

ORDINANCE NUMBER 49-17

AN ORDINANCE OF THE MASON COUNTY BOARD OF COMMISSIONERS AMENDING SECTION 15.13, ISSUING NOTICES OF CODE VIOLATIONS ADMINISTRATIVELY AND SECTION 15.09.030 , CONDUCTING ADMINISTRATIVE REVIEW OF ACCESSORY DWELLING UNITS TO DECREASING RELIANCE ON THE HEARINGS EXAMINER FOR REVIEWS THAT CAN BY CONDUCTED ADMINISTRATIVELY.

AN ORDINANCE of the Mason County Board of Commissioners ("Commissioners") to amend Title 15 of the Mason County Code, Section 15.13, issuing notices of code violations administratively and Section 15.09.030, conducting administrative review of accessory dwelling units.

WHEREAS, Mason County Code 15.13, under the authority of Washington State law, Chapter 7.80 Revised Code of Washington 23 (RCW), provides for local code enforcement of civil infractions; and

WHEREAS, a stated purpose of Chapter 7.80 RCW is to allow for local code enforcement officers to address civil infractions reducing court case loads;

WHEREAS, Mason County Planning has experience administering permits for accessory dwelling units and Mason County Board of County Commissioners has codified specific criteria for approval of accessory dwelling units in MCC 17.03.029;

WHEREAS, Mason County is streamlining planning processes and reducing costs for both citizens and the County;

WHEREAS, the Commissioners find that it is in the public interest to adopt the amendments described above;

NOW THEREFORE, BE IT HEREBY ORDAINED, by the Board of Commissioners of Mason County that:

Title 15, "Development Code", Sections 15.13 and 15.09030 of the Mason County Code are hereby amended as set forth in Attachment A, which is attached hereto and incorporated herein by reference.


DATED this 22nd day of August 2017.

BOARD OF COUNTY COMMISSIONERS
MASON COUNTY, WASHINGTON


ATTEST:



Clerk of the Board



Kevin Shutty, Chair

APPROVED AS TO FORM:


Tim Whitehead, Chief DPA



Terri Jeffreys, Commissioner
Drexler



Randy Neatherlin, Commissioner

Chapter 15.13 - ENFORCEMENT

Sections:

15.13.005 - Severability.

This title shall be governed by the laws of the state of Washington. In the event that any portion or section of this title be declared invalid or unconstitutional by a court of competent jurisdiction, the remainder of the title shall not be affected and shall remain in full force and effect.

(Ord. 179-02 Attach. B (part), 2002; Ord. 142-02 Attach. B (part), 2002; Ord. 88-02 Attach. B (part), 2002; Ord. 116-01 Attach. A (part), 2001; Ord. 129-00 Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

15.13.010 - Enforcing official—Authority.

- (a) The review authority shall be responsible for enforcing those codes and ordinances to which this title applies, and may adopt administrative rules to meet that responsibility. The review authority may delegate enforcement responsibility, as appropriate. An employee of one review authority department may commence an enforcement action of violations of codes and regulations of other departments.
- (b) Inspections. The purpose of these inspection procedures are to ensure that a property owner's rights are not violated.

When it is necessary to make an inspection to enforce the provisions of this chapter, or when the director has reasonable cause to believe that a violation has been or is being committed, the director or his duly authorized inspector may enter the premises, or building at reasonable times to inspect or to perform any duties imposed by this chapter, provided that if such premises or building be occupied that credentials be presented to the occupant and entry requested. If such premises or building be unoccupied, the director shall first make reasonable effort to locate the owner or other person having charge or control of the premises or building and request entry. If entry is refused, the director shall have recourse to remedies provided by law to secure entry.

(Ord. 32-04 Attach. B (part), 2004; Ord. 179-02 Attach. B (part), 2002; Ord. 142-02 Attach. B (part), 2002; Ord. 88-02 Attach. B (part), 2002; Ord. 116-01 Attach. A (part), 2001; Ord. 129-00 Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

15.13.020 - Penalty.

- (a) Nonconforming structures and other non-conforming land modifications shall be a continuing violation. Every day of violation shall be a separate violation. It shall be a violation to own, use, control, maintain, or possess a portion of any premises which has been constructed, equipped, maintained, controlled, or used in violation of any of the applicable provisions, MCC Section 15.03.005, in this title. Structures or activities which were made or conducted without a permit, when a permit was required at the time of first action, do not vest and require current permits. Any person, firm, or corporation who violates or who solicits, aids, or attempts a violation are accountable under this chapter and are subject to the penalty provisions ~~as well as the hearing examiner process.~~
- (b) Compliance with the requirements of those codes and regulations listed under MCC Section 15.03.005 shall be mandatory, and violations of those codes are within the purview of this chapter.

