
Council Bill Number: 115899

Ordinance Number: 122407

AN ORDINANCE relating to land use code enforcement, amending Sections 23.90.006, 23.90.008, 23.90.014, 23.90.018, 23.90.019; 23.90.020, 23.91.006, and 23.91.012, adding new Sections 23.90.015 and 23.90.025, and repealing Section 23.90.022 of the Seattle Municipal Code.

Status: Passed

Note: Fourth Quarter 2006 Salary Ordinance

Vote: 7-0 (Excused: Della, Rasmussen)

Date filed with the City Clerk: 2007/06/06

Date of Mayor's signature: 2007/05/29 ([about the signature date](#))

Date introduced/referred to committee: 2007/05/14

Committee: Full Council

Sponsor: STEINBRUECK

Committee Recommendation: Pass

Index Terms: LAND-USE-CODE, MUNICIPAL-CODE, AMENDMENT, BUILDING-CODES, LAND-USE-REGULATIONS, NUISANCE-ABATEMENT, FINES

Fiscal Note: [Fiscal Note to Council Bill No. 115899](#)

Electronic Copy: [PDF scan of Ordinance No. 122407](#)

Reference: Related: Ord 122396, 122397, Amending: 121196, 117263, 119702,, 122190, 122190, 122054, 120156

Text:

AN ORDINANCE relating to land use code enforcement, amending Sections 23.90.006, 23.90.008, 23.90.014, 23.90.018, 23.90.019; 23.90.020, 23.91.006, and 23.91.012, adding new Sections 23.90.015 and 23.90.025, and repealing Section 23.90.022 of the Seattle Municipal Code.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 23.90.006 of the Seattle Municipal Code, which section was last amended by Ordinance 121196, is amended as follows:

23.90.006 Investigation and notice of violation.

A. The Director ~~shall~~ is authorized to investigate any structure or use ~~which~~ the Director reasonably believes does not comply with the standards and requirements of this Land Use Code.

B. If after investigation the Director determines that the standards or requirements have been violated, the Director ~~shall~~ serve may issue a notice of violation ~~to upon~~ the owner, tenant or other person responsible for the condition. The notice of violation shall state separately each standard or requirement violated, shall state what corrective action, if any, is necessary to comply with the standards or requirements, and shall set a reasonable time for compliance. ~~The notice shall state that any subsequent violation may result in criminal prosecution as provided in Section 23.90.020.~~ In the event of violations of the standards or requirements of the Seattle Shoreline Master Program, Chapter 23.60, the required corrective action shall include, if appropriate, but shall not be limited to, mitigating measures such as

restoration of the area. ~~Civil penalties for unauthorized dwelling units in single-family structures shall be applied.~~

C. The notice shall be served upon the owner, tenant or other person responsible for the condition by personal service ; ~~registered mail, or certified mail or by first class mail with return receipt requested, addressed to the last known address of such person to the person's last known address. If, after a reasonable search and reasonable efforts are made to obtain service, the whereabouts of the person or persons is unknown or service cannot be accomplished and the Director makes an affidavit to that effect, then service of the notice upon such person or persons may be made by: If the address of the responsible person is unknown and cannot be found after a reasonable search, the notice may be served by posting a copy of the notice at a conspicuous place on the property. If a notice of violation is directed to a tenant or other person responsible for the violation who is not the owner, a copy of the notice shall be sent to the owner of the property.~~

~~1. Publishing the notice once each week for two (2) consecutive weeks in the City Official Newspaper; and~~

~~2. Mailing a copy of the notice to each person named on the notice of violation by first class mail to the last known address if known, or if unknown, to the address of the property involved in the proceedings.~~

D. A copy of the notice of violation may be filed with the King County Department of Records and Elections when the responsible party fails to correct the violation or the Director requests the City Attorney take appropriate enforcement action may be posted at a conspicuous place on the property, unless posting the notice is not physically possible.

