailing of the hearing examiner's decision or a notice from the town that penalties are due.

2. The town attorney is authorized to take appropriate action to collect the monetary penalty.

Section 6. Hearing before the hearing examiner.

- A. *Notice.* The person(s) to whom a notice of civil violation is issued will be scheduled to appear before the hearing examiner at least thirty (30) calendar days but no more than sixty (60) calendar days from the date the notice of civil violation is issued.
- B. *Hearing examiner.* One or more hearing examiners shall be appointed by the Town Council to hear cases brought under this ordinance. The hearing examiner may be a town employee but shall not be an employee of the public works department or the town attorney's office.
- C. *Prior correction of violation.* Except in the case of a repeat violation or a violation which creates a situation or condition which cannot be corrected, the hearing will be canceled and no monetary penalty will be assessed if the applicable town official approves the completed required corrective action at least forty-eight (48) hours prior to the scheduled hearing.
- D. *Procedure.* The hearing examiner shall conduct a hearing on the civil violation. The applicable town official and the person(s) to whom the notice of civil violation was directed may participate as parties in the hearing and each party may call witnesses. The town 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, if applicable, is reasonable. The determination of the applicable town official as to the need for the required corrective action shall be accorded substantial weight by the hearing examiner in determining the reasonableness of the required corrective action. Formal rules of evidence need not be followed, but all witnesses shall be sworn by the hearings officer.
- E. *Decision of the hearing examiner.*
  1. The hearing examiner shall determine whether the town has established by a preponderance of the evidence that a violation has occurred and that the required correction is reasonable and shall affirm, vacate, or modify the town's decisions regarding the alleged violation and/or the required corrective action.

2. The hearing examiner shall issue a written order to the person responsible for the violation and the property owner 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 section 5;
  - e. The date and time after which the town may proceed with abatement of the unlawful condition if the required correction is not completed.

F. *Assessment of monetary penalty.* Monetary penalties assessed by the hearing examiner shall be in accordance with the monetary penalty schedule in section 5.

1. The hearing examiner shall have the following options in assessing monetary penalties:
  - a. Assess monetary penalties beginning on the date the notice of civil violation was issued and thereafter; or
  - b. Assess monetary penalties beginning on the correction date set by the applicable town official or an alternate correction date set by the hearing examiner and thereafter; or
  - c. Assess no monetary penalties.
2. In determining the monetary penalty assessment, the hearing examiner shall consider the following factors:
  - a. Whether the person(s) responded to attempts to contact the person and cooperated with efforts to correct the violation;
  - b. Whether the person(s) failed to appear at the hearing;
  - c. Whether the violation was a repeat violation;

- d. Whether the person(s) showed due diligence and/or substantial progress in correcting the violation;
  - e. Whether a genuine code interpretation issue exists; and
  - f. Any other relevant factors.
3. The hearing 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 hearing examiner shall consider the factors set forth above.
- G. *Notice of decision.* The hearing examiner shall mail a copy of the decision to the property owner and the person responsible for the violation and to the applicable town official within ten (10) working days of the hearing.
- H. *Failure to appear.* If the person(s) 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 town will carry out the hearing examiner's order and will seek to recover all related expenses, plus the cost of the hearing and any monetary penalty from that person(s).
- I. *Appeal to superior court.* An appeal of the decision of the hearing examiner must be filed with the superior court within ten (10) calendar days from the date the hearing examiner's decision was mailed to the person(s) to whom the notice of civil violation was directed, or is thereafter barred.

Section 7. Abatement by the town.

- A. The town may abate a condition which was caused by or continues to be a civil violation when:
- 1. The terms of the voluntary correction agreement have not been met; or
  - 2. A notice of civil violation has been issued pursuant to section 4 and a hearing has been held pursuant to section 6 and the required correction has not been completed by the date specified in the hearing examiner's order; or
  - 3. The condition is subject to summary abatement as provided for in section 7.

- B. *Summary abatement.* Whenever any nuisance causes a condition, the continued existence of which constitutes an immediate threat to public health, safety, or welfare or to the environment, the town 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. No right of action shall lie against the town or its agents, officers, or employees for actions reasonably taken to prevent or cure any such immediate threats, but neither shall the town be entitled to recover any costs incurred for summary abatement, prior to the time that actual notice of same is provided to the person responsible for the violation and the property owner.
- C. *Authorized action by the town.* Using any lawful means, the town may enter upon the subject property and may remove or correct the condition that is subject to abatement. The town 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 the incidental expenses, of correcting the violation shall be billed to the person responsible for the violation and/or the property owner and shall become due and payable to the town within ten (10) calendar days. The term "incidental expenses" includes but is not limited to personnel costs, both direct and indirect; attorney's fees; costs incurred in documenting the violation; hauling, storage and disposal expenses; and actual expenses and costs of the town in preparing notices, specifications, and contracts, the expenses and costs of the town in accomplishing, contracting, and inspecting the work; and the costs of any required printing, mailing, posting and publishing.
- E. *Lien for vegetation removal costs.* Any costs incurred by the town in abating or correcting a violation, including incidental expenses shall become a lien against the real property in accordance with RCW 35.21.310.
- F. *Interference.* Any person who knowingly obstructs, impedes, or interferes with the town or its agents, or with the person responsible for the violation or the property owner in the performance of duties imposed by this ordinance, shall be guilty of a misdemeanor punishable by imprisonment not exceeding ninety (90) days and a fine not exceeding one thousand dollars (\$1,000). The town may also impose a civil fine of up to one thousand dollars (\$1,000) for knowingly obstructing, impeding, or interfering with the town.

Section 8. Additional enforcement procedures.

The provisions of this ordinance are not exclusive, and may be used in addition to other enforcement provisions authorized by Yacolt Town Ordinances or state law except as precluded by law.

Section 9. Conflicts.

In the event of a conflict between this ordinance and any other provision of the Yacolt Town Ordinances providing for a civil penalty, this ordinance shall control.

Section 10. Severability.

Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 11. Effective Date.

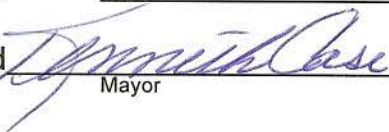
This ordinance shall be published in the official newspaper of the town, and shall take effect and be in full force immediately after the date of publication.

Passed by the council and approved by the mayor this 20<sup>th</sup> day of December, 1999.

Ayes Milman, Messer, Robertson, Smith

Nays None

Absent None

Signed   
Mayor

Attest   
Clerk/Treasurer

Approved as to Form:

\_\_\_\_\_  
Town Attorney

I hereby certify that this is a true and correct copy of Ordinance #390 as read before the Council and passed on the date herein mentioned and passed according to law.

ATTEST   
Brenda Finnegan, Clerk/Treasurer