- (c) Any private party who intentionally, recklessly, or negligently violates any of the applicable codes, regulations and ordinances is guilty of a misdemeanor. This includes, but is not limited to, a violation of notice and order, a violation of notice of civil violation, a violation of a warning notice, a violation of a stop work order, violation of a do not occupy order, ~~and or~~ failure to comply with orders of the hearings examiner. Any person convicted of a misdemeanor under this section shall be punished by a fine of not more than five hundred dollars, or by imprisonment not to exceed ninety days, or by both, unless otherwise required by state laws. Each such person is guilty of a separate offense for each and every day during any portion of which any violation of any of the applicable provisions is committed, continued, permitted, or aided by any such person.
- (d) Notwithstanding the provisions of any other code, the review authority is authorized to issue civil infractions for violations of any provision of any code or regulation listed under Section 15.03.005. The enforcement officer may issue a civil infraction ticket of up to two hundred fifty dollars for the first violation and up to five hundred dollars for the second and subsequent violations. Second and subsequent violations refer to any violation of any provision of Section 15.03.005 within two years of the first violation. A violator is: (1) one who owns the property and knows the violation is occurring, and fails to take action to abate it; (2) one who causes the violation to occur or solicits, commissions, requests, or aids the violation; (3) one who has a virtual exclusive right to possess the land, as in a tenant, equitable title owner, or trust beneficiary, and who aids, abets, commissions, solicits, requests, or knowingly allows a violation to occur on the land; or (4) to the maximum extent allowed under Washington law, any company whose employee or employees violates any provision of Title 15. Proof in district court shall be by a preponderance of the evidence. To the extent that there is no conflict with this regulation, all such civil infractions under this regulation shall be governed by the standards and procedures set forth in Revised Code of Washington 7.80 (Civil Infractions). Each day of the violation shall be considered a separate offense.

(Ord. 179-02 Attach. B (part), 2002; Ord. 142-02 Attach. B (part), 2002; Ord. 88-02 Attach. B (part), 2002; Ord. 116-01 Attach. A (part), 2001; Ord. 129-00 Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

15.13.030 - Application.

- (a) Actions under this chapter may be taken in any order deemed necessary or desirable by the review authority to achieve the purpose of this chapter or of the development code.
- (b) Proof of a violation of a development permit shall constitute prima facie evidence that the violation is that of the applicant and/or owner of the property upon which the violation exists. An enforcement action under this chapter against the owner and/or applicant shall not relieve or prevent enforcement under this chapter or other ordinance against any other responsible person, which, to the extent allowed by state law, includes an officer or agent of a business or nonprofit organization who, while violating the applicable provisions, is acting on behalf of, or in representation of, the organization.
- (c) Where property has been subjected to an activity in violation of this chapter, the county may bring an action against the owner of such land or the operator who performed the violation. In addition, in the event of intentional or knowing violation of this chapter, the ~~hearing examiner~~review authority may, ~~upon the county's request,~~ deny authorization of any permit or development approval on said property for a period up to ten years from the date of unauthorized clearing or grading. While a case is pending ~~before the hearing examiner,~~ the county shall not authorize or grant any permit or approval of development on the property.
- (d) Nothing in this chapter shall be construed to prevent the application of other procedures, penalties or remedies as provided in the applicable code or ordinance.

(Ord. 32-04 Attach. B (part), 2004; Ord. 179-02 Attach. B (part), 2002; Ord. 142-02 Attach. B (part), 2002; Ord. 88-02 Attach. B (part), 2002; Ord. 116-01 Attach. A (part), 2001; Ord. 129-00 Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

15.13.035 - Warning notice.

Prior to other enforcement action, and at the option of the review authority, a warning notice may be issued. This notification is to inform parties of practices which constitute or will constitute a violation of the development code or other development regulation as incorporated by reference and may specify corrective action. This warning notice may be sent by certified/registered mail, posted on site or delivered by other means. The parties shall respond to the county within twenty days of the postmark, posting on site, or delivery of the notice.

(Ord. 179-02 Attach. B (part), 2002; Ord. 142-02 Attach. B (part), 2002; Ord. 88-02 Attach. B (part), 2002; Ord. 116-01 Attach. A (part), 2001; Ord. 129-00 Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

15.13.040 - Notice of civil violation.