E. Nothing in this section shall be deemed to limit or preclude any action or proceeding to enforce this chapter nor does anything in this section obligate the Director to issue a notice of violation prior to initiation of a civil or criminal enforcement action except as otherwise provided in Director's rules adopted pursuant to SMC chapter 23.88. Nothing in this section shall be deemed to limit or preclude any action or proceeding pursuant to Section 23.90.010 or Section 23.90.012.

F. ~~The Director may mail, or cause to be delivered to all residential, nonresidential, and/or live-work rental units in the structure or post at a conspicuous place on the property, a notice that informs each recipient or resident about the notice of violation, Stop Work order or emergency Order and the applicable requirements and procedures.~~

G. ~~A notice or an Order may be amended at any time in order to:~~

~~1. Correct clerical errors, or~~

~~2. Cite additional authority for a stated violation.~~

Section 2. Section 23.90.008 of the Seattle Municipal Code, which section was last amended by Ordinance 117263, is amended to read as follows:

23.90.008 Time to comply.

~~A.~~ When calculating a reasonable time for compliance as required by Section 23.90.006, the Director shall consider the following criteria:

1. The type and degree of violation cited in the notice;

2. The stated intent, if any, of a responsible party to take steps to comply;

3. The procedural requirements for obtaining a permit to carry out corrective action;

4. The complexity of the corrective action, including seasonal considerations, construction requirements and the legal prerogatives of landlords and tenants; and

5. Any other circumstances beyond the control of the responsible party.

~~B. Unless a request for review before the Director is made in accordance with Section 23.90.014 the notice of violation shall become the final order of the Director. After the notice of violation becomes the final order of the Director, a copy of the notice of violation shall be filed with the King County Department of Records and Elections if the notice of violation cites illegal uses, illegal units, failure to comply with a permit condition, elimination of a required parking space, more than one (1) dwelling per lot, or shoreline violations. All other notices of violation shall be filed with the King County Department of Records and Elections when the Director notifies the City Attorney in writing of any person subject to a penalty under the title.~~

Section 3. Section 23.90.014 of the Seattle Municipal Code, which section was last amended by Ordinance 119702, is amended as follows:

23.90.014 Review by the Director.

A. Any person significantly affected by or interested in a notice of violation issued by the Director pursuant to Section 23.90.006 may obtain a review of the notice by requesting such review within ten (10) fifteen (15) days after service of the notice. When the last day of the period so computed is a Saturday, Sunday or federal or City holiday, the period shall run until five (5:00) p.m. on the next business day. The request shall be in writing, and upon receipt of the request, the Director shall notify any persons served the notice of violation and the complainant, if any, of the request for review and the deadline for submitting additional information for the review. which shall be within Additional information shall be submitted to the Director no later than fifteen (15) twenty (20) days after the notice of a request for a review is mailed received, unless otherwise agreed by all persons served with the notice of violation. Before the deadline for submission of additional information, any person significantly affected by or interested in the notice of violation (including any persons served the notice of violation and the complainant) may submit any additional information in the form of written material or oral comments to the Director for consideration as part of the review.

B. The review will be made by a representative of the Director who is familiar with the case and the applicable ordinances. The Director's representative will review all additional information received by the deadline for submission of additional information. The reviewer may also request clarification of information received and a site visit. After review of the additional information, the Director may:

1. Sustain the notice of violation;
2. Withdraw the notice of violation;
3. Continue the review to a date certain for receipt of additional information; or
4. Modify the notice of violation, which may include an extension of the compliance date.

~~C. The Director shall issue an Order of the Director containing the decision within seven (7) days of the date of the completion of the review and shall cause the same to be mailed by regular first class mail to the person or persons named on the notice of violation, mailed to the complainant, if possible, and filed with the Department of Records and Elections of King County.~~

Section 4. A new section 23.90.015 is added to the Seattle Municipal Code as follows:

23.90.015 Order of the Director.

A. Where review by the Director has been conducted pursuant to Section 23.90.014, the Director shall issue an order of the Director containing the decision within fifteen (15) days of the date that the review is completed and shall cause the same to be mailed by regular first class mail to the person or persons named on the notice of violation and, if possible, mailed to the complainant.

B. Unless a request for review before the Director is made pursuant to Section 23.90.014, the notice of violation shall become the order of the Director.

C. Because civil actions to enforce Title 23 SMC are brought in Seattle Municipal Court pursuant to Section 23.90.018, orders of the Director issued under this chapter are not subject to judicial review pursuant to chapter 36.70C RCW.

Section 5. Section 23.90.018 of the Seattle Municipal Code, which section was last amended by Ordinance 122190, is amended as follows:

23.90.018 Civil ~~penalty~~ enforcement proceedings and penalties.

A. In addition to any other ~~sanction or remedial procedure that may be available~~ remedy authorized by law or equity, any person violating or failing to comply with any of the provisions of Title 23 ~~and who is identified in an order of the Director~~ shall be subject to a cumulative penalty ~~in the amount of Seventy-five (\$75) up to One Hundred Fifty Dollars (\$150.00) per day for each violation from the date the violation begins for the first ten (10) days of noncompliance; and up to Five Hundred Dollars (\$500) per day for each violation from the date set for compliance for each day beyond ten (10) days of noncompliance until compliance is achieved~~ the person complies with the requirements of the code, except as provided in subsection B of this section. In cases where the Director has issued a notice of violation, the violation will be deemed to begin for purposes of determining the number of days of violation on the date compliance is required by the notice of violation.

B. Specific Violations.

1. Violations of Section 23.71.018 are subject to the penalty in the amount specified in Section 23.71.018 H.
2. Violations of ~~the requirements of~~ Section 23.44.041 C are subject to a civil penalty of Five Thousand Dollars (\$5,000), which shall be in addition to any penalty imposed under subsection A of this section.
3. Violation of Section 23.49.011 or 23.49.015 with respect to failure to demonstrate compliance with commitments to earn LEED Silver ratings under either such Section are subject to penalty in amounts determined under Section 23.49.020, and not to any other penalty.

C. Civil actions to enforce Title 23 shall be brought exclusively in Seattle Municipal Court except as otherwise required by law or court rule. The penalty imposed by this section shall be collected by civil action, brought in the name of the City. The Director shall ~~notify~~ request in writing that the City Attorney ~~take enforcement action.~~ in writing of the name of any person subject to the penalty, and the The City Attorney shall, with the assistance of the Director, take appropriate action to ~~collect the penalty~~ enforce Title 23. In any civil action ~~for a penalty filed pursuant to this chapter,~~ the City has the burden of proving by a preponderance of the evidence that a violation exists or existed, ~~the~~ The issuance of the notice of violation or of an order following a review by the Director is not itself evidence that a violation exists.

D. Except in cases of violations of Section 23.49.011 or 23.49.015 with respect to failure to demonstrate compliance with commitments to earn LEED Silver ratings, the violator may show as full or partial mitigation of liability:

1. That the violation giving rise to the action was caused by the ~~wilful~~ willful act, or neglect, or abuse of another; or
2. That correction of the violation was commenced promptly ~~upon receipt of the notice thereof,~~ but that full compliance within the time specified was prevented by inability to obtain necessary materials or labor, inability to gain access to the subject structure, or other condition or circumstance beyond the control of the defendant.

Section 6. Subsection B of Section 23.90.019 of the Seattle Municipal Code, which section was last amended by Ordinance 122190, is amended as follows:

23.90.019 Civil penalty for unauthorized dwelling units in single- family structures.

* * *

B. After discovery of the existence of one (1) or more unauthorized dwelling unit(s) in a single-family dwelling unit or the existence of an unauthorized detached dwelling unit in a detached accessory dwelling unit structure, the Director ~~shall~~ may issue a ~~Notice of Violation~~ notice of violation in the manner set forth in Section 23.90.006, which notice shall impose the civil penalty and notify the owner of the date by which action to remove or legally establish the unauthorized unit(s) must be completed to avoid additional penalty. Failure to complete the required action by the date stated shall be a further violation of ~~the Land Use Code Title 23~~, subjecting the owner to an additional penalty of ~~Seventy-five Dollars (\$75) up to Five Hundred Dollars (\$500)~~ per day for each violation from the date the violation begins until the Notice compliance is satisfied achieved. In cases where the Director has issued a notice of violation, the violation will be deemed to begin for purposes of determining the number of days of violation on the date compliance is required by the notice of violation. Such penalties shall be collected in the manner provided in Section 23.90.018.