- (a) Authority. A notice of civil violation may be issued and served upon a person if any activity by or at the direction of that person is, has been, or may be taken in violation of the applicable codes under Section 15.03.005. A landowner, tenant, or contractor may each be held separately and joint and severally responsible for violations of the applicable codes and regulations.
- (b) Notice. A notice of civil violation shall be deemed served and shall be effective when posted at the location of the violation and/or delivered to any person at the location and/or mailed first class to the owner or other person having responsibility for the location and not returned.
- (c) Content. A notice of civil violation shall set forth:
 - (1) The name and address of the person to whom it is directed;
 - (2) The location and specific description of the violation;
 - (3) A notice that the order is effective immediately upon posting at the site and/or receipt by the person to whom it is directed;
 - (4) An order that the violation immediately cease, or that the potential violation be avoided;
 - (5) An order that the person stop work until correction and/or remediation of the violation as specified in the order;
 - (6) A specific description of the actions required to correct, remedy, or avoid the violation, including a time limit to complete such actions;
 - (7) A notice that failure to comply with the regulatory order may result in further enforcement actions, including civil fines and criminal penalties;
 - (8) A notice of the ~~date, time and place of appearance before the hearing examiner as provided in Section 15.13.045. opportunity to appeal the administrative decision to the hearings examiner consistent with Section 15.11.020.~~
- (d) Remedial Action. The review authority may require any action reasonably calculated to correct or abate the violation, including but not limited to replacement, repair, supplementation, revegetation, or restoration.

(Ord. 179-02 Attach. B (part), 2002; Ord. 142-02 Attach. B (part), 2002; Ord. 88-02 Attach. B (part), 2002; Ord. 116-01 Attach. A (part), 2001; Ord. 129-00 Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

~~15.13.045—Hearing before the hearings examiner.~~

- ~~(a) A person to whom a notice of a civil violation is issued will be scheduled to appear before the hearings examiner after the notice of civil violation is issued. Extensions may be granted at the discretion of the appropriate review authority.~~
- ~~(b) Correction of Violation. The hearing will be canceled if the applicable review authority determines that the required corrective action has been completed or is on schedule for completion as set by the review authority at least forty-eight 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 review authority 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 county shall have the burden of proof to demonstrate by a preponderance of evidence that a violation has occurred or imminently may occur and that the required corrective action will correct the violation. A hearing examiner's order may prohibit future action, and violations of that order may lead to penalties under this title. The determination of the applicable review authority shall be accorded substantial weight by the hearings examiner in determining the reasonableness of the required corrective action.~~
- ~~(d) Decisions of the Hearings Examiner.~~
 - ~~(1) The hearings examiner shall determine whether the county has established by a preponderance of the evidence that a violation has occurred and that the required correction will correct the violations and shall affirm, vacate, or modify the county's decisions regarding the alleged violation and/or the required corrective action, with or without written conditions.~~
 - ~~(2) The hearing 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 civil fines assessed based on the criteria in subsection (d)(3) of this section;~~
 - ~~(E) The date and time by which the correction must be completed.~~~~
 - ~~(3) Civil fines assessed by the hearing examiner shall be in accordance with the civil fine in Section 15.13.050.
 - ~~(A) The hearing examiner shall have the following options in assessing civil fines:
 - ~~(i) Assess was issued and thereafter; or~~
 - ~~(ii) Assess civil fines beginning on the correction date set by the applicable review authority or alternate correction date set by the hearings examiner and thereafter; or~~
 - ~~(iii) Assess less than the established civil fine set forth in Section 15.13.050 based on the criteria of subsection (d)(3)(B) of this section; or~~
 - ~~(iv) Assess no civil fines.~~~~~~

~~(B) In determining the civil fine assessment, the hearing 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 or if the person has previously violated the applicable codes, regulations, and ordinances;~~
- ~~(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 hearing examiner may double the civil fine schedule if the violation was a repeat violation or the person has previous violations of the applicable codes, regulations, or ordinances. In determining the amount of the civil fine for repeat violations the hearing examiner shall consider the factors set forth in subsection (d)(3)(B) of this section.~~

~~(4) Notice of Decision. Upon receipt of the hearing examiner's decision, the review authority shall send by first class mail and by certified mail return receipt requested a copy of the decision to the person to whom the notice of a civil violation was issued. The decision of the hearing examiner shall be rendered 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 hearing examiner will enter a default order with findings pursuant to subsection (d)(2) of this section and assess the appropriate civil fine pursuant to subsection (d)(3) of this section. The county will enforce the hearing examiner's order and any civil fine from that person.~~

~~(f) Appeal to Superior Court. See Section 15.11.040 Judicial Appeal.~~

~~(Ord. 179-02 Attach. B (part), 2002; Ord. 142-02 Attach. B (part), 2002; Ord. 88-02 Attach. B (part), 2002; Ord. 116-01 Attach. A (part), 2001; Ord. 129-00 Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).~~

15.13.050 - Civil fines.

- (a) Authority. A person who violates any provision of the development code, or who fails to obtain any necessary permit, who fails to comply with the conditions of a permit, or who fails to comply with a notice of civil violation shall be subject to a civil fine.
- (b) Amount. The civil fine assessed shall not exceed one thousand dollars for each violation, ~~except where the hearings examiner is authorized under this chapter to double the fine.~~ Each separate day, event, action or occurrence shall constitute a separate violation.
- (c) Notice. A civil fine shall be imposed by an order of the hearings examiner review authority, and shall be effective when served or posted as set forth in Section 15.13.040(b).
- (d) Collection.
 - (1) Civil fines shall be immediately due and payable upon issuance and receipt of order of the hearings examiner review authority. The review authority may issue a stop work order until such fine is paid.
 - (2) If remission or appeal of the fine is sought, the fine shall be due and payable upon issuance of a final decision.

- (3) If a fine remains unpaid thirty days after it becomes due and payable, the review authority may take actions necessary to recover the fine. Civil fines shall be paid into the county's general abatement fund unless otherwise provided by ordinance. The review authority, in its discretion, may determine that assessments in amounts of five hundred dollars or more shall be payable in not to exceed three equal annual installments. The payments shall bear interest equal to that charged on delinquent taxes under RCW 84.56.020. Such an account in good standing shall not be considered as delinquent unpaid fines as provided in subsection (d)(4) of this section.
- (4) Unpaid fines shall be assessed against the property and be recorded on the assessment roll, and thereafter said assessment shall constitute a special assessment against and a lien upon the property, provided that fines in excess of the assessed value shall be a personal obligation of the property owner, and fines assessed against persons who are not the property owner shall be personal obligations of those persons.
- (e) Immediately upon its being placed on the assessment roll, the assessment shall be deemed to be complete, the several amounts assessed shall be payable, and the assessments shall be liens against the lots or parcels of land assessed, respectively. The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property and shall be paramount to all other liens except for state, county and property taxes with which it shall be upon a parity. The lien shall continue until the assessment and all interest due and payable thereon are paid.
- (f) All such assessments remaining unpaid after thirty days from the date of recording on the assessment roll shall become delinquent and shall bear interest at such rates and in such manner as provided for in RCW 84.56.020, as now or hereafter amended, for delinquent taxes.
- (g) If the county assessor and the county treasurer assess property and collect taxes for this jurisdiction, a certified copy of the assessment shall be filed with the county treasurer. The descriptions of the parcels reported shall be those used for the same parcels on the county assessor's map books for the current year.
- (h) The amount of the assessment lien shall be billed annually by the treasurer's office on the date of the assessment lien until paid and shall be subject to the same penalties and procedure and sale in case of delinquency as provided for ordinary property taxes. All laws applicable to the levy, collection and enforcement of property taxes shall be applicable to such assessment. Notwithstanding the previous provisions, the foreclosure process and sale process may be commenced within a year of the creation of a lien when the review authority or the hearing examiner make a written request to the treasurer's office to commence the process.

(Ord. 80-03 Attach. B (part), 2003; Ord. 179-02 Attach. B (part), 2002; Ord. 142-02 Attach. B (part), 2002; Ord. 88-02 Attach. B (part), 2002; Ord. 116-01 Attach. A (part), 2001; Ord. 129-00 Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

15.13.055 - Cost recovery.

- (a) Authority. Notwithstanding any other code provision, a person who violates any provision of any code or regulation under MCC Section 15.03.005, or who fails to obtain any necessary permit, or who fails to comply with a notice of civil violation shall be subject to enforcement, hearings examiner, and abatement costs. ~~Costs in year 2002 shall be fifty-two dollars and thirty cents per hour for any employee of Mason County, except that department heads and managers, elected officials, and deputy prosecutor time shall be seventy-five dollars per hour. For every year after 2002, the rate may be adjusted according to the Consumer Price Index.~~
- (b) Amount. The review authority shall keep an itemized account of the time spent by employees of the county in the enforcement or abatement of any code or any regulation under Section 15.03.005. ~~The review authority may request costs be ordered by the hearings examiner. The hearing examiner may order costs.~~

- (c) Notice. Upon completion of the work for which cost recovery is proposed, the review authority shall provide notice by certified mail return receipt requested to the property owner or other person on whose behalf the costs were incurred.
- (d) Collection. Costs may be collected as provided in MCC Section 15.13.050(d) through (h) inclusive.
- (e) Civil fines and funds collected shall be deposited ~~as provided in the respective county regulation or, if no other provision is made, shall be deposited~~ in the general abatement fund of the county. ~~However, departmental directors may, in their discretion, direct that costs be placed in a special abatement fund.~~ If the director decides to close the fund, the remaining fund balance shall revert back to the general fund.