Section 7. Subsection A of Section 23.90.020 of the Seattle Municipal Code, which section was last amended by Ordinance 122054, is amended as follows:

23.90.020. ~~Alternative Criminal penalties~~ criminal penalty.

A. Any person ~~violating who violates or failing fails~~ to comply with any of the provisions of this Title 23 and who has had an Order of Judgment entered against them by a court of competent jurisdiction for violating Titles 22 or 23 within the past seven (7) years from the date the criminal charge is filed Land Use Code and who has had a judgment entered against him or her pursuant to Section 23.90.018 or its predecessors within the past five (5) years shall be subject to criminal prosecution and upon conviction of a subsequent violation shall be fined in a sum not exceeding Five Thousand Dollars (\$5,000) or be imprisoned in the City Jail for a term not exceeding one (1) year or be both fined and imprisoned shall upon conviction be guilty of a gross misdemeanor subject to the provisions of Chapter 12A.02 and 12A.04, except that absolute liability shall be imposed for such a violation or failure to comply and none of the mental states described in Section 12A.04.030 need be proved. The Director may request that the City Attorney prosecute such violations criminally as an alternative to the civil procedure outlined in this chapter. Each day of noncompliance with any of the provisions of this Land Use Code shall constitute a separate offense.

* * *

Section 8. A new section 23.90.025 is added to the Seattle Municipal Code as follows:

23.90.025 Appeal to Superior Court.

Final decisions of the Seattle Municipal Court on enforcement actions authorized by this chapter may be appealed pursuant to the Rules for Appeal of Decisions of Courts of Limited Jurisdiction.

Section 9. Subsection B of Section 23.91.006 of the Seattle Municipal Code, which was last amended by Ordinance 119896, is hereby amended as follows:

SMC 23.91.006 Response to citations.

* * *

B. A response to a citation must be received by the Office of the Hearing Examiner no later than ~~eighteen (18)~~ fifteen (15) days after the date the citation is served. When the last day of the appeal period so computed is a Saturday, Sunday, or federal or City holiday, the period shall run until five (5:00) p.m. on the next business day.

Section 10. Subsection E of Section 23.91.012 of the Seattle Municipal Code, which section was last amended by Ordinance 121477, is hereby amended as follows:

* * *

E. Evidence at Hearing.

1. The certified statement or declaration authorized by RCW 9A.72.085 submitted by an inspector shall be prima facie evidence that a violation occurred and that the person cited is responsible. The certified statement or declaration of the inspector authorized under RCW 9A.72.085 and any other evidence accompanying the report shall be admissible without further evidentiary foundation.
2. Any certifications or declarations authorized under RCW 9A.72.085 shall also be admissible without further evidentiary foundation. The person cited may rebut the DPD evidence and establish that the cited violation(s) did not occur or that the person contesting the citation is not responsible for the violation.

Section 11. Section 23.90.022 of the Seattle Municipal Code, which was last amended by Ordinance 120156, is repealed in its entirety.

Section 12. Severability and Savings. If any section, sentence, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by an administrative agency or quasi-judicial body, or by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance. Provided, however, that if any section, sentence, clause or phrase of this ordinance is held to be invalid by an administrative agency or quasi-judicial body, or by a court of competent jurisdiction, then the section, sentence, clause or phrase in effect prior to the effective date of this ordinance shall be in full force and effect for that individual section, sentence, clause or phrase as if this ordinance had never been adopted.

Section 13. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020

Passed by the City Council the ____ day of _____, 2007, and signed by me in open session in authentication of its passage this ____ day of _____, 2007.

President _____ of the City Council

Approved by me this ____ day of _____, 2007.

Gregory J. Nickels, Mayor

Filed by me this ____ day of _____, 2007.

City Clerk

(Seal)

Darby DuComb/DND

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February 28, 2007

version #3a

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