(Ord. 179-02 Attach. B (part), 2002; Ord. 142-02 Attach. B (part), 2002; Ord. 88-02 Attach. B (part), 2002; Ord. 116-01 Attach. A (part), 2001; Ord. 129-00 Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

15.13.060 - Abatement.

- (a) The review authority may abate the violation if corrective work is not commenced or completed within the time specified in a notice of civil violation.
- (b) If any required work is not commenced or completed within the time specified, the review authority may proceed to abate the violation and cause the work to be done and charge the costs thereof as a lien against the property and any other property owned by the person in violation and as a personal obligation of any person in violation.

(Ord. 32-04 Attach. B (part), 2004; Ord. 179-02 Attach. B (part), 2002; Ord. 142-02 Attach. B (part), 2002; Ord. 88-02 Attach. B (part), 2002; Ord. 116-01 Attach. A (part), 2001; Ord. 129-00 Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

15.13.070 - Review of approved permits.

- (a) Review. Any approval or permit issued under the authority of the development code may be reviewed for compliance with the requirements of the development code, or to determine if the action is creating a nuisance or hazard, has been abandoned, or the approval or permit was obtained by fraud or deception.
- (b) Review Authority Investigation. Upon receipt of information indicating the need for, or upon receiving a request for review of permit or approval, the review authority shall investigate the matter and take one or more of the following actions:
 - (1) Notify the property owner or permit holder of the investigation;
 - (2) Issue a notice of civil violation and/or civil fine and/or recommend revocation or modification of the permit or approval;
 - (3) Refer the matter to the county prosecutor;
 - (4) Revoke or modify the permit or approval, if so authorized in the applicable code or ordinance; and/or
 - (5) Refer the matter to the hearing examiner with a recommendation for action.

(Ord. 32-04 Attach. B (part), 2004; Ord. 179-02 Attach. B (part), 2002; Ord. 142-02 Attach. B (part), 2002; Ord. 88-02 Attach. B (part), 2002; Ord. 116-01 Attach. A (part), 2001; Ord. 129-00 Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).

15.13.075 - Revocation or modification of permits and approvals.

[[Handled by appropriate departments]]

- (a) Upon receiving a review authority's recommendation for revocation or modification of a permit or approval, the hearing examiner shall review the matter at a public hearing, subject to the notice of public hearing requirements (Section 15.07.030). Upon a finding that the activity does not comply with the conditions of approval or the provisions of the development code, or creates a nuisance or hazard, the hearing examiner may delete, modify or impose such conditions on the permit or approval it deems sufficient to remedy the deficiencies. If the hearing examiner finds s no reasonable conditions which would remedy the deficiencies, the permit or approval shall be revoked and the activity allowed by the permit or approval shall cease.
- (b) Building Permits. The building official, not the hearing examiner has the authority to revoke or modify building permits.
- (c) If a permit is not acted on within three years of authorization, the permit is automatically revoked.
- (d) Reapplication. If a permit or approval is revoked for fraud or deception, no similar application shall be accepted for a period of one year from the date of final action and appeal, if any. If a permit or approval is revoked for any other reason, another application may be submitted subject to all of the requirements of the development code.

(Ord. 32-04 Attach. B (part), 2004).

15.09.030 - Type I and Type II review—Without notice.

(a) After the determination of a complete application, the review authority may approve, approve with conditions, or deny the following without notice, unless notice is otherwise required (for example, short subdivision applications):

- (1) Type I decisions;
- (2) Extension of time for approval;
- (3) Minor amendments or modifications to approved developments or permits. Minor amendments are those which may affect the precise dimensions or location of buildings, accessory structures and driveways, but do not affect: (i) overall project character, (ii) increase the number of lots, dwelling units, or density or (iii) decrease the quality or amount of open space;
- (4) Adjustment to yard setbacks;
- (5) Type II decisions, which are excluded as provided in Section 15.03.010 of this title;

(6) Accessory Dwelling Units.

(b) The review authority's decisions under this section shall be final on the date issued.

(Ord. 179-02 Attach. B (part), 2002; Ord. 142-02 Attach. B (part), 2002; Ord. 88-02 Attach. B (part), 2002; Ord. 116-01 Attach. A (part), 2001; Ord. 129-00 Attach. A § 2 (part), 2000; Res. 79-78 (part), 1998; Res. 136-96 (part), 1996).